

34479 Minnesota Pollution Control Agency Request for Comments

Closed Sep 02, 2022 · Discussion · 33 Participants · 1 Topics · 38 Answers · 0 Replies · 1 Votes

33

PARTICIPANTS

1

TOPICS

38

ANSWERS

0

REPLIES

1

VOTES


SUMMARY OF TOPICS

SUBMIT A COMMENT

 38 Answers · 0 Replies

Important: All comments will be made available to the public. Please only submit information that you wish to make available publicly. The Office of Administrative Hearings does not edit or delete submissions that include personal information. We reserve the right to remove any comments we deem offensive, intimidating, belligerent, harassing, or bullying, or that contain any other inappropriate or aggressive behavior without prior notification.

Emily Wegener · Citizen · (Postal Code: unknown) · Aug 19, 2022 11:25 am

 0 Votes

August 19, 2022

Thank you for the opportunity to provide input on the MPCA feedlot water fee increases. We strongly disagree with the proposed fee increases.

Minnesota already has the highest fees of neighboring states along with some of the longest wait times for permit processing. We're already often at a competitive disadvantage and increasing fees would continue to deter the growth and diversification of family farms in Minnesota.

In most counties, county permitting fees are also assessed in addition to state fees, meaning we are paying duplicative fees in places where the county or the MPCA are providing service. We have experienced increased frustrations with the lack of knowledge and understanding of modern feedlots by those with the Minnesota Pollution Control Agency. With already the highest fees, it does not seem unreasonable to expect a higher level of service and background from those reviewing, inspecting, and enforcing permits. Yet, the agency seeks additional fee revenue with little evidence this would increase the value of service provided by the agency.

Doubling fees for renewals and creation of a gap site fee is unnecessary. Re-permitting requires very little review and there is no service provided for gap sites. It is frustrating to already pay the highest fees compared to neighboring state and now experience a doubling of fees when the cost of production for farms is already very high following many years of uncertainty in farming.

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Finally, because of our commitment to doing what is right on our farms and protecting the environment, we've demonstrated the integrity with which we operate our farms using modern technologies and barn designs to ensure we continue to protect the environment. Deep-pitted manure storage does not require the same kind of review as other feedlots.

Regards,

Emily Wegener
Preferred Capital Management

Shamus Brown · Citizen · (Postal Code: unknown) · Aug 23, 2022 1:42 pm

 0 Votes

August 23, 2022

Appreciate the opportunity to provide input on the MPCA feedlot water fee increases. I and the clients I work with in the pork industry strongly disagree with the proposed fee increases.

Minnesota already has the highest fees in the Midwest as well as long wait times for permit processing. Additionally, most counties are assessing additional fees; that is fees in addition to state fees.

Modern pork producers strive to protect the environment and do the right things. If you look at modern swine facilities with deep pit concrete storage the risks and review are substantially different than outdoor or lagoon type facilities. How are additional fees going to make these facilities better?

I'd ask that before the agency increase fees that there be a clear picture of what added services and benefits there will be; at this time it appears that it is added cost and making farming more prohibitive

Thank you again for the opportunity to comment.

Shamus Brown
Fairmont Veterinary Clinic

Jay Moore · Citizen · (Postal Code: unknown) · Aug 26, 2022 1:36 pm

 0 Votes

see attachment

Bruce Kleven · Citizen · (Postal Code: unknown) · Aug 29, 2022 4:01 pm

 0 Votes

Attached please find comments from the Minnesota State Cattlemen's Association

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(MSCA).

Lucas Sjostrom · Citizen · (Postal Code: unknown) · Aug 29, 2022 9:16 pm
👍 0 Votes

Attached please find comments from the Minnesota Milk Producers Association (MMPA).

Lucas Sjostrom · Citizen · (Postal Code: unknown) · Aug 29, 2022 9:19 pm
👍 0 Votes

Attached please find joint comments from the following:
AgCountry Farm Credit Services
Compeer Financial
Minnesota AgriGrowth Council
Minnesota Milk Producers Association
Minnesota Pork Producers Association
Minnesota Soybean Growers Association

Steve Gottwalt · Citizen · (Postal Code: unknown) · Aug 30, 2022 9:17 am
👍 1 Votes

Please see the attached comments from the Central Minnesota Builders Association.
Thank you.

Brian Martinson · Citizen · (Postal Code: unknown) · Aug 30, 2022 9:40 am
👍 0 Votes

See Attachment: Comments submitted on behalf of the Minnesota Association of County Feedlot Officers (MACFO).

Ronald A Ritchie · Citizen · (Postal Code: unknown) · Aug 30, 2022 3:10 pm
👍 0 Votes

See Attachment: Comments submitted on behalf of the City of North St. Paul. Thank you

Rebecca Haug · Citizen · (Postal Code: unknown) · Aug 31, 2022 8:59 am
👍 0 Votes

See attached comments on behalf of the City of Hugo. Thank you.

Michael Behan · Citizen · (Postal Code: unknown) · Aug 31, 2022 9:35 am
👍 0 Votes

Please find attached comments on behalf of Dakota County.

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Bruce Kleven · Citizen · (Postal Code: unknown) · Aug 31, 2022 11:29 am

👍 0 Votes

Attached please find comments from the Minnesota Turkey Growers Association (MTGA).

Bruce Kleven · Citizen · (Postal Code: unknown) · Aug 31, 2022 11:29 am

👍 0 Votes

Attached please find comments from the Chicken and Egg Association of Minnesota (CEAM).

Elizabeth Wefel · Citizen · (Postal Code: unknown) · Aug 31, 2022 4:16 pm

👍 0 Votes

Attached please find the comments from the Coalition of Greater Minnesota Cities.

Tony Kwilas · Citizen · (Postal Code: unknown) · Sep 01, 2022 12:03 pm

👍 0 Votes

Attached please find the comments from the Minnesota Chamber of Commerce

Gary Peters · Citizen · (Postal Code: unknown) · Sep 01, 2022 12:58 pm

👍 0 Votes

Please find attached comments on behalf of the City of Minnetrista

Nick Erickson · Citizen · (Postal Code: unknown) · Sep 01, 2022 2:09 pm

👍 0 Votes

Please see the attached file for comment from Housing First Minnesota. As the MPCA has not provided us with the calculations we requested on the proposed fee increases, our ability to comment on the proportionality of the fees is limited.

Elizabeth Stout · Citizen · (Postal Code: unknown) · Sep 01, 2022 2:35 pm

👍 0 Votes

Please see attached joint letter from the Cities of Minneapolis and Saint Paul regarding the proposed rulemaking.

Norman Miranda · Citizen · (Postal Code: unknown) · Sep 01, 2022 3:00 pm

👍 0 Votes

Please find attached comments on behalf of the Central Iron Range Sanitary Sewer District regarding proposed fees rulemaking.

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Norman Miranda · Citizen · (Postal Code: unknown) · Sep 01, 2022 3:19 pm

👍 0 Votes

Please find attached comments on behalf of the Central Iron Range Sanitary Sewer District regarding proposed fees rulemaking.

Erick Francis · Citizen · (Postal Code: unknown) · Sep 01, 2022 3:59 pm

👍 0 Votes

Find comments regarding the proposed water quality fee increases.

Danielle Havemeier · Citizen · (Postal Code: unknown) · Sep 01, 2022 4:17 pm

👍 0 Votes

Please see the attached on behalf of Schwartz Farms, Inc.

Cooper Silburn · Citizen · (Postal Code: unknown) · Sep 02, 2022 9:10 am

👍 0 Votes

Please see the attached comments on behalf of the Minnesota Environmental Science and Economic Review Board (MESERB).

Shanna Czeck · Citizen · (Postal Code: unknown) · Sep 02, 2022 9:23 am

👍 0 Votes

Please find the attached comments on behalf of St. Cloud Public Utilities.

Lauren Letsche · Citizen · (Postal Code: unknown) · Sep 02, 2022 10:41 am

👍 0 Votes

Please find attached comments on behalf of the City of Columbia Heights.

Grace Keliher · Citizen · (Postal Code: unknown) · Sep 02, 2022 11:09 am

👍 0 Votes

Please find attached comments on behalf of the Builders Association of Minnesota.

Amanda Bilek · Citizen · (Postal Code: unknown) · Sep 02, 2022 11:10 am

👍 0 Votes

Attached please find comments from the Minnesota Corn Growers Association.

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Randy Neprash · Citizen · (Postal Code: unknown) · Sep 02, 2022 11:37 am

👍 0 Votes

Please see the attached pdf file for comments from the Minnesota Cities Stormwater Coalition on the proposed rule amendments on water quality fees: Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapter 7002; Revisor's ID Number R-04476; OAH Docket #65-9003-34479.

SUSAN ARNTZ · Citizen · (Postal Code: unknown) · Sep 02, 2022 11:52 am

👍 0 Votes

On behalf of the City of Mankato, we share the following comments:

These stormwater programs (MS4, ISW, and CSW) are often seen as an unfunded state mandate for LGUs to perform many of the duties that are incumbent to the MPCA. Increasing the fees for LGUs would just further reduce funds available to LGU permittees to execute the requirements of the various permits to remain in compliance. This would result in a reduction of service, which could result in additional environmental degradation. Alternatively, it could result in an increase in local revenue generation, creating an in-direct tax on LGU residents that supports state government activities.

This is a large fee increase, MPCA should provide clarity in what permittees are receiving in services for the permit. It is important to be able to communicate the need of any fee increase and what the resulting level of service is to those being charged the fee.

Any additional fees generated for water quality permit should be designated for water quality programs and a mechanism should be in place to ensure that funds cannot be used for other programs.

A review of the current Construction Stormwater Permit process should be done to determine how to lessen the impact to permittees. Where CSW rules are required to be administered by the MS4 permittee, MPCA should rebate to, or otherwise support, the permittee in administering requirements. The current level of service does not reflect the cost of the permit.

Samantha Berger · Citizen · (Postal Code: unknown) · Sep 02, 2022 12:27 pm

👍 0 Votes

Please see the attached file for the City of Apple Valley on the proposed rule amendments on water quality fees.

Ryan Peterson · Citizen · (Postal Code: unknown) · Sep 02, 2022 12:59 pm

👍 0 Votes

Please find attached comments on behalf of the City of Burnsville regarding proposed fees rulemaking.

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Mitch Robinson · Citizen · (Postal Code: unknown) · Sep 02, 2022 1:05 pm

👍 0 Votes

Please see the attached file for the City of Brooklyn Park on the proposed rule amendments on water quality fees.

Bruce Kleven · Citizen · (Postal Code: unknown) · Sep 02, 2022 1:21 pm

👍 0 Votes

Attached please find comments from the Minnesota Farm Bureau Federation (MFBF).

Ken Graeve · Citizen · (Postal Code: unknown) · Sep 02, 2022 1:48 pm

👍 0 Votes

Please see the attached comments on behalf of the Minnesota Department of Transportation. Thank you for the opportunity to comment.

Lisa DeMars · Citizen · (Postal Code: unknown) · Sep 02, 2022 2:21 pm

👍 0 Votes

See Attachment: Comments submitted on behalf of the City of Medina. Thank you

Kelly Perrine · Citizen · (Postal Code: unknown) · Sep 02, 2022 2:48 pm

👍 0 Votes

Please see the attached comments submitted on behalf of the City of Lakeville. Thank you

Jill Resler · Citizen · (Postal Code: unknown) · Sep 02, 2022 3:59 pm

👍 0 Votes

Please see the attached comments from the Minnesota Pork Producers Association. Thank you.

Patrick Sejkora · Citizen · (Postal Code: unknown) · Sep 02, 2022 4:13 pm

👍 0 Votes

On behalf of the City of Eden Prairie, thank you for providing the opportunity to comment on the proposed amendments on water quality fees. Eden Prairie is a member of the Minnesota Cities Stormwater Coalition (MCSC) and are supportive of the organization's formal comments. The City also offers the following comments on the proposed amendments.

The City recognizes and appreciates that the long term health of the MPCA's MS4 permitting program is linked to its funding. However, it is our opinion that the proposed fee increases for municipalities places the burden of this funding primarily on Minnesota's MS4 cities while neglecting other permitted pollution sources. Many Cities,

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in partnership with the MPCA and watershed districts, have been at the forefront of implementing best management practices (BMPs) to reduce urban runoff and pollution. These fee increases may utilize funds that would have otherwise been used to fund BMPs that improve water quality. The rapidity of the permit fee increases over only three years is also concerning as Cities work to develop and reconfigure budgets. We ask that a more measured phasing in of the permit fee increases is implemented to reduce whiplash to City stormwater budgets.

The City also requests that if the proposed amendments are passed, the funds provided by the increased fees paid by municipalities are duly distributed to programs and resources that provide direct benefit to municipal permittees and water quality. These include the continued maintenance and improvement of the Minnesota Stormwater Manual, the MS4 Toolkit, the MS4 Digital Document Library, stormwater research, and educational materials that can be used by permittees.

Thank you for your consideration.



NEW FASHION PORK

PO Box 244 • 164 Industrial Parkway • Jackson, MN 56143

RECEIVED

By: OAH on 08/26/22 at 1:36pm

Jay Moore Attachment

August 22, 2022

Minnesota Pollution Control Agency

Re: MPCA's Proposed Water Fees Increases

Thank you for the opportunity to submit comments to the MPCA on the feedlot water fee increases. New Fashion Pork (NFP) adamantly disagrees with the proposed fee increases.

NFP operations in seven different states and Minnesota has the highest fees, which are excessively high in comparison to other states. Also, the processing period to issue a permit in Minnesota has the longest wait times. Minnesota Livestock producers are already at a competitive disadvantage and increasing fees would continue to prevent the growth and diversification of livestock producers in Minnesota. This proposed fee schedule increase essentially appears to be a disincentive to become a livestock producer in Minnesota or to expand a feedlot operation.

In most counties, county permitting fees are also assessed in addition to state fees, meaning producers are paying duplicative fees in places where the county or the MPCA are providing service. Another issue that livestock producers experience, is the overall lack of knowledge and understanding of modern feedlots by those who represent the Minnesota Pollution Control Agency. With already the highest fees, it does not seem unreasonable to expect a higher level of service and background from those reviewing, inspecting, and enforcing permits. Yet, the agency seeks additional fee revenue with little evidence this would increase the value of service provided by the agency.

Doubling fees for renewals and creation of a gap site fee is unnecessary. Re-permitting requires truly little review and there is no service provided for gap sites. It is frustrating to already pay the highest fees compared to neighboring state and now experience a doubling of fees when the cost of production for farms is already extremely high following many years of uncertainty in farming.

NFP is and always will be committed to doing what is right on our farms and protecting the environment. NFP will not jeopardize our integrity, which we demonstrate by utilizing the "state of the art" technologies in our barn designs, our feed formulas, our livestock genetics, and environmental technologies to ensure the protection of our environment. NFP farms are designed to require minimum maintenance and built to be environmentally safe, needing only minimal regulatory oversight, if any.

We strongly oppose the proposed fee increases and implore the agency to further analyze its own processes for administering the feedlot programs, the entire permitting process, and their ability to provide customer service.

Regards,

Dr. Brad Freking, Owner
New Fashion Pork

Jay Moore, Director of Environmental Services
New Fashion Pork



Minnesota State Cattlemen's Association
PO Box 12
Maple Plain, MN 55359
763-479-1011
www.mnsca.org

August 29, 2022

The Honorable Ann O'Reilly
Administrative Law Judge
Office of Administrative Hearings
600 North Robert St.
P.O. Box 64620
St. Paul, MN 55164-0620

Submitted electronically to:
<https://minnesotaoah.granicusideas.com>

Re: Planned Amendments to Rules Governing Water Quality Fees
Minnesota Rules Chapter 7002
Revisor's ID Number R-04476
OAH Docket #65-9003-34479

Dear Ms. Collins:

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

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

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

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

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

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

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

Sincerely,

Grant Breitzkreutz

Grant Breitzkreutz
President

**MINNESOTA MILK PRODUCERS ASSOCIATION**

2015 Rice Street | St. Paul, MN 55113

Phone: 763-355-9697 | Fax: 651-925-0545

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

August 29, 2022

Dear Minnesota Pollution Control Agency Commissioners and Staff:

The Minnesota Milk Producers Association thanks you for the opportunity to provide input on water program fees, as we did in our letters dated August 11, 2017, and March 13, 2020. Our members are very troubled by the proposals referenced in examples used by the Minnesota Pollution Control Agency (MPCA) on this topic. We also heard unanimous support from attendees for no feedlot water fees when we attended the in-person feedback session in Alexandria in 2020 with former MPCA employee Katie Schmitt.

Further opposition in the mechanism to implement these fees comes from many counties' feedlot officers, due to the poor return on their time in collecting these fees for MPCA, with no additional investment. While MPCA estimates that 20% of time is spent helping county feedlot officers, that also means that county feedlot officers and county taxes are spent helping MPCA understand the situation. Therefore, we do not believe this program should be seen as a cost, but investment for our state that should be shared by all citizens; to support livestock farms and clean water.

As Minnesota's over 2,000 dairy farmers try to compete with other states in terms of cost of production and future processing capacity because our pricing is regional, we point to the Minnesota Department of Agriculture's Livestock Industry Study for the legislature; it was presented on February 1, 2016. As the study points out, Minnesota fees for feedlots are the highest compared to neighboring states. But the study did not even reference the Environmental Assessment Worksheet (EAW) because no other state has a fee associated. Minnesota's fee is \$4,600, while other states must see the value in additional livestock operations joining the ranks. Not only does this increase the cost of production for Minnesota farmers, making it harder to start or continue an operation for the state, but it also lowers the profit potential for milk processors. An increase in water fees across the board would be a true double-whammy to the dairy industry, and triplicate in effect when you consider higher burdens on our rural county taxes.

Further, feedlot fees were increased in 2009, not 25 years ago as is often referenced. Since this previous increase, many regional offices lost staff, as MPCA has shifted funding to other areas. In the meantime, through MPCA's water data and anecdotal evidence, it does not appear feedlots have had a detrimental effect on the environment. In fact, we might say in this time with "more efficient" funding, farmers with feedlots are continuing their long track of improving environmental stewardship by working within current national and MPCA guidelines, industry initiatives, and with their county officials. Within the next 10 years, technologies could become available to eliminate manure lagoons altogether – therefore MPCA's insistence to continually return to fee increases shows the short-sighted nature of this endeavor.

One way to reduce the budget outlay for this program would be to consider enrollment in the Minnesota Ag Water Quality Certification Program (MAWQCP) as good as or better than the investment of paying water fees. Governor Walz said on stage at FarmFest in August 2022 that the MAWQCP does this – we do not believe that promise has been carried through despite much request. That hope was why Minnesota Milk endorsed MAWQCP early on, as one of the few agriculture groups to do so at this time. This would

Advancing the Success of Minnesota Dairy Farms



MINNESOTA MILK PRODUCERS ASSOCIATION

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help in a dual effect, of saving MPCA time and money, and bettering our environment through a voluntary program with costs borne by farmers how they want to implement them.

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

Sincerely,

A handwritten signature in black ink that reads "Lucas Sjostrom". The signature is written in a cursive style with a long, sweeping underline.

Lucas Sjostrom
Minnesota Milk Executive Director

August 29, 2022

Minnesota Pollution Control Agency Commissioners and Staff:

We, the undersigned organizations, are disappointed with the agency's continued efforts to increase water fees to close what you have described as "budget gaps." Efforts and presentations to increase these fees on farmers have taken place in 2017, 2020 and now in 2022.

In a presentation during the 2020 effort, MPCA staff argued that there was a budget hole to fill, and the fees were the only fair way to do this. "Water fees" have been underfunded, according to MPCA staff, but in the five years since this effort began, Minnesota's livestock producers have likely the best track record to date in managing our livestock manure and feedlots. Incidents requiring enforcement are few, and farmers who do not pay water fees are more likely (on a percentage basis) to have those incidents.

We ask you to stop asking for fee increases. Good farmers are employing appropriate practices on their own and in partnership with private engineering firms, state and federal governments, and local governments as a service to our fellow citizens. As the Livestock Industry Study of 2015 points out, Minnesota has the highest fees of our surrounding states, and that study did not include the \$4,600 Environmental Assessment Worksheet Fee. In addition to already paying the highest fees, the permitting process takes longer to navigate and has increasingly been a barrier for family farmers to modify or grow their farms. These proposed fee increases would be in addition to fees required by delegated counties who have enforcement authority -- there some fees are already more than \$1000.

We have a golden opportunity in years ahead to decide if we want family farms in Minnesota. Our corporate farm laws do not allow for corporate-owned farmland. Our current regulation provides us a great place to work and play. We have the strictest NPDES rules in the country. And despite being "underfunded" in this category, Minnesota's livestock farmers are environmentally outstanding, often pulling home national environmental awards. At the recent August 2022 USDA-NRCS Minnesota State Technical Advisory Committee, one federal employee remarked in his presentation that he was very proud to be in Minnesota, a state where farmers enjoy trying conservation practices and working with conservation partners.

Again, we ask you to stop proposing fee increases. The first two times were not appropriate, and this request is similarly out of line with the benefits Minnesota famers provide to our state.

AgCountry Farm Credit Services
Compeer Financial
Minnesota AgriGrowth Council
Minnesota Milk Producers Association
Minnesota Pork Producers Association
Minnesota Soybean Growers Association



August 29, 2022

Administrative Law Judge Ann O'Reilly
State of Minnesota Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
St. Paul, Minnesota 55164-0620

VIA ELECTRONIC TRANSMISSION**Re: OAH Docket # 65-9003-34479**

Dear Judge O'Reilly:

CMBA, on behalf of our more than 300 member builders, contractors and associates, appreciates the opportunity to provide comments about the MPCA's Proposed Significant Water Quality Fee Increases:

Project Size	Current Fee	Proposed Fee	Fee Increase %
Less than 5 Acres	\$400	\$500	25%
5 Acres to 25 Acres	\$400	\$1,000	150%
Greater than 25 Acres to 50 Acres	\$400	\$1,200	200%
Greater than 50 Acres to 100 Acres	\$400	\$2,000	400%
Greater than 100 Acres	\$400	\$2,500	525%

CMBA has the following concerns with these Proposed Significant Fee Increases:

- Lack of Supporting Documentation.** As part of a coalition working with Housing First Minnesota (HFM), CMBA has not yet seen information from MPCA on how fees for the General Permit have been calculated. This information should have been provided at the outset, and not withheld to be accessible by request only. Without specific information on how fees are calculated, CMBA is prejudiced against making more informed comments.
- Inability to Assess Demonstrated Need.** CMBA cannot independently examine the need of a new subdivision registration fee because the information and documentation have not been provided (as noted in item 1).
- Size of the Increases.** Under the MPCA's Proposed Significant Fee Increases, Water Quality fees would increase by up to 525%, even as Minnesota is suffering one of the worst housing affordability crises in the nation. CMBA is appalled at the tone-deafness of such a proposal.
- Phasing of Fees.** During the August 16th stakeholder meeting, MPCA stated its MS4 fees would be phased-in over a three-year period -- except for fees under the General Permit which are proposed to take effect immediately after adoption. While CMBA summarily disagrees with all of the Proposed Significant Fee Increases, this implementation timing disconnect seems arbitrary. Any MSF and General Permit fee changes should occur on the same schedule.

Please contact me with any questions or concerns and thank you again for the opportunity to provide comments on these Proposed Significant Fee Increases.

Sincerely yours,

Wanda Schroeder
Executive Director

cc: CMBA Board of Directors
Nick Erickson, HFM

Minnesota Association of County Feedlot Officers

August 12, 2022

Denise Collins
Office of Administrative Hearings Court Administrator
600 North Robert Street
P.O. Box 64620
St. Paul, MN 55164-0620

RE: Water Quality Fees, Request for Comments

Dear Ms. Collins,

The Minnesota Association of County Feedlot Officers (MACFO) represents counties that have delegated authority to administer Minnesota's feedlot rule. There are currently 50 counties with delegation agreements, including most of the major livestock counties. MACFO works with livestock producers and the public to increase feedlot knowledge and improve environmental outcomes.

MACFO appreciates the opportunity to offer comments on the fee proposals for feedlots included in the *Water Fees Rule Concept Document, July 2022*. We are encouraged by changes made based on the 2020 Request for Comments, particularly the removal of the registration site fee. The proposal to adjust fees for state permitted sites and phasing in those increases over time is preferable to the previous proposal.

MACFO appreciates the budgetary constraints on the feedlot program. We are interested in learning more about how increased revenue to the feedlot program will be prioritized. It is important that any new revenue generated from feedlot permits be kept in the feedlot program and used for service and program improvements.

Counties and the Minnesota Pollution Control Agency (MPCA) have been good partners in support of Minnesota livestock producers to aid them in meeting or exceeding environmental regulations. MACFO would welcome the opportunity to discuss how additional funding could most benefit the program.

Sincerely,



Amanda Lang
MACFO President



President

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Goodhue, MN 55027
(507) 766-9640
kelsey.petit@co.goodhue.mn.us

Treasurer

BethyJo Juetten
Stearns County
3301 County Road 138
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(320) 656-6484
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RECEIVED

By: OAH on 08/30/22 at 3:10pm

Ronald A Ritchie Attachment



**NORTH
ST. PAUL**
extraordinary.

September 1, 2022

Denise Collins
Office of Administrative Hearings Court Administrator
600 North Robert Street
PO Box 64620
St. Paul MN 55164-0620
Denise.collins@state.mn.us

RE: Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapter 7002; Revisor's ID Number R-04476; OAH Docket #65-9003-34479

Dear Mrs. Collins,

Thank you for the opportunity to provide comments on the planned amendments to Rules Governing Water Quality Fees, MN Rules, Chapter 7002; Revisor's ID Number R-04476; OAH Docket #65-9003-34479.

The City of North St. Paul is a MS4 community that will be affected by the proposed water quality fee amendment. We understand the need for the MPCA to review its fees, however, we do have some comments on the proposed increases to the MS4 program.

1. Our fee will increase from \$400 every five years to \$1,500 every year plus the \$400 every five years. This program is an unfunded mandate that we have been administering for almost twenty years. During that time, we have determined how to fund our program and improve water quality. With the proposed fee increase, our community will have even less funds to administer our program and create programs and projects to improve water quality. How has this been taken into consideration while determining the fee structure?
2. In many cases, the stormwater entering our MS4 is from non-regulated land uses. How are these non-regulated land uses being held to water quality standards and funding this program?
3. Fees are being increased for the city, the county, the watershed district and MnDOT. How has this been evaluated so there isn't double dipping for the same impervious surfaces?
4. In many cases the entities in question #3 work together to complete water quality improvement projects. By increasing the fees to all of them, you are reducing the available funds to implement programs and projects. How has this been evaluated in the fee determinations?

Thank you for the opportunity to provide comments on the Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapter 7002; Revisor's ID Number R-04476; OAH Docket #65-9003-34479. Please contact me at 651-747-2556 or ron.ritchie@northstpaul.org if you have any questions. Thank you.

Sincerely,

Ron Ritchie
Public Works Director





August 30, 2022

Denise Collins
Office of Administrative Hearings Court Administrator
600 North Robert Street
PO Box 64620
St. Paul MN 55164-0620
Denise.collins@state.mn.us

RE: Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapter 7002; Revisor's ID Number R-04476; OAH Docket #65-9003-34479

Dear Mrs. Collins,

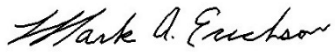
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Sincerely,

A handwritten signature in cursive script that reads "Mark A. Erichson".

Mark Erichson
Hugo City Engineer



August 30, 2022

Physical Development Division

Georg Fischer, Director

Dakota County
Western Service Center
14955 Galaxie Avenue
Apple Valley, MN 55124-8579

952.891.7000

Fax 952.891.7031

www.dakotacounty.us

Environmental Resources

Environmental Initiatives

Groundwater Protection

Land Conservation

Vermillion River Watershed

Water Resources

Waste Regulation

Office of Planning

Parks, Facilities and Fleet

Parks

Facilities Management

Fleet Management

Transportation

Highway

Surveyor's Office

Transit Office

Minnesota Office of Administrative Hearings
600 North Roberts Street
St. Paul, MN 55164

Revisor's ID Number R-04476

Dakota County Physical Development Division staff (staff) have reviewed the Minnesota Pollution Control Agency (MPCA) Request for Comments on Planned Amendments to Rules Governing Water Quality Fees, *Minnesota Rules*, Chapter 7002; Revisor's ID Number R-04476, OAH Docket No. 65-9003-34479 and respectfully submit these comments for your consideration.

Dakota County is the third-most populous county in the state of Minnesota and its mission is to provide efficient, effective, and responsive government services to residents and businesses. While staff appreciate the MPCA's reduction in proposed fee increases compared to the 2020 proposal, our overall concerns with the fee structure and costs remain as outlined below.

General Comments

Dakota County has long recognized the importance of protecting and improving Minnesota's surface and groundwater resources. The County and its partner organizations have demonstrated a significant commitment to the protection and restoration of water resources. The County was an early adopter of state-of-the-art technologies and best management practices to reduce sediment, phosphorus, chloride, and other stormwater-related pollutants from entering surface and groundwater within Dakota County and beyond. However, unfunded state mandates and permit fees passed onto the County from the MPCA continue to jeopardize the delivery of locally-led, innovative, water resources conservation efforts.

Specific Fee Comments

- 1) The MPCA proposes to increase water-related permit fees to support approximately 30% of its regulatory water quality program budget and has shared general figures demonstrating operating costs across several program categories. However, the MPCA should provide more detailed budget information for each of its water quality regulatory programs, including the number of full-time employees (FTEs) dedicated to each program.
- 2) The Construction Stormwater and Industrial Stormwater regulatory programs generate significant revenue to support the MPCA's water quality regulatory programs, and greatly exceed the MPCA's 30% support goal. The MPCA should demonstrate that it has limited proposed fee increases as a result of the goal exceedances currently enjoyed by the aforementioned regulatory programs.

- 3) There are existing inefficiencies and redundancies in regulatory authority created by the MPCA via the Municipal Separate Storm Sewer (MS4) General Permit and Construction General Permit:
- All construction projects disturbing 1 or more acres of land require a MPCA Construction Stormwater permit. The MPCA collects permit fees for every Construction Stormwater Permit but MPCA staff only review a small fraction of applications and inspect a small fraction of permitted sites.
 - All permittees requiring coverage under the MS4 General Permit (including Dakota County) must implement a regulatory program that is at least as stringent as the MPCA's Construction Stormwater Permit. This requirement produces a duplication of regulation, whereas a permittee (e.g. developer) must obtain both a County or City permit in addition to an MPCA permit for what are typically two identical construction stormwater permits.
 - Unlike its own program, the MPCA requires local MS4 staff (i.e. the local government unit) to perform all site plan review, complete on-site inspections, and have robust Enforcement Response Procedures. After issuing a construction stormwater permit through the local program, the MS4 permittee is required to direct project developers to also apply for the MPCA construction stormwater permit and pay the associated fee. Refusal to do so is a violation of the MS4 permit and could result in fines charged directly to the local government unit.

The following changes to the MPCA Construction Stormwater fee policy and structure are recommended.:

- Eliminate construction stormwater permit fees for all public projects.
 - Waive MPCA Construction Stormwater fees where an applicant has documented it has obtained a local MS4 permit/approval, unless:
 - a. MPCA receives a complaint regarding suspected site violations, or
 - b. MPCA staff provide specific technical or regulatory assistance to a permitted MS4's staff on a specific site issue.
- 4) The MPCA's proposed Municipal Stormwater fee schedule indicates the Minnesota Department of Transportation (MnDOT) would pay a fraction of the proposed typical MS4 permit fee for permit coverage. MPCA staff indicated MnDOT was placed in the "non-traditional" MS4 category based on impervious surface and/or contributing drainage area. The nature of the MnDOT MS4 is similar to that of a county MS4 with respect to drainage area and impervious surfaces. Therefore, it is logical for the MPCA to place counties in the same category and fee structure as MnDOT. Dakota County does not collect stormwater utility fees to support its non-traditional MS4 program. Instead, the majority of MS4 permitted cities within Dakota County charge stormwater utility fees, including from properties adjacent to or draining into the County's MS4. Staff do not propose to duplicate or interfere with city fee programs, and the MPCA should consider stormwater utility fee structures between counties and cities as it develops Municipal Stormwater fee policy recommendations.

- 5) The MPCA reviewed the MS4 fee structure and policies implemented by the State of Michigan as justification for its proposed fee increases. However, staff recommend the MPCA provide an overview of MS4 fee structures/policies for additional state programs beyond Michigan.
- 6) The MPCA's table of current fees versus the proposed 30% fee scenario is misleading as it shows the current fee (which is paid over five years) next to a proposed annual fee. The representation of the fee increase should be revised to show total fees for a permittee over five years to improve transparency and understanding regarding the scale of the proposed increase.
- 7) The MPCA has expressed that for several programs, costs have increased yet fees have remained the same. While the MPCA has recently provided some additional value via technical deliverables such as the Minnesota Stormwater Manual, an increase in permit fees is unwarranted. The MPCA has delegated significant workload to local MS4 permittees yet continues to collect significant permit fee revenue. As such, staff do not support the MPCA's proposal to expand or maintain its current budget, or to provide significantly increased "assistance" to permittees.

Again, thank you for the opportunity to comment on the proposed Rules governing water quality fees. We look forward to working with the MPCA to review permit fee policies moving forward.

Respectfully submitted,



Georg Fischer, Director
Dakota County Physical Development Division

CC: Matt Smith, County Manager
David McKnight, Director, Enterprise Finance and Information Services
Erin Laberee, Transportation Director
Todd Howard, Assistant County Engineer

**Minnesota Turkey Growers Association**

108 Marty Drive
Buffalo, MN 55313
Phone: 763-682-2171
Fax: 763-682-5546
Minnesotaturkey.com

August 31, 2022

The Honorable Ann O'Reilly
Administrative Law Judge
Office of Administrative Hearings
600 North Robert St.
P.O. Box 64620
St. Paul, MN 55164-0620

Submitted electronically to:
<https://minnesotaoah.granicusideas.com>

Re: Planned Amendments to Rules Governing Water Quality Fees
Minnesota Rules Chapter 7002
Revisor's ID Number R-04476
OAH Docket #65-9003-34479

Dear Judge O'Reilly:

The Minnesota Turkey Growers Association (MTGA) submits these comments on proposed water fee changes as provided in the August 1, 2022 edition of the *Minnesota State Register*. The MTGA opposes efforts to increase fees on livestock operations. Our central argument is that the livestock industry has never needed the NPDES or SDS permits because the industry is prohibited from discharging pollutants, yet MPCA representatives have consistently opposed livestock industry efforts to eliminate this unnecessary permit requirement. This is particularly true in the case of poultry litter because poultry litter is dry material that is easily transported, stored, and applied. It is disingenuous for the Agency to approach the livestock industry for fee increases when the industry has never needed water discharge permits from the Agency. In short, the Agency has consistently asked for work that it does not need to do.

Purpose of the NPDES Program

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

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

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

Minnesota State Law Development

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

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

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

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

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

Federal Rule Development

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

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One portion of the proposed rule that was vacated by the court was the duty to apply for a permit. The farm organizations argued that the EPA exceeded its statutory authority by requiring all CAFOs to either apply for NPDES permits or demonstrate that they had no potential to discharge and be certified as such by the regional EPA director. The court agreed with the farm organization petitioners on this issue and therefore vacated the duty to apply for a permit. Specifically, the court said:

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

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

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

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

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

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

must be an actual discharge ... to trigger the CWA's requirements and EPA's authority." It also struck down the CAFO rule's "failure to apply" provision, stating that its imposition is "outside the bounds of the CWA's mandate."

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

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

Conclusion

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Jessica Westbrock". The signature is stylized and cursive.

Jessica Westbrock,
President

**Chicken and Egg Association of Minnesota**

8515 Douglas Ave., Suite 9, Urbandale, Iowa 50322

515.727.4701 | info@mnchicken.org

August 31, 2022

The Honorable Ann O'Reilly
Administrative Law Judge
Office of Administrative Hearings
600 North Robert St.
P.O. Box 64620
St. Paul, MN 55164-0620

Submitted electronically to:
<https://minnesotaoah.granicusideas.com>

Re: Planned Amendments to Rules Governing Water Quality Fees
Minnesota Rules Chapter 7002
Revisor's ID Number R-04476
OAH Docket #65-9003-34479

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Conclusion

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Very truly yours,



Kevin Stiles,
Executive Director



DEDICATED TO A STRONG GREATER MINNESOTA

RECEIVED

By: OAH on 08/31/22 at 4:16pm

Elizabeth Wefel Attachment

August 30, 2022

VIA OAH e-comments

Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
St. Paul, Minnesota 55164

RE: Comments on Planned Amendments to Rules Governing Water Quality Fees, *Minnesota Rules*, Chapter 7002; Revisor's ID Number R-04476; OAH Docket #65-9003-34479

I am writing on behalf of the Coalition of Greater Minnesota Cities (CGMC) in response to the request for comments on potential amendments to water program fees. The CGMC is a nonprofit, nonpartisan advocacy organization representing more than 100 cities outside the Twin Cities metropolitan area and is dedicated to developing viable, progressive communities through strong economic growth and local government. Because all CGMC member cities will be affected by amendments to program fees, we appreciate the opportunity to provide comments.

In its most recent request for comment, the Minnesota Pollution Control Agency (MPCA) provided a revised draft concept of the proposed fee increase. Although we believe that the agency should look to the general fund to cover increased costs rather than user fees, we appreciate the proposal to use a tiered approach to make fees more equitable. The following are our concerns about the concept document:

General Fund Dollars Should Cover Increases in Program Costs

We are greatly concerned about increasing the portion of the water quality program funded by fees from 20% to 31% without specific authorization from the legislature. If the MPCA can demonstrate that any additional funds are needed to perform its statutorily required duties, we believe that general fund money should be a primary source for part or all of the increase for several reasons:

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

Municipalities Should Not Bear Brunt of Increase

Our cities play an important role in keeping Minnesota's water clean and we are proud of that role. However, it is becoming increasingly more expensive to do so. Putting aside the cost of the fee increase, many of our cities are seeing skyrocketing infrastructure and operational costs to run the wastewater facilities and stormwater systems that keep Minnesota's waters clean. Many of our cities are already facing rate increases to pay for necessary infrastructure updates and increasing operational costs, yet the bulk of these proposed fee increases fall on municipalities who will have no

choice but to comply. In essence, a state agency is funding its operations by foisting the cost onto a different form of government, municipalities. This is troubling.

Any Increase in Fees Should Be Tied to Demonstrable Results

The CGMC believes that to address the water quality challenges that our municipalities face today, more innovative approaches to permitting and permit compliance are necessary. When faced with a push for such innovation, the MPCA has stated that it does not have sufficient funds for such approaches. We believe that there needs to be a commitment from the agency to demonstrate a dedication to innovation in conjunction with any fee increases.

Fee Increases Should be More Gradual

Although we believe the increased costs of the water program should be covered by means other than fees on the regulated local governments, to the extent that fees are increased should be done more gradually. Most facilities will see their annual fee double in three years. At a time when all costs at facilities are rising, we believe that the increase should be more gradual, perhaps over five years.

Municipal Wastewater Variance Fees

The MPCA has touted variances as a tool for addressing restrictive water quality standards, yet the high fees (around \$10,000) make the application unaffordable for many cities. Limits derived from water quality standards are unfunded mandates on local communities, and local governments should not be required to pay \$10,000 for the opportunity to request relief from that mandate. We are pleased that the agency is making an effort to decrease the fee for smaller communities, and we believe that it should be eliminated for municipal wastewater.

The state should also provide financial support to local governments for other costs associated with a variance application, such as engineering and legal fees. We would prefer that permits and their underlying water quality standards be written so that local governments have the technical and financial capabilities of meeting them, rather than having to ask for variances. However, in the absence of that change, the state should underwrite the costs of these mandates.

Reinstating Fee Waiver for Chloride Variances

The MPCA convened a Chloride Working Group made up of city staff from across the state to make recommendations on how to implement the chloride standard in wastewater discharge permits. Because it is not feasible to remove chloride at a wastewater facility, the group's recommended strategy focused on a streamlined variance procedure and a waiver of the variance fee for these variances. Then-Commissioner Jon Linc Stine issued an order adopting various aspects of the proposal, including the waiver of the variance fee.

This proposal seeks to undo that work and creates a breach of trust. It also contradicts statements made by the MPCA to legislators, assuring them that the agency had made the path to chloride variances accessible by waiving variance application fees.

Thank you for your time and consideration. If you have any questions, please contact me at mayorholmer@citytrf.net and copy our legal representative, Elizabeth Wefel at eawefel@flaherty-hood.com.

Sincerely,



Brian Holmer
President, Coalition of Greater Minnesota Cities
Mayor, Thief River Falls



August 30, 2022

Claudia Hochstein
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

Re: Request for Comments on Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapters 7002; Revisor's ID Number R-04476; OAH Docket #65-9003-33479

Dear Ms. Hochstein:

The Minnesota Chamber of Commerce (Chamber) is a statewide business organization representing 6,300 business with more than 500,000 employees (including utilities, mining, manufacturing, services providers, etc.) which will be impacted by this proposed rule. The Chamber appreciates the opportunity to provide comments on the Minnesota Pollution Control Agency's (MPCA) Planned Amendments to Rules Governing Water Quality Fees. The MPCA has requested comments on possible rule amendments provided in the Minnesota State Register on August 1, 2022.

As you may recall, the Chamber submitted a comment letter on August 11, 2017 and again on March 13, 2020 (copies Attached) where the Chamber recommended the MPCA perform a comprehensive and detailed review of water related programs, including elimination of some programs, and designate funds from these lower priority programs for reallocation within the water division, prior to requesting any fee increases. As in 2017 and 2020, the Chamber does not believe a fee increase is warranted without a re-prioritization by the MPCA of existing programs. The Chamber again contends this review is still necessary.

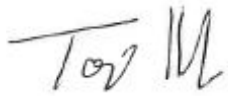
During the 2021 1st Legislative Special Session, the legislature appropriated approximately \$3 million for the 2022-2023 biennium to the MPCA for water division program related activities. The proposed fee increases would raise \$9.4 million, highlighting the need for an analysis of what the previous funds were used for and a detailed explanation of how the proposed funds would be appropriated.

Furthermore, the Chamber believes the MPCA must present the recommended analysis and conclusion to the Legislature for review and approval.

With the State of Minnesota expecting a budget surplus for the upcoming 2024-2025 biennium, the Chamber also encourages the MPCA to seek additional general fund revenue rather than increasing water fees.

The Chamber believes that the increase in fees is an undue hardship, especially on industry, who are already facing challenging economic conditions.

Thank you for the opportunity to provide comments on proposed amendments to rules governing water quality fees. Please do not hesitate to contact me for clarification or discussion at 651-292-4668 or tkwilas@mnchamber.com.

A handwritten signature in black ink, appearing to read "Tony Kwilas". The signature is written in a cursive, slightly slanted style.

Tony Kwilas
Director, Environmental Policy
Minnesota Chamber of Commerce



March 13, 2020

Ms. Mary H. Lynn
Minnesota Pollution Control Agency
520 Lafayette Road N
St. Paul, Minnesota 55155-4194

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

Dear Ms. Lynn:

The Minnesota Chamber of Commerce (Chamber) is a statewide business organization representing 6,300 business with more than 500,000 employees (including utilities, mining, manufacturing, services provides, etc.) which will be impacted by this proposed rule. The Chamber appreciates the opportunity to provide comments on the Minnesota Pollution Control Agency's (MPCA) Planned Amendments to Rules Governing Water Quality Fees. The MPCA has requested comments on possible rule amendments provided in the Minnesota State Register on January 27, 2020.

As you may recall, the Chamber submitted a comment letter on August 11, 2017 (copy Attached) where the Chamber recommended the MPCA perform a comprehensive and detailed review of water related programs, including elimination of some programs, and designate funds from these lower priority programs for reallocation within the water division, prior to requesting any fee increases. As in 2017, the Chamber does not believe a fee increase is warranted without a re-prioritization by the MPCA of existing programs. The Chamber again contends this review is still necessary. Furthermore, the Chamber believes the MPCA must present the recommend analysis and conclusion to the Legislature for review and approval.

Thank you for the opportunity to provide comments on proposed amendments to rules governing water quality fees. Please do not hesitate to contact me for clarification or discussion at 651-292-4668 or tkwilas@mnchamber.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "TK", is written over a light blue rectangular background.

Tony Kwilas
Director, Environmental Policy
Minnesota Chamber of Commerce

August 11, 2017

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

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

Dear Ms. Lynn:

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

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read 'Tony Kwilas', is written over a solid black horizontal line.

Tony Kwilas

Director, Environmental Policy

Municipal Offices

7701 County Road 110 West

Minnetrista, MN 55364-9552

Email: minnetrista@ci.minnetrista.mn.us

September 1, 2022

Denise Collins
Office of Administrative Hearings Court Administrator
600 North Robert Street
PO Box 64620
St. Paul MN 55164-0620
Denise.collins@state.mn.us

RE: Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapter 7002;
Revisor's ID Number R-04476; OAH Docket #65-9003-34479

Dear Mrs. Collins,

Thank you for the opportunity to provide comments on the planned amendments to Rules Governing Water Quality Fees, MN Rules, Chapter 7002; Revisor's ID Number R-04476; OAH Docket #65-9003-34479.

The City of Minnetrista is a MS4 community that will be affected by the proposed water quality fee amendment. We understand the need for the MPCA to review its fees, however, we do have some comments on the proposed increases to the MS4 program.

1. Our fee will increase from \$400 every five years to \$750 every year plus the \$400 every five years. This program is an unfunded mandate that we have been administering for almost twenty years. During that time, we have determined how to fund our program and improve water quality. With the proposed fee increase, our community will have even less funds to administer our program and create programs and projects to improve water quality. How has this been taken into consideration while determining the fee structure?
2. In many cases, the stormwater entering our MS4 is from non-regulated land uses. How are these non-regulated land uses being held to water quality standards and funding this program?
3. Fees are being increased for the city, the county, the watershed district and MnDOT. How has this been evaluated so there isn't double dipping for the same impervious surfaces?
4. In many cases the entities in question #3 work together to complete water quality improvement projects. By increasing the fees to all of them, you are reducing the available funds to implement programs and projects. How has this been evaluated in the fee determinations?

Thank you for the opportunity to provide comments on the Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapter 7002; Revisor's ID Number R-04476; OAH Docket #65-9003-34479. Please contact me at 952-241-2532 or garypeters@ci.minnetrista.mn.us if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gary Peters', is written over a horizontal line.

Gary Peters
Public Works Director

Minnesota Pollution Control Agency
443 Lafayette Road N
St. Paul, MN 55155

September 1, 2022

Re: Amendments To Water Quality Fee Rules

Via Electronic Delivery

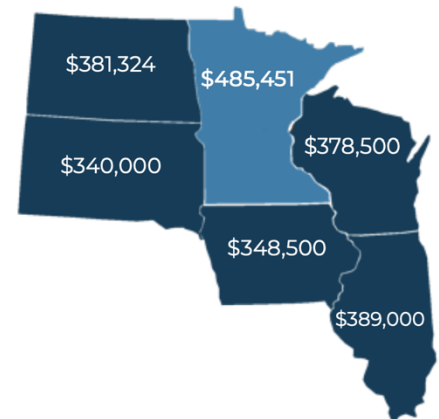
To the Minnesota Pollution Control Agency,

Housing First Minnesota, the leading voice for Minnesota’s housing industry, offers the following comments on the amendments to the water quality fee rules (Proposed Fee Increases) from the Minnesota Pollution Control Agency (MPCA). By way of background, Housing First Minnesota represents a broad collection of industry firms, including the project applicants who regularly engage in development-related activities that fall under the oversight of Minnesota Construction Stormwater General Permit (General Permit), as well as the homebuilders who undertake projects under a Common Plan of Development.

MINNESOTA’S HOUSING RECORD

Housing First Minnesota’s comments on Proposed Fee Increases are rooted in our organization’s efforts to increase homeownership opportunities for everyone, everywhere. Unfortunately, Minnesota’s housing record does not match the vision of Minnesota exceptionalism for which we all strive:

- Minnesota is home to the [highest median new home price in the Midwest](#) (right).¹
- The Twin Cities is home to the [lowest housing inventory in the nation](#).²
- The Twin Cities is home to the [widest homeownership equity gap in the nation](#).³
- Our state is nearly [60,000 housing units short](#), an increase of nearly 20% since the 2018 Minnesota Task Force on Housing called for a surge in new home production.⁴
- By nearly every measure, [it costs more to build a new home in Minnesota](#) than in nearby Midwest states. The cost of complying with the state’s complex stormwater regulatory structure is one of those reasons.⁵



PROPOSED FEE INCREASE

The Proposed Fee Increases reflect a significant increase in fees for project applicants falling under the Minnesota Construction Stormwater General Permit.

¹ Market data from Zonda (August 2022). Graphic from Minnesota Housing Dashboard, Housing First Minnesota (August 2022).

² Minnesota Population Center Review of United States Census Bureau Data (2021).

³ Urban Institute Review of United States Census Bureau American Community Survey (2021).

⁴ Minnesota Housing Dashboard, Housing First Minnesota (August 2022).

⁵ *Priced Out: The True Cost of Minnesota’s Broken Housing Market*, Housing Affordability Institute (2019).



Project Size	Current Fee	Proposed Fee	Fee Increase
Less than 5 Acres	\$400	\$500	25%
5 Acres to 25 Acres	\$400	\$1,000	150%
Greater than 25 Acres to 50 Acres	\$400	\$1,200	200%
Greater than 50 Acres to 100 Acres	\$400	\$2,000	400%
Greater than 100 Acres	\$400	\$2,500	525%

Additionally, the Proposed Fee Increases also establishes a new Subdivision Registration Fee of \$100. **This raises the Proposed Fee Increases to a range of 50% to 550%.**

Given the depth and context of Minnesota’s housing crisis, the Proposed Fee Increases are an unnecessary and unreasonable additional homeowner cost increase.

COMMENTS ON THE PROPOSED FEE INCREASE

Reviewing how housing related fees are generally calculated in Minnesota, state law commonly stipulates that a government entity assessing a fee must demonstrate proportionality for the service provided or the impact created. Building permit fees, used to cover the cost of inspection services, must represent a “fee-for-service” and must be commensurate with the service provided⁶. Local governments, when assessing subdivision-related fees, must show “an essential nexus between the fees or dedication imposed” and that the “fee or dedication must bear a rough proportionality to the need created by the proposed subdivision or development”⁷.

In both cases, these fees follow the Nollan-Dolan⁸ standard, important legal precedents established by the Supreme Court of the United States. Housing First Minnesota acknowledges the presence of a nexus for fees established under the General Permits, but it is the rough proportionality that remains unclear. Housing First Minnesota believes that the MPCA must seek to follow current state practices on the assessment of fees.

Specific to the Proposed Fee Increase, Housing First Minnesota has several concerns:

1. **Significant Fee Increase.** As noted above, the Proposed Fee Increases are significant, and being increased by up to 550% while Minnesota is suffering one of the nation’s worst housing affordability and inventory challenges.
2. **Lack of Demonstrated Proportionality.** Specific information on how the Proposed Fee Increases were calculated was not shared at the MPCA’s public engagement session, and stakeholders were directed to contact MPCA staff. On Aug. 18, 2022, Housing First Minnesota requested information from Ryan Anderson of the MPCA on behalf of several housing-related groups seeking clarification on how the fee increases were calculated.

The response Housing First Minnesota received did not provide any specific information on how the Proposed Fee Increases were calculated. The response stated:

“We considered fee structures used by other states across the country. Many jurisdictions use project sizes for the basis of creating tiers. These tiers also generally reflect project complexity and overall review and oversight demands on the Agency. We believe the fees should be commensurate with these demands.”

⁶ Minnesota Rule 1300.0160

⁷ Minnesota State Statute 462.358, Subd. 2(c)

⁸ *Nollan v. California Coastal Commission* 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994)

Similarly, when asked for more information on the \$100 subdivision registration fee, MPCA was unable to provide Housing First Minnesota any documentation. The response stated: *“Processing subdivision registrations requires staff database management resources. Additionally, our compliance inspectors perform their duties on sites provided coverage through subdivision registration. As a subdivision registration is an extension of permit coverage which is subject to our program responsibilities, we feel a fee is appropriate.”*

Without specific information as to how the Proposed Fee Increases are calculated, Housing First Minnesota is prejudiced against providing more informed comments, which included analyzing the Proposed Fee Increases. Given the up to 550% increase in General Permit Fees and the creation of a new, additional fee, Housing First Minnesota respectfully requests the MPCA provide specifics to the public as to how these specific fees are calculated.

3. **Lack of Demonstrated Need.** As noted above, Housing First Minnesota cannot independently examine the need of a new subdivision registration fee and we can only assume that without documentation, the Agency cannot demonstrate need. Housing First Minnesota respectfully request this information be provided.
4. **Arbitrary Decision on Phasing of Fees.** At the Aug. 16, 2022, stakeholder meeting, it was noted that under the Proposed Fee Increase, MS4 fees would be phased in over a three-year period but for fees under the General Permit, the noted increase will take effect immediately. The explanation of this decision is the difference i. Is the MPCA is seeking to recoup its costs, which is the stated rationale for the Proposed Fee Increase, this decision is arbitrary and lacks a factual basis. Housing First Minnesota respectfully requests that all project applicants are given a three-year phase in should the MPCA move forward with the Proposed Fee Increases.
5. **Unknown Coordination within MPCA.** For years, Housing First Minnesota has advocated for government entities undertaking multiple concurrent housing-related rulemaking efforts to view these changes and their cost impacts in totality. Homebuilders and project applicants will view the Proposed Fee Increases and any potential cost increases in the 2023 General Permit as multiple overlapping increases in stormwater costs. Housing First Minnesota believes that the MPCA should demonstrate how it is considering balancing affordability in both individual rulemaking efforts and with both rules in totality.

CONCLUSION

Thank you for consideration of Housing First Minnesota's comments. At present, due to the lack of supporting documentation and the steep Proposed Fee Increases presented during the state's housing crisis, Housing First Minnesota believes the MPCA has not adequately shown the Proposed Fee Increased meet the criteria for rulemaking under Minnesota law.

Please contact me with any questions at nick@housuigfirstmn.org or (651) 697-7586.

Best regards,



Nick Erickson
Director of Research and Regulatory Affairs
Housing First Minnesota



September 2, 2022

Denise Collins
Office of Administrative Hearings Court Administrator
600 North Robert Street, P.O. Box 64620
St. Paul, Minnesota 55164-0620

Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapters 7002 and 7083; Revisor's ID Number R-4476

Dear Ms. Collins:

Thank you for the opportunity to comment on the above-referenced proposed amendments. The following comments are offered on behalf of the Cities of Minneapolis and St. Paul. Minneapolis and St. Paul are the only two Phase I Cities in Minnesota that are regulated under the MS4 stormwater permitting program. Any changes to the MS4 permit fees will affect our programming and budgets.

While we understand that the agency needs to revisit statewide permit fees, we ask that any changes to the MS4 permit fees be reasonable, and justified, and supported by fact. The Cities of Minneapolis and St. Paul jointly submit the following comments on this rulemaking.

1. Is the MS4 fee chart, found on the MPCA website with the date of July 2022, representative of both Phase I and Phase II based on population. If the fees of the Phase I cities of Minneapolis and Saint Paul are not determined to be in the 100,000+ range, as shown on the fee chart, what are the proposed MS4 permit fees for the Phase I cities? How are they determined, relative to the permit fees for other cities and permittees? Why are the Phase I MS4 permit fees not addressed in this rulemaking and the documentation for this rulemaking? This question has been asked at all stages of rulemaking and has not yet been adequately addressed.
2. If the MPCA is going to dramatically increase MS4 permit fees, the Phase I cities request that the MPCA provide detailed and transparent information about the Agency's staff budget and time allocation for service to Phase I cities. We request that this information be provided for both the current staff allocation and the proposed staff allocation after the permit fees are increased. The MPCA should break out how the increase in fees will be distributed between Phase I and Phase II programs.
3. The cost of compliance with MS4 permit requirements has increased as new and expanded permit requirements have been required by the MPCA. When the MS4 Phase I fee for Minneapolis and St. Paul was originally set at \$1,230 annually, this was considered to be enough of a burden to impose on these cities, in addition to the Permit requirements. Why does the

MPCA now feel that a higher burden, in the form of a significantly increased MS4 Permit fees in addition to the expanded Phase I permit requirements, is fair or appropriate? Other than the Minnesota Stormwater Manual, Phase I cities receive less support from the MPCA than the Phase II cities. Preparation of extensive Phase I annual reports vs a MPCA created form for Phase II cities, and minimal support for specific Phase I obligations related to monitoring activities, public education topics, etc.

Only a relatively small portion of water pollution across the state is due to stormwater runoff from permitted urban sources. Most water pollution is generated from nonregulated land uses. However, most of the cost to reduce and manage water pollution due to stormwater runoff is born by permitted urban public entities. Considering these facts, the Cities of Minneapolis and St. Paul believe that it is not appropriate to increase the costs for permitted public entities at this time, but rather explore regulation of non urban sources of pollution.

If you have any questions please don't hesitate to contact us at Elizabeth.stout@minneapolismn.gov or patrick.g.murphy@ci.stpaul.mn.us.

Sincerely,



Elizabeth Stout, P.E. (she/her)
City of Minneapolis Public Works



Patrick Murphy, P.E.
City of Saint Paul Sewer Utility



City of Buhl, Minnesota
City of Chisholm, Minnesota
City of Kinney, Minnesota
Town of Great Scott, Minnesota

Chairman: Scott M. Allison
Vice Chairman: Ronald Novoselac
Secretary/Treasurer: Milan Luzaich
Executive Director: Norman L. Miranda

Central Iron Range Sanitary Sewer District

September 1, 2022

Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
St. Paul, Minnesota 55154

RE: Requested Comments on Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapter 7002; Revisor's ID Number R-04476; OAH Docket #65-9003-34479

I appreciate the opportunity to provide comment on MPCA's latest revision of the Water Fees Rule Concept as it pertains to Wastewater Utilities.

As a member of then MPCA Commissioner Stine's Water Fee Advisory Committee and participation in various meetings thereafter, I have gained a wealth of information pertaining to the past cost and revenue challenges MPCA has and will face in the future. Our Advisory Committee received, shared, and scrutinized a significant amount of detailed financial and program information. Based on this information, we came to the general agreement that the MPCA has a significant shortfall in revenue not only to sustain current programs but to perform its statutory duties.

The July 2022 Concept Document lacks current supportive documentation to show how current cost and projected revenue estimates were developed to support the requested fees and generated revenue it provides. If revenue and cost estimates continue to be developed from historical data averaged over the past five years, revenue and program costs will never be "rightsized". It is necessary and appreciated that MPCA is looking at phasing in significant fee increases over three years but that may mean three more years of revenue shortfall requiring greater "catchup" increases in the future. MPCA should consider current cost estimates from 2021 or 2022 projected costs and future costs based upon proposed levels of service. As far as future revenue stream aside from fees, consideration needs to be made for the reasonable stability of the annual grants and allocations the MPCA receives from various sources. The Advisory Committee did not believe some of these revenue sources could be guaranteed in the future. How does MPCA propose to compensate for revenue shortfall due to fluctuations in other revenue sources?

Since Clean Water, provided by the Wastewater program throughout the state, benefits the entire population, I believe annual allocations should be made from the General Fund by the legislature to cover approximately fifty percent of the annual cost of the program. The remainder of the costs can then be allocated to permitted utilities at fees which are affordable. The responsibility for this initiative rests with MPCA, supported by the regulated community, to develop current and projected subsequent year annual cost and revenue estimates supported by measurable and verifiable goals, objectives, levels of service and program deliverables. The Advisory Committee saw an advantage to raising fees if MPCA would be enhancing services to its customers, the regulated community. There is nothing proposed in the Concept Document which would suggest an increase or refinement of services.

In conclusion, I do not believe that the current Concept Document provides the current detailed cost, revenue and program supportive documentation needed for me or my fellow regulated communities to provide any meaningful comment on the fee proposal. Over time, especially in the past three years, there have been dramatic economic and environmental challenges which were not foreseen and addressed in the past work by the Advisory Committee, Requests for Comment periods in 2017 and 2020 and subsequent Stakeholder Meetings. As such, I recommend the current process be put on hold until the Regulated Community has the information they need to make educated comment. It would be premature for MPCA to take current comments and proceed to issuing a SONAR (Statement of Need and Reasonableness). At this point without detailed supportive data/documentation we cannot determine the need or reasonableness.

I respectfully request MPCA provide detailed current and future revenue and cost estimates and the level of services they intend to provide with the increased revenues. It is also understood that core administrative, management and supervisory staff may be supported by some or all the Water programs. Also provide reasonable projections on anticipated current and future revenue sources to support the program. There is a likelihood that some revenue sources may increase or decrease over time. It is important to understand MPCA's approach to funding from the legislature.

Once the Regulated Community has received and digested detailed information, I suggest that stakeholder meeting(s) be held to give MPCA the opportunity to discuss the updated information and receive comment. A follow-up Request for Comment period should then be conducted to reach all regulated communities.

As a member of the Advisory Committee, I continue to support our decision that MPCA is underfunded to provide a program which is desired and beneficial to the Regulated Community, all Minnesotans and visitors to our communities that enjoy our great Water Resources. It is an opportune time for MPCA to clearly state the estimated cost of the current program and the projected cost moving forward and the revenue sources needed to fund it now and into the future.

Again, thank you for this opportunity and your consideration. If you have any questions, please feel free to contact me at nmiranda@cirssd.org or at 218-999-0654.

Respectfully submitted,



Norman L. Miranda
Executive Director
Central Iron Range Sanitary Sewer District

Sept. 2, 2022

Denise Collins
Office of Administrative Hearings Court Administrator
600 North Robert Street, P.O. Box 64620
St. Paul, Minnesota 55164-0620

RE: REQUEST FOR COMMENTS on Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapter 7002; Revisor's ID Number R-04476; OAH Docket #65-9003-34479

Dear Denise Collins:

Thank you for the opportunity to comment on the above-referenced proposed amendments. The following comments are offered on behalf of the City of St. Louis Park, as any changes to the MS4 permit fees will affect the city.

I understand and appreciate the MPCA's needs to revisit permit fees. I ask that any increases to the MS4 permit fees be meaningfully constrained. I also submit the following comments on these proposed rule amendments.

The City of St. Louis Park requests that the MPCA provides and publishes responses to our comments and all the comments received for these proposed rule amendments. Please provide answers to questions included in the comments and respond to specific requests for information. I also recognize that responses to comments may not be required in this case. If the MPCA has requested comments, common sense, professionalism, and respect for the stakeholders make responding to the comments appropriate.

1. Local MS4 programs are unfunded mandates that have been administered at the local level for about twenty years or more. Budgets are well-established and frequently set by the revenues from stormwater utility fees that are difficult to increase for local taxpayers. The proposed MS4 permit fee increases are significant for many permitted cities. Paying these increased fees to the State will result in less funding for local implementation projects. Is this really the intent of the MPCA? Please explain why the MPCA believes this impact makes sense.
2. The Notice and Request for Comments included a specific request for information regarding *"whether local governments might be required to adopt or amend an ordinance or other regulation under Minnesota Statutes, section 14.128 to implement these rules"*. MCSC anticipates that some or many cities will need to revise or amend their stormwater utility fees to raise the revenues to pay the increased fees. We are unable to provide additional information or details about such required local revisions or amendments at this time. Please contact us if more information or details are desired.

3. We request that the increased fee revenues are **not** used by the MPCA to expand the permit audit program and process. We request that the MPCA provide us with the agreement and commitment between MPCA and EPA regarding the number and frequency of MS4 local program audits.
4. We request that the increased fee revenues are **not** used by the MPCA to expand permit enforcement actions or make them more frequent.
5. We request that the increased fee revenues are **not** used by the MPCA to make the MS4 permit more complex or demand more documentation and reporting from the permittees.
6. Please provide assurances that the increased fee revenues will be used to provide stable and continuing funding support for the Minnesota Stormwater Manual, the MS4 Toolkit, the MS4 Digital Document Library, and stormwater research. These are MPCA functions and activities that are valuable for the permittees.
7. It is our experience that the MPCA relies on the MS4 permittees to administer the requirements of the Construction Stormwater Permit (CSP) within their jurisdictions, including plan review, site inspections, and almost all enforcement actions. In light of this, we request that the MPCA share a portion of the State's CSP fee revenues with the permitted cities where each project is located. We also request that projects done by MS4-permitted cities be exempt from the State CSP fees.
8. The jurisdictional areas of permitted cities, counties, MnDOT, and watershed districts, in many cases, overlap significantly. It appears that the MPCA is collecting multiple permit fees from these various parties for the same land areas and impervious areas. If this is true, please explain why this is appropriate. If, in the opinion of the MPCA, this is not true, please explain why it is not a valid interpretation of the current situation.
9. Please explain why the proposed MS4 permit fees in Minnesota are significantly higher than those fees in Iowa, North Dakota, and South Dakota. If the MPCA collected information about the MS4 permit fees in other states, please provide this information to MCSC.
10. Please provide a draft of the rules and the SONAR, when they are available, to MCSC and each of the MS4 permittees. At a minimum, please consider this a formal request from each of the permitted cities that are members of MCSC.
11. Increasing the MS4 permit fees will put many city council members in difficult positions. For many years, the MPCA has consistently chosen to limit its funding and support for public education directly related to the MS4 program. The MPCA has not helped at all to raise public awareness of the existence and effectiveness of the MS4 program. The local stormwater public education required by the MS4 General Permit has focused on stormwater management and not the MS4 permitting program. Partly because of these decisions, the public is relatively unaware of the MS4 program. There is a low level of awareness and understanding of the need for the MS4 permitting program or the positive

results of local implementation efforts. Because of this, there will be relatively little understanding or support from their constituents for the members of any city council if they must vote on paying an increased MS4 permit fee. MCSC requests that the MPCA use some of the revenues from these increased fees to significantly expand their funding and support for public education directly related to the MS4 program.

12. The city staff will have to explain these proposed fee increases to their city council. In many cases, the members of these councils will be hostile to or highly skeptical of the merit of these fee increases. With this in mind, the City of St. Louis Park requests that the MPCA provide the following information to assist local staff:
 - a. These fee increases, for many cities, are very large compared to the very low cost of the MS4 permit fees for the entire history of the program in Minnesota. Please explain, in significant detail, why the permit fees were originally set so low and why continuing that policy, and those fees, is no longer possible or appropriate.
 - b. Please provide details about the costs for the MPCA to administer the MS4 program. Please provide quantitative information about the allocation of MPCA staff time between permit writing, application reviews, annual report reviews, data compilation and management, BMP effectiveness monitoring, technical assistance, enforcement, program assistance, audits, the MN Stormwater Manual, stormwater research, and other tasks.
 - c. It is our understanding that the permit fee revenues go to the Environmental Fund and are then distributed to multiple programs. If this is accurate, please provide the statutory or rule references that support and/or require this.
13. In many cases, stormwater entering permitted MS4s is from non-regulated land uses. How are these non-regulated land uses and property owners being held to water quality standards and funding this program?
14. The cities are responsible for both water quantity (e.g., localized flooding) and water quality (e.g., stormwater permitting) issues and concerns within our jurisdictions. With an increasing number of more intense storms due to climate change, cities are struggling to find sufficient funding for necessary work and establish a balance between water quantity and quality priorities. At this time, it is counterproductive and insensitive to have the MPCA significantly increase the cost of cities' stormwater permits that are focused only on water quality. Please respond.

The City of St. Louis Park appreciates the opportunity to comment on these proposed rule amendments. We look forward to responses from the MPCA to our comments and the comments from others.

Sincerely,



Erick Francis, water resources manager



RECEIVED

By: OAH on 09/01/22 at 4:17pm

Danielle Havemeier Attachment

Schwartz Farms

“Producing quality pork and creating opportunities for rural communities”

September 1, 2022

Thank you for the opportunity to comment on the proposed permit fee schedule for Minnesota Feedlots. I write on behalf of Schwartz Farms, Inc. We strongly disagree with the proposed fee increases for general and individual permits, as well as the proposal to add an annual fee for gap sites.

With more than 3,000 pig farms across the state, Minnesota ranks second in the number of pigs raised. Pig farming in our state supports an additional 44,000 jobs in supporting industries. This equates to over \$7 billion in economic activity throughout the state of Minnesota.

Farmers are committed to doing what is right and protecting our environment, which is why we construct and operate facilities using modern technology and designs to ensure we continue to protect our environment. The cost to construct and operate these facilities continues to be on the rise.

Farmers in Minnesota find themselves at a competitive disadvantage with higher permitting fees and longer processing times compared to those in neighboring states. In addition to state fees, most counties throughout the state also require their own fees, which poses yet another financial burden to our producers.

Increasing costs will deter individuals from getting involved in livestock production and prompt our current producers to consider discontinuing their operations due to increased costs, ultimately leading to less jobs and less revenue generated within the agricultural sector throughout our state.

Also, MPCA recently released an online system for processing permit applications and renewals. We believe it would be fair to assume that this new system has streamlined the process, requiring less time and administration to review and process permit applications. Additionally, modern facilities have deep-pitted manure storage, requiring a different review process than other feedlots. For these reasons, doubling fees for permits and imposing a fee for gap sites seems unreasonable.

Any potential benefits associated with the proposed fee schedule are well outweighed by the additional costs and administrative burdens it imposes on our Minnesota producers, and ultimately, on our economic activity throughout the state.

We strongly oppose the proposed fee increases for general and individual permits and the addition of an annual fee for gap sites. We ask that MPCA support Minnesota producers and their livelihood by striking the proposed fee schedule.



Schwartz Farms

Again, thank you for the opportunity to share our comments and concerns. If you would like to discuss further or have any questions, I encourage you to please contact me.

Sincerely,

Brian Schwartz
Schwartz Farms, Inc.
507-794-5779



MESERB

Minnesota Environmental Science
and Economic Review Board

Using science and economics to improve environmental regulations

September 2, 2022

VIA OAH e-comments

Minnesota Office of Administrative Hearings
600 Robert St N
St Paul, MN 55101

RE: REQUEST FOR COMMENTS on Planned Amendments to Rules Governing Water Quality Fees

Thank you for the opportunity to comment on the Minnesota Pollution Control Agency's ("MPCA" or "the agency") planned amendments to rules governing water quality fees.

The Minnesota Environmental Science and Economic Review Board ("MESERB") MESERB is a municipal joint powers organization with more than 50 members, including cities, sanitary districts, and public utilities commissions in Greater Minnesota, that own and operate wastewater treatment facilities that stand to be impacted by the proposed rule amendments. MESERB's mission is to work to protect Minnesota's water resources by ensuring that water quality regulations that impact our communities are scientifically based, have reasonable and cost-effective implementation strategies, and produce meaningful benefits to water quality.

MPCA should seek to cover the increasing costs of its water quality program through general fund dollars, not just through fee increases on municipalities.

A well-articulated plan and vision for MPCA to seek and obtain additional funding avenues through the Legislature for MPCA's water programs is missing from this discussion. MPCA's proposal to increase the portion of the water quality program funded by fees from 20% to 31% without specific authorization from the legislature, or at minimum, a collaborative strategy to seek bipartisan support for additional legislative funding is concerning. Environmental regulations benefit all citizens, not just those subject to a specific permit. The cost of preserving our state's water resources should not fall on select local government and their residents and businesses.

We believe that funding shortfalls should be addressed by general fund money rather than through steep fee increases. MPCA should lead this effort by working in collaboration with municipal, industrial, and environmental groups to communicate the need for these funds to the legislature and make reasonable programmatic changes necessary to obtain broad based support for such funding requests. Seeking funding through the Legislature also increases accountability for how funds received through the increased fees will be used. Adding nearly \$2 million to the municipal wastewater program through increased permit fees will ultimately result in municipalities charging this amount back to their citizens. Regulated cities and businesses, environmental groups, the public and elected officials should have more input on a decision of how our limited resources are spent to protect the environment. MPCA can lead this effort and should do so by attempting to form a coalition to advocate for the needed resources at the legislature.

The proposed fees increase should be phased in over five years.

MESERB members agree that a phase-in period is necessary for the proposed fee increases. The proposed three-year period is insufficient and does not sufficiently mitigate the burden the fee-increase will have on

existing cash-strapped municipal wastewater budgets and operations. A reasonable extension of the phase-in period to five or six years will help municipalities plan for and account for the effect of the increased fees. A table indicating the fee increase each year should be added to assist municipalities in budgeting the increase over the phase-in period.

The proposed amendments to rules governing water quality fees have a disproportionately large impact on municipalities compared to industries.

The fee increases should be leveled equitably across program areas, if the fees are to be increased at all, especially considering that the financial capabilities of municipal wastewater programs are not double that of industrial wastewater programs. For example, the amended fee proposal for municipal wastewater major design flows of 20-49.99 MGD is about \$30,000 more expensive than for industrial wastewater at the same design flow. This approximate trend continues in each category shared by municipal and industrial wastewater facilities. The proposed fees approximately double the current fees in each category for municipal wastewater while only increasing a fraction of the current fees for industrial wastewater. This discrepancy is unexplained, and municipalities and industries should not have such a glaring disparity in the proposed amendments. Any rationale, including how fees for municipalities will be used, should be specified in detail.

A fee increase on municipalities should result in enhanced services from MPCA.

MESERB members recognize and appreciate MPCA increased efforts in recent years to work with municipal permit holders and provide additional assistance and attention during the permitting process. We understand these efforts takes time and resources from MPCA, however, if MPCA is going to charge municipal facilities more, then MPCA should also provide a thorough explanation of how the doubled fees for municipal facilities will result in enhanced services to those same facilities.

The proposed increase in fees is a major increase from what the fees previously were, and impacted water operations should know how the increased fees will benefit them. MPCA should specifically articulate the need of any fee increase and what services facilities can expect to receive because of such increases. Additionally, fees generated for water quality permits should be designated for water quality programs and there should be a mechanism in place to ensure that funds cannot be used for other programs.

Municipal waste variances should continue to be waived

MPCA has often promoted variances as a tool for addressing restrictive water quality standards for which treatment technology is either cost prohibitive or does not exist at all. MPCA convened a “Chloride Working Group” made up of representatives from municipal wastewater treatment facilities from across the state. The group made recommendations on how to implement the chloride standard in wastewater discharge permits. The recommended strategy focused on a streamlined variance procedure with a waiver of the variance fee for chloride variances because it is not feasible to remove chloride at a wastewater facility. Former Commissioner Jon Linc Stine issued an administrative order adopting a waiver of the variance fee for chloride variance. The proposed amendments would undo the successes that MPCA and the working group achieved by working together. This will create a breach of trust and serve as a clear example of why the regulated community is reluctant to rely on policy guidance and administrative assurances from MPCA for regulatory certainty: they can be changed at the agency’s whim. MESERB respectfully requests that MPCA maintain its policy to waive chloride variance fees for municipalities.

Conclusion

MPCA's water quality services are of the utmost importance to human health and the environment, our state's water quality, and to the residents and businesses of our state. MESERB supports a reasonable fee increase with a five-year phase-in period that addresses our comments and concerns above. However, any such fee increase should be coupled with MPCA's commitment to develop a coalition of cities, industry, and environmental groups to bring the case to the legislature about why additional general fund money is needed to support the environment services MPCA provides. While such an effort may require MPCA to make program adjustments and improvements based on stakeholder feedback, it is much more sustainable long-term for MPCA, regulated parties, the public, and the environment. Thank you for the opportunity to submit these comments, and for taking the time to consider them.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Josh Gad", is positioned above the typed name and title.

Josh Gad
MESERB President
WRRF – Superintendent
City of Mankato
701 Pine St
Mankato, MN 56001
Desk - 507-387-8616
Cell - 507-340-6415

September 2, 2022

Denise Collins
Office of Administrative Hearings
Court Administrator
600 Roberts Street, PO BOX 64620
St. Paul, MN 55164

Re: Water Quality Fees Rule Update – City of St. Cloud Comments

The City of St. Cloud (City) appreciates Minnesota Pollution Control Agency's (MPCA) engagement with stakeholders in the Water Fees Rule updates process. The City has involvement in various programs and, as a result, has provided general comments about the rulemaking process along with comments related to municipal separate storm sewer systems (MS4), industrial stormwater and municipal wastewater programs.

1. General Water Fee Rule Comments

The City attended the Water Quality Fees Rulemaking webinar, held on August 16, 2022. During the webinar, it was communicated that the Water Quality fee increases are estimated to generate approximately 31% of the funding required to run Water Quality programs. These fees would go into the Environmental Fund, where they are appropriated to specific programs by the Legislature. It is unclear if the funds paid by a specific program will benefit that specific program, or if there is the chance that the funds may be shifted to other programs. Additionally, the City is unclear what, if any, other programs are funded from the Environmental Fund. The City suggests providing additional information to stakeholders about the Environmental Fund, what programs it funds and how the money is appropriated. This increased transparency could help stakeholders understand how the fees are used.

2. Municipal Separate Storm Sewer Systems (MS4)

The City of St. Cloud is a MS4 permittee with a population of 50,001 – 75,000. The proposed fee for this tier is \$5,000 per year. The City appreciates that this increase is proposed to be phased in over three years; this will aid greatly in the budgeting process. While this is less than the fee proposed in 2020, the proposed increase is a significant financial burden on the permittee. Permit fees are reasonable when a specific group benefits from the service more than the general public. In this instance, the MS4 permitting program benefits the entire state by regulating the stormwater discharges from a limited number of cities, townships, and counties.

In addition to the proposed fee increases, the newly issued General MS4 permit has numerous new requirements that will impact the City's stormwater budget. This annual permit fee, in combination with meeting the new MS4 requirements, will negatively impact the City's stormwater program budget which is very limited and must be used to address water quality and quantity issues within the City for the residents and customers that pay the user rates. MS4 Cities have a long record of very successful water quality improvement projects and programs. It is critical to keep financially efficient with MS4 stormwater budgets to continue implementing these projects and programs.



3. Industrial Stormwater

The St. Cloud Nutrient, Energy and Water Recovery Facility (NEW RF) maintains a National Pollutant Discharge Elimination System (NPDES) permit with the MPCA. The facility's industrial stormwater permit is combined into this NPDES permit. Currently, the facility is only charged the annual fee for the municipal wastewater program. The City recommends keeping this structure to avoid excessive financial burdening of two fees being associated with one permit.

4. Municipal Wastewater

St. Cloud NEW RF maintains a major NPDES permit (5-19.99 MGD). The proposed fee for this tier is \$28,700 which is a double the previous annual fee. The City appreciates that this increase is proposed to be phased in over three years; this will aid greatly in the budgeting process. However, this proposed fee will make up nearly 3% of St. Cloud's NEW RF administration budget. This increase will result in reduced funding in other areas of an already limited budget.

The City has reviewed the Water Quality Fee Rulemaking Concept Document, published by MPCA in July 2022. It was identified that under the current fee structures, an industrial wastewater annual fee was higher than the municipal wastewater annual fee, \$18,250 and \$14,350 respectively. The proposed annual fee increase for industrial wastewater is 20% but the increase for municipal wastewater is 100%, which makes the municipal wastewater annual fee significantly more than the industrial wastewater annual fee. The City is unclear why the industrial permit is now less expensive and has a lesser increase than the municipal wastewater fee. The City recommends that MPCA provides justification for this unbalanced distribution of fee funds.

Your attention to this matter and the ongoing efforts for stakeholder input is appreciated.

Sincerely,

Shanna Czeck
Utilities Water Quality Coordinator

C: Tracy Hodel, Public Services Director
Lisa Vollbrecht, Public Utilities Director
Emma Larson, Assistant Public Utilities Director



City of Columbia Heights | *Public Works*

637 38th Ave NE, Columbia Heights, MN 55421 ▪ Ph: 763-706-3700 ▪ Fax: 763-706-3701 ▪ www.columbiaheightsmn.gov

September 2, 2022

Denise Collins
Office of Administrative Hearings Court Administrator
600 North Robert Street
PO Box 64620
St. Paul MN 55164-0620
Denise.collins@state.mn.us

RE: Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapter 7002;
Revisor's ID Number R-04476; OAH Docket #65-9003-34479

Dear Mrs. Collins,

Thank you for the opportunity to provide comments on the planned amendments to Rules Governing Water Quality Fees, MN Rules, Chapter 7002; Revisor's ID Number R-04476; OAH Docket #65-9003-34479.

The City of Columbia Heights is an MS4 community that will be affected by the proposed water quality fee amendment. We understand the need for the MPCA to review its fees however, we do have some comments on the proposed increases to the MS4 program.

1. Our fee will increase from \$400 every five years to \$1500 every year plus the \$400 every five years. This program is an unfunded mandate that we have been administering for almost twenty years. During that time, we have determined how to fund our program and improve water quality. With the proposed fee increase, our community will have even less funds to administer our program and create programs and projects to improve water quality. How has this been taken into consideration while determining the fee structure?
2. The jurisdictional areas of permitted cities, counties, MnDOT, and watershed districts, in many cases, overlap significantly. It appears that the MPCA is collecting multiple permit fees from these various parties for the same land areas and impervious areas, paid for by the same taxpayers. If this is true, please explain why this is appropriate? If, in the opinion of the MPCA, this is not true, please explain why it is not a valid interpretation of the current situation.
3. In many cases the entities in question #2 work together to complete water quality improvement projects. By increasing the fees to all of them, you are reducing the available funds to implement programs and projects. How has this been evaluated in the fee determinations?
4. Please provide assurances that the increase fee revenues will be used to provide stable and continuing funding support for the Minnesota Stormwater Manual, the MS4 Toolkit, the MS4 Digital Document Library, and stormwater research. These are MPCA functions and activities that are valuable for the permittees.

In addition to the comments above, the City of Columbia Heights would also like to concur with the Minnesota Cities Stormwater Coalition, MCSC, comments.

Thank you again for the opportunity to provide comments. I look forward to hearing back from you. Please contact me at 763-706-3704 or skhan@columbiaheightsmn.gov if you have any questions. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sulmaan Khan', written in a cursive style.

Sulmaan Khan

City of Columbia Heights Assistant City Engineer



Comments to Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, chapter 7002; Revisors ID Number R-04476, OAH Docket No. 65-9003- 34479

We disagree with the proposed tiered structure for permit fees based on acreage:

Construction stormwater

Construction stormwater permits were not included in the original proposal for this rulemaking. However, with MPCA's new holistic approach to consider fee increases across programs, an adjustment to the construction stormwater permit application fee is being proposed. This fee has been a flat \$400 per application since the last revision of fees in 2004, whether a project is one acre or one hundred acres. MPCA proposes creating a tiered structure for these fees and adding a fee for subdivision registration. This fee would go into effect immediately following rule adoption.

Subdivision registration

\$100

Proposed tiered application fee structure

Project size (acres)	Current application fee	Proposed application fee
Less than 5	\$400	\$500
Greater than 5 up to 25	\$400	\$1,000
Greater than 25 up to 50	\$400	\$1,200
Greater than 50 up to 100	\$400	\$2,000
100+	\$400	\$2,500

The proposed amendment provides no evidence for any additional interactions by the Minnesota Pollution Control Agency (MPCA) with permittees based on the number of acres of a development. Rather, it is our recommendation that the fees be based on whether a permit review is required due to the project size, and proximity and if the project discharges to a special or impaired water body. As is common in other MPCA programs, an hourly rate is charged during a review process and should be considered for the Construction Stormwater Permit Review Process. We recommend a more modest permit fee increase for all Construction Stormwater Permits, along with charging an hourly rate based on job title/schedule for Construction Stormwater Permit Reviews.

In 2021, if a permittee gained coverage on 10 Permits and 20 Subdivision Registrations, the Construction Stormwater Permit Fees paid to the MPCA would be \$4,000. Under the proposed fee amendments, for the same number of permits, the fees would range from \$7,000 to \$27,000. In this scenario, that is a potential increase of 675% in permit fees paid to the MPCA. Those costs are in addition to the permit fees paid to MS4s, counties, watersheds, and other entities with whom the regulated community routinely interacts. Has the MPCA conducted a cost benefit study to

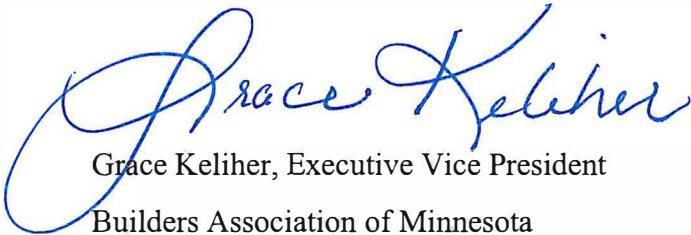
measure the impact of the modification to the regulated community? And on what basis did the MPCA determine the current permit fee structure to be inadequate?

Second, the proposed amendment to charge \$100 per subdivision permit when the current amount is \$0 will surely cause a change in how the regulated community obtains permit coverage for their projects. Often, multiple contractors (operators) are working in a community at the same time and, in order to maintain compliance with the rules of the Construction General Permit (CGP) set forth by the MPCA, permittees apply for multiple Subdivision Registrations. Since the MPCA doesn't allow for multiple contractors to be on the same permit concurrently and additional permits must be taken out, you are requiring developers to pay additional \$100 fees on existing projects to ensure they are compliant. To charge \$100 for every Subdivision Registration effectively monetarily penalizes larger developers for maintaining compliance with the CGP because of the number of contractors allowed at a time under the CGP.

Lastly, we suggest implementing a phasing in of any fee increase as is proposed in the other water quality program amendments. Just as in MS4 programs, developers and builders approve a budget for each of their projects and to immediately implement the fees will affect those budgets negatively.

The fee increase and immediate implementation will greatly impact the overall cost of project compliance, which continues to perpetuate the problem of home affordability. We respectfully request the MPCA consider lower fee increases, an alternative to the tiered acreage structure as proposed, and a phasing in of any fee increases that may be implemented.

Sincerely,



Grace Keliher, Executive Vice President
Builders Association of Minnesota



September 2, 2022

The Honorable Ann O'Reilly
Administrative Law Judge
Office of Administrative Hearings
600 North Robert St.
P.O. Box 64620
St. Paul, MN 55164-0620

Re: Planned Amendments to Rules Governing Water Quality Fees, *Minnesota Rules* Chapter 7002,
Revisor's ID Number R-04476, OAH Docket #65-9003-34479

Dear Judge O'Reilly,

The Minnesota Corn Growers Association (MCGA) appreciates the opportunity to provide comments on the Minnesota Pollution Control Agency's (MPCA) proposed amendments to water quality fee rules. MCGA represents nearly 6,500 corn farmer-members and the research and education activities of 24,000 Minnesota corn farmers who contribute to the corn checkoff program.

MCGA has significant concerns with MPCA's proposal to increase fees for water permits particularly the impact increased fees will have on Minnesota livestock farms. We have expressed these concerns in the previous two requests for comments. Included in MCGA's membership and board leadership are farms who have raise livestock in addition to their own crop production. Additionally, Minnesota's livestock farmers are a significant in-state market of corn for livestock feed. The health and prosperity of Minnesota's livestock sector is incredibly important to Minnesota corn farmers. We believe MPCA's proposal for water permit fee increases, if implemented, will have adverse impacts on the economic health and long-term prosperity of Minnesota's nation-leading livestock sector.

MCGA and our members are continuously working to improve and become better stewards of our state's natural resources while maintaining a thriving rural economy. Our sustainability commitment is focused on three equally important elements—people, planet, profit. In order to deliver on our commitment to sustainability, markets for corn are critically important and livestock operations provide essential in-state use for corn.

Unfortunately, Minnesota has seen a decline in the livestock inventory for beef and dairy while other livestock or poultry segments have fluctuated or remained flat. According to a *2015 Livestock Inventory Report* from the Minnesota Department of Agriculture (MDA), Minnesota already has significantly higher livestock permitting—both application and annual—fees compared with neighboring states.

The study concluded some of the requirements specific to permitting livestock facilities are on a level playing field at the federal level. However, there are instances where Minnesota adds an additional level of environmental review not seen in other states, with increased permitting costs as a result. Farmers interested in expanding or starting new livestock operations in Minnesota may choose to locate


elsewhere due to the additional layers of regulatory burden in Minnesota. Reduced interest for internal expansion or relocation to Minnesota means less livestock, less need for permit review and environmental review by the state, loss of jobs, closure of rural businesses and schools, and loss of tax base.

The conclusions in the 2015 MDA livestock industry report are further supported by MCGA's own analysis in a 2018 report prepared by Informa Agribusiness Consulting Group. The study concluded that not only are Minnesota farmers already paying higher permitting costs compared to other states but in many cases they also experience significant waiting time prior to final approval for other areas of permitting such as an Environmental Assessment Work Sheet. For instance, interviewees stated that it took anywhere from 10-20 months before their EAW was processed- more than twice as long as MPCA's guidance states. With already the highest fees in the upper Midwest, MPCA should have the capacity to fully process permits in timely manner within the current fee structure. One of the recommendations of the study was to find ways to provide MPCA staff with additional training and opportunities to tour and better understand the industries that they are working with. MCGA would highly encourage MPCA to consider this for their current and future employees.

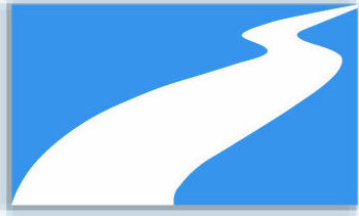
MCGA is concerned that increasing water permitting fees for livestock operations would put us at an even greater competitive disadvantage for increasing our livestock and poultry inventory and the in-state market for corn utilization. Further, livestock operations will be asked to pay higher permit and renewal fees and will not see an improvement in service, such as reduced timelines, for the higher upfront fee. MPCA is also planning to add a new annual "gap site" fee. These sites are currently not receiving any type service from MPCA and it is unclear what, if any, benefit that these sites will be receiving other than another increase in costs for their operation.

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

Sincerely,

A handwritten signature in black ink that reads "Bryan Biegler". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Bryan Biegler
President
Minnesota Corn Growers Association



Minnesota Cities Stormwater Coalition

Municipal stormwater professionals working together for clean water

Steering Committee:

Elizabeth Stout
City of Minneapolis
Chair

Andrew Hogg
City of Saint Paul
Vice Chair

Rick Baird
City of Mankato

Bob Bean
Bolton & Menk

Andy Bradshaw
City of Moorhead

Jane Byron
City of Rosemount

Erick Francis
City of Saint Louis Park

Cara Geheren
Focus Engineering

Bryan Gruidl
City of Bloomington

Rebecca Haug
WSB

Ryan Johnson
City of Roseville

John Paulson
City of Hutchinson

Staff:

Randy Neprash, P.E.
Stantec
(651) 271-5535
randy.neprash@stantec.com

MCSC is an affiliate of the
League of Minnesota Cities



September 2, 2022

Denise Collins
Office of Administrative Hearings Court Administrator
600 North Robert Street, P.O. Box 64620
St. Paul, Minnesota 55164-0620

RE: REQUEST FOR COMMENTS on Planned Amendments to Rules
Governing Water Quality Fees, Minnesota Rules, Chapter 7002; Revisor's
ID Number R-04476; OAH Docket #65-9003-34479

Dear Ms. Collins:

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

We understand and appreciate the MPCA's needs to revisit permit fees. We ask that any increases to the MS4 permit fees be meaningfully constrained. We also submit the following comments on these proposed rule amendments.

MCSC requests that the MPCA provide and publish responses to our comments and all the comments received for these proposed rule amendments. Please provide answers to questions included in comments and respond to specific requests for information. We recognize that responses to comments may not be required in this case. The MPCA has requested comments. Common sense, professionalism, and respect for the stakeholders make responding to the comments appropriate.

1. Local MS4 programs are unfunded mandates that have been administered at the local level for about twenty years or more. Budgets are well-established and frequently set by the revenues from stormwater utility fees that are difficult to increase for local taxpayers. The proposed MS4 permit fee increases are significant for many permitted cities. **With limited local stormwater budgets, paying these increased fees to the State will result in less funding for local implementation projects and/or proper and necessary O&M work.** Is this really the intent of the MPCA? Please explain why the MPCA believes this impact makes sense.

2. The Notice and Request for Comments included a specific request for information regarding *“whether local governments might be required to adopt or amend an ordinance or other regulation under Minnesota Statutes, section 14.128 to implement these rules”*. MCSC anticipates that some or many cities will need to revise or amend their stormwater utility fees to raise the revenues to pay the increased fees. We are unable to provide additional information or details about such required local revisions or amendments at this time. Please contact us if more information or details are desired.
3. The MCSC member staff are local stormwater professionals who will have to explain these proposed fee increases to their City Councils. In many cases and based on experience, the members of these Councils will be hostile to or highly skeptical of the merit of these fee increases. With this in mind, MCSC requests that the MPCA provide the following information to assist local staff:
 - 3.a. These fee increases, for many cities, are very large compared to the very low cost of the MS4 permit fees for the entire history of the program in Minnesota. Please explain, in significant detail, why the permit fees were originally set so low and why continuing that policy and those fees is no longer possible or appropriate.
 - 3.b. Please provide details about the costs and the detailed budget for the MPCA to administer the MS4 program. Please provide quantitative information about the allocation of MPCA staff time between permit writing, application reviews, annual report reviews, data compilation & management, BMP effectiveness monitoring, technical assistance, enforcement, program assistance, audits, the MN Stormwater Manual, stormwater research, and other tasks.
 - 3.c. It is our understanding that the permit fee revenues go the Environmental Fund and are then distributed to multiple programs, at the MPCA’s discretion. If this is accurate, please provide the statutory or rule references that support and/or require this. Please provide detailed information about the present and planned allocation of the Environmental Fund.
4. Voting to pay the proposed increased MS4 permit fees will put many City Council members in difficult positions. For many years, the MPCA has consistently chosen to limit its funding and support for public education directly related to the MS4 program. The MPCA has providing very limited assistance and support to raise public awareness of the existence and effectiveness of the MS4 program. The local stormwater public education required by the MS4 General Permit has focused on stormwater management, and not the MS4 permitting program. Partly because of these decisions and factors, the public is relatively unaware of the MS4 program. There is a low level of awareness and understanding of the need for the MS4 permitting program or the positive results of local implementation efforts. Because of this, there will be relatively little understanding or support from their constituents for the members of any City Council when they must vote on paying an increased MS4 permit fee. MCSC requests that the MPCA use some of the revenues from these increased fees to significantly expand their funding and support for public education directly related to the MS4 program.

5. We request that the increased fee revenues are not used by the MPCA to expand the permit audit program and process. We request that the MPCA provide to us the agreement and commitment between MPCA and EPA regarding the number and frequency of MS4 local program audits.
6. We request that the increased fee revenues are not used by the MPCA to expand permit enforcement actions or make them more frequent.
7. We request that the increased fee revenues are not used by the MPCA to make the MS4 permit more complex or demand/require more documentation and reporting from the permittees.
8. Please provide assurances that the increase fee revenues will be used to provide stable and continuing funding support for the Minnesota Stormwater Manual, the MS4 Toolkit, the MS4 Digital Document Library, and stormwater research. These are MPCA functions and activities that are valuable for the permittees.
9. It is our experience that the MPCA relies on the MS4 permittees to administer the requirements of the Construction Stormwater Permit (CSP) within their jurisdictions, including plan review, site inspections, and almost all enforcement actions. In light of this, we request that the MPCA share a portion of the State's CSP fee revenues with the permitted cities where each project is located. We also request that projects done by MS4 permittees be exempt from the State CSP fees.
10. The jurisdictional areas of permitted cities, counties, MnDOT, and watershed districts, in many cases, overlap significantly. It appears that the MPCA is collecting multiple permit fees from these various parties for the same land areas and impervious areas, paid for by the same taxpayers. If this is true, please explain why this is appropriate? If, in the opinion of the MPCA, this is not true, please explain why it is not a valid interpretation of the current situation.
11. Please explain why the proposed MS4 permit fees in Minnesota are significantly higher than those fees in Iowa, North Dakota, and South Dakota. If the MPCA collected information about the MS4 permit fees in other states, please provide this information to MCSC.
12. Please provide a draft of the rules and the SONAR, when they are available, to MCSC and each of the MS4 permittees. At a minimum, please consider this a format request (as per the Notice and Request for Comments) from each of the permitted cities that are members of MCSC.
13. In many cases, stormwater entering permitted MS4s is from non-regulated land uses. How are these non-regulated land uses and property owners being held to water quality standards and funding the stormwater programs?

14. Cities are responsible for both water quantity (e.g.: localized flooding) and water quality (e.g.: stormwater permitting) issues and concerns within our jurisdictions. With an increasing number of more intense storms due to climate change, cities are struggling to find sufficient funding for necessary local resilience improvements/upgrades and establish a balance between water quantity and quality priorities. At this time, it is counterproductive and insensitive for the MPCA significantly increase to cost for cities' stormwater permits, that are focused only on water quality. Please respond.

MCSC appreciates the opportunity to comment on these proposed rule amendments. We look forward to responses from the MPCA to our comments and the comments from others.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Randy Neprash', with a stylized flourish extending to the right.

Randy Neprash, PE

MCSC staff

randy.neprash@stantec.com



Engineering Services Division

September 2, 2022

City of Brooklyn Park
5200 85th Ave. N
Brooklyn Park, MN 55443

Denise Collins
Office of Administrative Hearings Court Administrator
600 North Robert Street, P.O. Box 64620
St. Paul, Minnesota 55164-0620

Re: Comments on Planned Amendments to Rules Governing Water Quality Fees

Dear Ms. Collins,

The City of Brooklyn Park has reviewed the planned amendments to water quality fee rules and appreciates the opportunity to provide comments. The City's greatest point of concern is regarding the increase in Municipal Stormwater (MS4) fees. Currently the City is paying \$400 every permit cycle, which has been 7 years for each of the last two permits. With a population around 80,000 people, the City would be subject to a \$8,250 annual fee.

While the City understands the need to increase permit fees that have remained the same since the early 2000's, the scale at which this are increasing seems extreme. The City also submits the following comments on the proposed rule amendments:

1. The substantial increase in permit fees will cause the City to be able to do less water quality projects which is the opposite intent of the MS4 program. The City recently raised stormwater rates in 2018 and would be hard pressed to pass another rate increase through the City Council to offset these permit fees.
2. Cities are responsible for both water quantity (e.g.: localized flooding) and water quality (e.g.: stormwater permitting) issues and concerns within our jurisdictions. With an increasing number of more intense storms due to climate change, cities are struggling to find sufficient funding for necessary local resilience improvements/upgrades and establish a balance between water quantity and quality priorities. At this time, it is counterproductive for the MPCA significantly increase to cost for cities' stormwater permits, that are focused only on water quality.
3. Please provide assurances that the increase fee revenues will be used to provide stable and continuing funding support for the Minnesota Stormwater Manual, the MS4 Toolkit, the MS4 Digital Document Library, and stormwater research. These are MPCA functions and activities that are valuable for the permittees.

Thank you for the opportunity to comment on the planned amendments to water quality fees. If you have any questions, please contact me at 763-493-8291 or Mitchell.robinson@brooklynpark.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Mitch Robinson". The signature is written in a cursive, slightly slanted style.

Mitch Robinson, P.E.
Water Resources Engineer
763-493-8291



August 31, 2022

The Honorable Ann O'Reilly
Administrative Law Judge
Office of Administrative Hearings
600 North Robert St.
P.O. Box 64620
St. Paul, MN 55164-0620

Submitted electronically to:
<https://minnesotaoah.granicusideas.com>

Re: Planned Amendments to Rules Governing Water Quality Fees
Minnesota Rules Chapter 7002
Revisor's ID Number R-04476
OAH Docket #65-9003-34479

Dear Judge O'Reilly:

The Minnesota Farm Bureau Federation (MFBF) submits these comments on proposed water fee changes as provided in the August 1, 2022 edition of the *Minnesota State Register*. Minnesota Farm Bureau Federation (MFBF) is a grassroots, general farm organization that advocates for nearly 30,000 farmers and ranchers represented in every county across the state of Minnesota.

The MFBF opposes any MPCA proposal to increase fees on livestock operations. We believe that because the MPCA currently has permit fees that are much higher than our surrounding states, any proposed increases are not justified and are therefore not necessary.

I. Minnesota currently has much higher permitting costs than neighboring states.

In 2015, the Minnesota legislature directed the Minnesota Department of Agriculture to conduct a study¹ of the livestock industry in Minnesota:

The commissioner of agriculture must identify causes of the relative growth or decline in the number of head of poultry and livestock produced in Minnesota, Iowa, North Dakota, South Dakota, Wisconsin, and Nebraska over the last ten years, including but not limited to the

¹ The full report can be found on the Legislative Reference Library's website at:
https://www.lrl.mn.gov/mndocs/mandates_detail?orderid=8900.

impact of nuisance conditions and lawsuits filed against poultry or livestock farms. No later than February 1, 2016, the commissioner must report findings by poultry and livestock sector and provide recommendations on how to strengthen and expand Minnesota animal agriculture to the legislative committees with jurisdiction over agriculture policy and finance. *Source:* 1st Sp. Sess. Laws 2015 Ch. 4, Art. 2, Sec. 83.

In addition to evaluating the effects nuisance conflicts and complaints had on the growth or decline of livestock numbers, the study also evaluated permitting processes and fees in each of the subject states. Attached to this comment letter is a four-page Appendix containing excerpts from the 2015 study that addresses the permitting issue. Most of the requirements specific to permitting livestock facilities are on a level playing field at the federal level. Table 5, found on pages 2 and 3 of the attached Appendix (pages 26-27 of the full MDA report), compares the permit requirements in each subject state. The requirements for federal NPDES operating permits; manure management plans; run-off controls, basins, and feed pad regulations; and water appropriations permits are either identical or substantially similar across all of the states, meaning that the underlying agency work to process those permits would be theoretically identical and/or substantially similar.

However, Table 6 found on page 4 of the attached Appendix (page 29 of the full MDA report), shows that the fees charged by each state vary substantially, with Minnesota by far the highest in almost every category. Most of the livestock operations in Minnesota that decide to obtain an NPDES permit obtain a general permit rather than an individual one. In that category, Minnesota already charges a \$620 application fee, while Nebraska charges \$200 and the other four states don't charge anything. In the individual permit category, Minnesota already charges an \$1,860 application fee, while Nebraska charges the same \$200 and the other four states don't charge anything. For individual renewals, Minnesota charges farmers \$620 per year, while none of the other states charge anything. Taken as a whole, the MPCA is currently raising much more revenue from permit fees than any of our surrounding states.

It is our understanding that both general and individual NPDES permits are valid for five years. According to the 2015 report, assuming the same workload, the current five-year cost to a new Minnesota livestock producer for both application and annual fees, compared to our surrounding states, would be as follows:

	<u>MN</u>	<u>IA</u>	<u>ND</u>	<u>SD</u>	<u>WI</u>	<u>NE</u>
General	\$965	\$0	\$0	\$175	\$345	\$250
Individual	\$3,090	\$430	\$0	\$175	\$345	\$250

The five-year cost to a Minnesota livestock producer who wants to begin operating in Minnesota with an individual permit is already **seven times more** than the next-closest state, Iowa. In the case of an existing livestock producer, the only change to the chart above would be that the five-year cost for an individual permit for a Minnesota producer would drop from \$3,090 to \$1,850, but would still be more than **four times** the cost of the next closest state, Iowa. As for the general permit, which is more common in Minnesota than an individual permit, the five-year cost is still almost **three times higher** than the next-closest state, Wisconsin.

It should be noted that the information cited above is from an official state agency report required by the legislature and to that extent should be given some deference by the OAH.

II. The MPCA has not shown that the proposed fee increases meet the statutory definition of “necessary”.

The Agency cites the following authority to raise permit fees on page 65 of the August 1, 2022 edition of the *State Register* (47 SR 65):

The agency may collect permit fees in amounts not ***greater than those necessary*** to cover the reasonable costs of developing, reviewing, and acting upon applications for agency permits and implementing and enforcing the conditions of the permits pursuant to agency rules. Permit fees shall not include the costs of litigation. The fee schedule must reflect reasonable and routine direct and indirect costs associated with permitting, implementation, and enforcement. The agency may impose an additional enforcement fee to be collected for a period of up to two years to cover the reasonable costs of implementing and enforcing the conditions of a permit under the rules of the agency. Any money collected under this paragraph shall be deposited in the environmental fund. Minn Stat. sec. 116.07, subd. 4d(a) (emphasis added).

At least in the case of livestock operations, the 2015 report shows that the requirements for federal NPDES operating permits; manure management plans; run-off controls, basins, and feed pad regulations; and water appropriations permits are either identical or substantially similar across all of the subject states. It is logical to assume that the underlying work of state agency employees to process those permits would be theoretically identical and/or substantially similar as those in our surrounding states. Yet the MPCA is proposing to raise fees for what appears to be the same workload as would be found in our surrounding states.

While the MFBF has no choice but to concede that the statutory authority found in Minn Stat. sec. 116.07, subd. 4d(a), exists, we still wonder whether the proposed fee increase is actually necessary. As explained on the previous page, the MPCA is already generating up to seven times more in revenue than our surrounding states, and now they want more? How can the other states get the same work done for a much lower cost? In other words, when compared to our surrounding states, what is wrong at the MPCA?

III. Conclusion.

The MFBF opposes the MPCA’s current proposal to increase fees on livestock operations. As explained above, because the MPCA currently has permit fees that are much higher than our surrounding states, any proposed increases are not justified and are therefore not necessary.

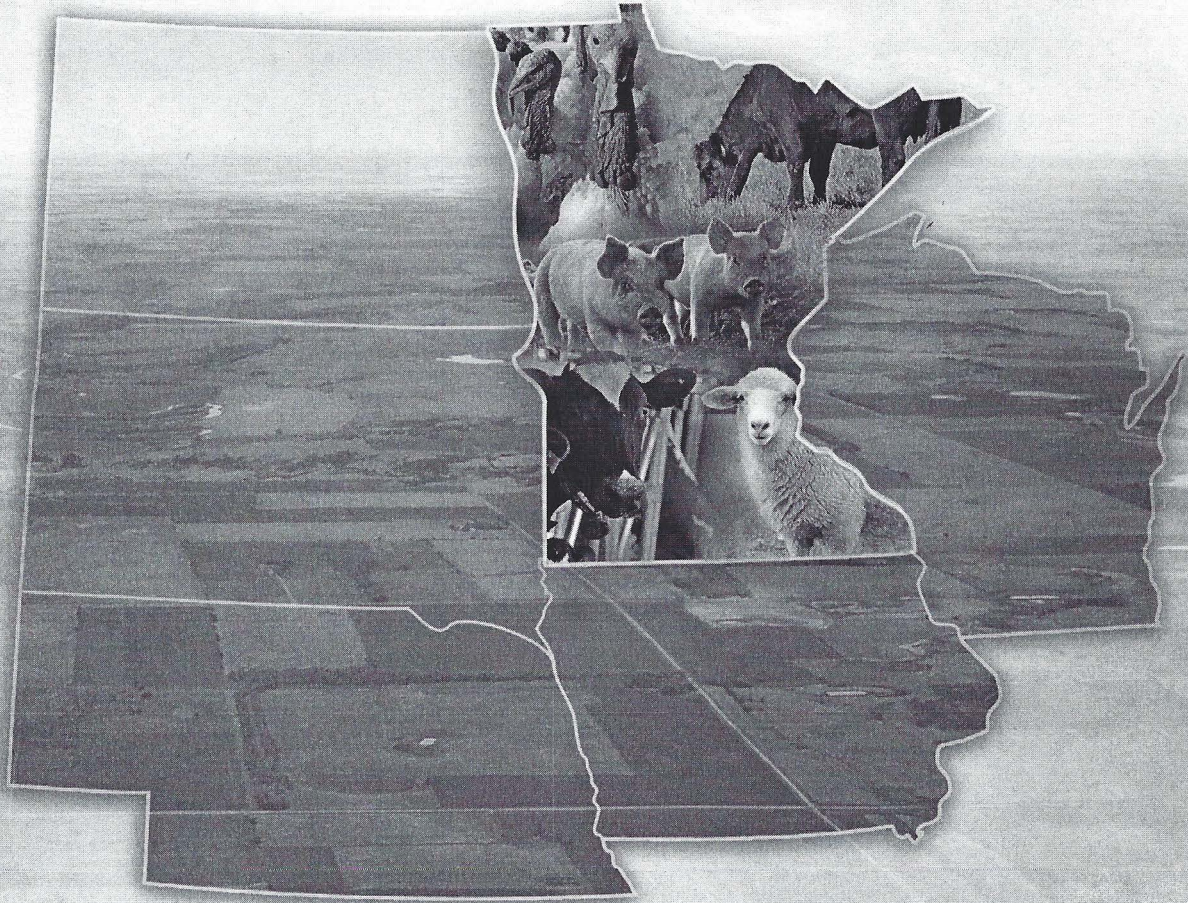
Thank you for your consideration.

Sincerely,



Dan Glessing
President

2015 Livestock Industry Study



Prepared by
the Minnesota Department of Agriculture

Curt Zimmerman, Livestock Supervisor

625 Robert Street North
St. Paul, MN 55155
651-201-6456
curt.zimmerman@state.mn.us

www.mda.state.mn.us

February 1, 2016



~~permits to protect the general health, safety, and welfare of its population. These requirements may be more restrictive than state requirements; however, they cannot be less restrictive than any provision in state statute or, in the example of township government, less restrictive than a county requirement.~~

Table 5. Requirements for state and federal operating permits, zoning, water appropriation and environmental review

	Minnesota	Iowa	North Dakota	South Dakota	Wisconsin	Nebraska
Federal NPDES Operating Permit	Yes: required if there is a discharge & CAFO	Same as Minnesota; however, Iowa does not have general NPDES permits, only individual	Yes: required combined State/Federal CAFO	Yes: required combined State/Federal CAFO	Yes, required combined State/Federal CAFO or 1,000+ AU	Same as Minnesota
State Operating Permit	Yes: State Disposal System (SDS) permit required if >1,000 AU. Or, can obtain coverage under NPDES permit.	State permit for construction of CAFO	Yes: see above	Yes: see above	Yes: required if there is a discharge & CAFO	Only if NDEQ requires it after review
Manure Management Plan	Yes: required for all State and Federal permitted sites	Yes: same as Minnesota	Yes: same as Minnesota	Yes: same as Minnesota	Yes: same as Minnesota	Yes: same as Minnesota
Winter Spreading 1. Liquid 2. Solid	1. No application after Nov 30th on frozen or snow-covered ground, except for emergency situations; must follow permit requirements. 2. Must follow MMP	1. No winter application from Dec. 21-April 1 if ground is frozen. 2. Must follow MMP	1 & 2: Allowed – must have and follow a nutrient management plan	1 & 2 Allowed – must have and follow a nutrient management plan	1. No application on frozen or snow covered ground, unless immediately incorporated or injected. 1. No application in Feb/Mar unless immediately incorporated	1 & 2: Allowed – must have and follow a nutrient
Run-off controls, basins, feed pad regulations	Facility must be designed and operated to meet zero discharge	Facility must be designed and operated to meet zero discharge	Facility must be designed and operated to meet zero discharge	Facility must be designed and operated to meet zero discharge	Facility must be designed and operated to meet zero discharge	Facility must be designed and operated to meet zero discharge

	Minnesota	Iowa	North Dakota	South Dakota	Wisconsin	Nebraska
Local Zoning County	Yes: no restrictions other than county ordinances; cannot be less restrictive than any state law	Chapter 355 prohibits counties from zoning farms, including feedlots	Chapter 11-33-02 and 58-03-11 prohibits counties from not allowing expansions & construction of feedlots & caps setbacks at 1.5 miles	Same as Minnesota	Yes, state law requires all feedlots over 500 AU be approved if they meet state standards	Counties may institute distance
Local Zoning Township	Yes: no restrictions other than township ordinances; cannot be less restrictive than any state or county law	State statute does not allow township zoning	Same as above, except setback cap is .5 mile	Yes	Only if county located in does NOT zone	Yes
Water Appropriation Permit	Yes, if usage is over 10,000 gallons/day or one million gallons/year	Yes, if usage is over 25,000 gallons/day	Yes, if usage is over 4.0731 million gallons/year	Yes, if usage is over 25,920 gallons/day	Registration, not permit, is required for usage over 100,000 gallons/day. Permit required for same if located in Great Lakes Basin.	All wells need permits from local Natural Resources District. No minimum usage requirement
Environmental Review	Yes, required for new or expanding over 1,000 AU or 500 AU in sensitive areas	No	No	No	Yes, required only if WDNR permit drafter determines its necessity	No

Source: Minnesota Pollution Control Agency, Minnesota Department of Agriculture. See Appendix A for definitions.

Permitting Costs Associated with Livestock Facilities

The general costs of permitting on the state level are shown in Table 6. It does not include permitting costs on local levels. The chart also shows time-line rules or goals for the permitting process and approval in selected states. Minnesota currently has some of the highest costs for permitting of all six states.

Table 6. Permitting costs

	Minnesota	Iowa	North Dakota	South Dakota	Wisconsin	Nebraska
General NPDES or SDS Application Fee	\$620	\$0	No	No	No	\$200
Individual NPDES or SDS Application Fee (new site)	\$1,860	\$85	No	No	No	\$200
Individual NPDES or SDS Application Fee (reissuance)	\$620					
General NPDES or SDS Annual Fee	\$345	\$0	No	\$175	\$345	\$50
Individual NPDES or SDS Annual Fee	\$1,230	\$340	No	\$175	\$345	\$50
Initial Inspection Fee	No	No	No	No	No	\$500
Indemnity Fee (one-time fee in case of disaster clean up)	No	\$150	No	No	No	No
Manure Management Plan Filing Fee	No	\$250	No	No	No	No
Construction Permit Fee	No	\$250	No	No	No	No
Storm water permit fee	\$0	\$175	\$0	\$0	\$140	\$0
Total Cost for new NPDES or SDS General Permit	\$620	NA	\$0	\$175	\$485	\$700
Total Annual Fee Cost to operate under General NPDES or SDS	\$345	NA	\$0	\$175	\$345	\$50
Total Cost to apply for new Individual NPDES or SDS permit	\$1,860	\$910	\$0	\$175	\$485	\$700
Total cost for annual fee to operate under Individual NPDES or SDS permit	\$1,230	\$590	\$0	\$175	\$345	\$50
Deadline for state to make permitting decision that affects applicant	60 day rule	60 day rule on NPDES*	180 day goal*	60 day goal*	150 day rule*	No
Deadline for local government to make permitting decision that affects applicant	60 day rule	No	No	65 day rule	No	No

* Additional details related to permitting decisions are referenced in Appendix B.

Nuisance Conflicts and Complaints

Land use conflicts, including nuisance complaints and lawsuits, both during the livestock siting process and after the start of operation, are unusual in Minnesota. For those neighbors or livestock operations involved, these lawsuits can be personal and costly.



Minnesota Department of Transportation
395 John Ireland Blvd
St Paul, MN 55155

September 2, 2022

The Honorable Ann O'Reilly
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
St Paul, MN 55164

Greetings, Judge O'Reilly,

We are writing about the planned amendments to rules governing water quality fees, OAH Docket No. 65-9003-34479.

We appreciate the MPCA's partnership with MnDOT as we work together to achieve our shared goals of maintaining good water quality in the state of Minnesota. We understand the need for MPCA to update fees for various water quality permits, but we would like more information on how the proposed changes have been determined and how the funds will be used.

The Construction Stormwater (CSW) Permit fees are proposed to increase and to vary based on the size of the project. The way the proposed fees will be scaled to the size of the project seems reasonable. It is our understanding that the CSW program is already supported by permit fees to a much higher degree than most other water quality permit programs, and increases were not proposed in the earlier version of this proposal in 2020. We would like the MPCA to explain the following:

- Why is the MPCA now proposing to increase CSW Permit fees when they did not propose increases in 2020?
- How do CSW Permit fees currently compare to the overall CSW program operational cost?
- How will the increased fee revenue be used?

The MS4 Permit fees are proposed to increase significantly for the MnDOT Metro District MS4 area. The proposed fee for MnDOT Metro MS4 will add up to over \$60,000 over five years (or more than \$85,000 for the typical 7-year time frame of permit cycle plus renewal period). These funds could otherwise be used for significant maintenance of stormwater treatment infrastructure.

- What metrics were used to calculate the proposed MnDOT MS4 fees, and how do they compare with the metrics used to calculate the proposed fees for other MS4 entities?
- If the overarching objective is to improve water quality, what specific services will the annual fees pay for and how will the benefits of those services compare to the water quality benefits of using that money to maintain stormwater infrastructure?

We appreciate the outreach that MPCA has done on this issue and the opportunity to comment on the current proposal. Please contact us if you want to discuss any of these questions.

Sincerely,

Marni Karnowski
Chief Environmental Officer
Director of the Office of Environmental Stewardship



CITY OFFICE
2052 County Road 24, Medina, MN 55340-9790

ADMINISTRATION | PLANNING & ZONING | PUBLIC WORKS
p: 763-473-4643 f: 763-473-9359

e: city@medinamn.gov

PUBLIC SAFETY
p: 763-473-9209 f: 763-473-8858

September 2, 2022

Denise Collins
Office of Administrative Hearings Court Administrator
Submitted via web: <https://minnesotaoah.granicusideas.com/>

RE: Planned Amendments to Rules Governing Water Quality Fees, MN rules, Chapter 7022 and 7083; Revisor's ID Number R-4476

Dear Ms. Collins:

Thank you for the opportunity to comment on the planned amendments to the Water Quality Fee Rules, MN Rules, Chapter 7002.

The City understands the need to evaluate permit fees which have remained the same for several years, however the proposed increase seems excessive.

Local funding of the increased MPCA operating costs, when the MS4 program continues to place additional unfunded mandated tasks and activities on LGUs, will increase operational costs and directly impact infrastructure improvements.

Medina supports the comments provided by the Minnesota Cities Stormwater Coalition. We strongly oppose the proposed fee increases and respectfully ask the agency to further analyze its own processes for administering the entire permitting process.

Thank you for the opportunity to comment on the planned amendments to water quality fees.

Sincerely,



Steve Scherer
Director of Public Works



September 2, 2022

Denise Collins
Office of Administrative Hearings Court Administrator
600 North Robert Street, P.O. Box 64620
St. Paul, Minnesota 55164-0620

RE: REQUEST FOR COMMENTS on Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapter 7002; Revisor's ID Number R-04476; OAH Docket #65-9003-34479

Dear Ms. Collins:

Thank you for the opportunity to comment on the above-referenced proposed rule amendments. The following comment is made regarding the Planned Amendments to Rules Governing Water Quality Fees, *Minnesota Rules*, Chapter 7002; specifically, the proposed Municipal Separate Storm Sewer Systems (MS4) annual fee structure. The City of Lakeville opposes the proposed language.

The City of Lakeville (the City) has seen substantial development over the past 12 years; since 2010, in partnership with the Minnesota Pollution Control Agency (MPCA), the City has reviewed and overseen all private and public developments within the city, the creation of hundreds of stormwater treatment systems (including NURP ponds, infiltration basins, filtration basins and rain gardens) and the issuance of 5,882 single family home and townhome building permits. In coordination with these activities, the City has partnered with state and local agencies (Board of Water and Soil Resources, Department of Natural Resources, Dakota County Soil and Water Conservation District, Vermillion River Watershed Joint Powers Organization and others) to restore over 4 miles of stream, implement 3 water reuse systems, and many other projects with the common goals of protecting and enhancing water quality.

The MS4 General Permit's goal is to, "Reduce pollutant levels in point source discharges and protect water quality in accordance with the U.S. Clean Water Act, Minnesota statutes and rules, and federal laws and regulations." The goal of the Construction Stormwater General Permit echoes that of the MS4 General Permit's. The City has historically dedicated (and will continue to dedicate) significant taxpayer resources to the implementation of the both aforementioned permits. A brief overview of annual contributions made to support water quality-sound development in accordance with these permits includes:

- Annual subscription dues for geographically referenced software for the mapping, management, and work order logging of all MS4 infrastructure



City of Lakeville
Positioned to Thrive

- Annual subscription dues for geographically referenced software to inspect, provide a line of communication with- and ultimately compel compliance for all those involved in land-disturbing activities within the city
- Annual salaries associated with 2.5 full time Environmental Resources employees and 1 full time Geographic Information Systems employee for: construction site plan review, construction site compliance inspections, inspection of ponds and structural stormwater best management practices, engaging the public in pollution reduction activities, management of the aforementioned databases and more.
- Costs associated with equipment used to: ensure proper function of stormwater best management practices (ex: vacuum trucks), initiate best management practices outlined in the permits (ex: street sweepers) and administer public safety protocols while adhering to water quality standards (ex: plows with calibrated de-icing software)

The above list is a small sampling of high-cost items relating to water quality protections and enhancements resultant of MS4 and Construction Stormwater Permit implementation activities; it is by no means an all-inclusive list. While it is understood that the burden held by the MPCA to ensure that cities are enforcing these stormwater regulations is great, the City argues that the burden held by local entities is far greater. Should the proposed MS4 annual fee structure be granted, the State will be placing further financial burden on the City (and its taxpayers), resulting in the reduction of the ability to fund activities aimed at protecting water quality by reducing pollutant levels in point source discharges. To continue the City's historic partnership with the MPCA, and in an effort to fund quantifiable water quality protection and enhancement measures, it is proposed that financial means to support the MPCA's program oversight be sought elsewhere, and not from those entities tasked with implementing those requirements associated with the MS4 and Construction Stormwater General Permits.

Local MS4 programs are unfunded mandates that have been administered at the local level for about twenty years or more. Budgets are well-established and frequently set by the revenues from stormwater utility fees that are difficult to increase for local taxpayers. The proposed MS4 permit fee increases are significant for many permitted cities. With limited local stormwater budgets, paying these increased fees to the State will result in less funding for local implementation projects and/or proper and necessary O&M work. Please explain why the MPCA believes this impact makes sense.

If the Municipal Separate Storm Sewer Systems (MS4) annual fee is to increase the following is requested:

1. The increased fee revenues are not used by the MPCA to expand the permit audit program and process. We request that the MPCA provide to us the agreement and commitment between MPCA and EPA regarding the number and frequency of MS4 local program audits.
2. The increased fee revenues are not used by the MPCA to expand permit enforcement actions or make them more frequent.



City of Lakeville
Positioned to Thrive

3. The increased fee revenues are not used by the MPCA to make the MS4 permit more complex or demand/require more documentation and reporting from the permittees.
4. Please provide assurances that the increase fee revenues will be used to provide stable and continuing funding support for the Minnesota Stormwater Manual, the MS4 Toolkit, the MS4 Digital Document Library, and stormwater research. These are MPCA functions and activities that are valuable for the permittees.

Please explain why the proposed MS4 permit fees in Minnesota are significantly higher than those fees in Iowa, North Dakota, and South Dakota.

Cities are responsible for both water quantity (e.g.: localized flooding) and water quality (e.g.: stormwater permitting) issues and concerns within our jurisdictions. With an increasing number of more intense storms, cities are struggling to find sufficient funding for necessary local resilience improvements/upgrades and establish a balance between water quantity and quality priorities. At this time, it is counterproductive and insensitive for the MPCA significantly increase to cost for cities' stormwater permits, that are focused only on water quality.

The City of Lakeville appreciates the opportunity to comment on these proposed rule amendments. We look forward to responses from the MPCA.

Sincerely,

Paul Oehme, P.E.
Public Works Director
City of Lakeville



RECEIVED

By: OAH on 09/02/22 at 3:59pm
Jill Resler Attachment

151 Saint Andrews Court, Suite 810
Mankato, MN 56001
507-345-8814

September 2, 2022

Re: Water Quality Fees, Request for Comments

Thank you for the opportunity to comment on the proposed water fee increases. On behalf to the Minnesota Pork Producers Association (MPPA), we have concerns regarding the proposed fee increases.

The agency has repeatedly tried to increase water fees since they were last increased in 2009 citing budget shortfalls and staffing challenges. While Minnesota pig farmers have repeatedly demonstrated their commitment to doing what is right for the environment, it has become increasingly challenging to work with the MPCA navigating through permitting processes. In addition to the move to electronic permits and processing, it is frustrating the agency continues to only seek additional fee revenue without evaluating their internal processes, especially on permits not required through statute or for permits that receive no service from MPCA for the permit.

The MPPA objects to paying both a local and state fee for feedlots. The mechanism for collecting these fee increases would occur at the county level where, in some cases, local permit fees are already collected for the same service of processing and enforcement. While county fees can already be more than \$1,000, the doubling of state fees and creation of new fees further puts Minnesota's family farmers at a disadvantage to farms operating in other states. This is already a substantial barrier for farmers to bring in younger generations and limits opportunities for new and beginning farmers to build or modify barns. All the while, these fee increases will have no discernable impact on the quality of service provided by the MPCA.

The cost and length of time it takes in Minnesota to receive a feedlot permit is the longest and most expensive compared to our neighboring states as shown in the legislatively funded study conducted by the Minnesota Department of Agriculture in 2015. This is without the proposed feedlot fee increases, putting Minnesota at an even further disadvantage when it comes to cost of production. We urge the MPCA to examine costs and processes and come forward with recommendations to operate differently rather than look to fee increases.

The addition of a fee for gap sites is not warranted. These feedlots receive no service from MPCA in the processing of these permits. Furthermore, these were not identified as part of the recommendations from the MPCA Fee Advisory Committee.

We recommend that the MPCA do a comprehensive review of permitting. That review should include the need for NPDES permits in Minnesota for non-point source, non-discharging farms and also adjusting to the reality of well-managed and more modern feedlots in Minnesota. We are already seeing decreases in the number of farmers seeking feedlot permits, which in the long run means less demand from MPCA resources for processing and enforcement. The sites that have been built since the chapter 7020 rules were adopted, implemented, and last revised in 2003 have shown they are protecting water quality through engineering and construction standards.

Although we appreciate the MPCA's effort to convene a working group on fees, we are disappointed that a deeper discussion on the wider permitting process was not held. Our shared goals should be protecting the environment and responsibly managing feedlots, not increasing fee revenue to meet the agency's shortfalls.

Regards,

A handwritten signature in cursive script, appearing to read "Jill Resler".

Jill Resler
Chief Executive Officer
Minnesota Pork Producers Association

September 2, 2022

Denise Collins
Office of Administrative Hearings Court Administrator
Submitted via web: <https://minnesotaoah.granicusideas.com/>

RE: Planned Amendments to Rules Governing Water Quality Fees, MN rules, Chapter 7022 and 7083;
Revisor's ID Number R-4476

Dear Ms. Collins:

Thank you for the opportunity to comment on the planned amendments to the Water Quality Fee Rules, *MN Rules*, Chapter 7002.

The City commends the MPCA in their updated approach to phase in more reasonable, fair, and lower annual costs into the new permit cycle, however the City still cannot support the fee increases as proposed for the MS4 General Permit. The City of Apple Valley is a regulated MS4 community, with a population of over 50,000 people. The City would go from paying \$400 every 5-7 years, to \$5,000 annually when fully phased.

Minnesota Cities should not bear the burden of the increased MPCA operating costs, when the MS4 program continues to place additional unfunded mandated tasks and activities on City operations, thereby increasing City operational costs. In addition, these unplanned proposed fees would directly affect the City's 10-year capital improvement project and budget program. Taking away funds from these programmed projects would directly impact the City from improving and maintaining existing infrastructure and would reduce our project efforts to improve water quality and meet required Waste Load Allocations.

The City also supports the comments provided by the Minnesota Cities Stormwater Coalition.

The City of Apple Valley appreciates the chance to comment on the proposed Rules governing water quality fees. We look forward to working with the MPCA on improving water quality together.

Sincerely,



Samantha Berger
Water Resource Specialist