



Regulatory efficiency package

The MPCA continuously seeks ways to improve regulatory efficiency while maintaining strong environmental protections. In 2011, the Executive Order and Permitting Efficiency Law directed the MPCA to improve permitting timeliness by setting a 150-day goal for the issuance of permits. Since the law's passage, the MPCA has issued 97 percent of priority (construction-based) and 85 percent of all permits (non-priority reissuance and priority) within the 150-day timeframe. Building on the success in achieving permitting efficiency goals, the MPCA offers the following proposal to benefit not only permitting, but also compliance and enforcement functions.

Permitting

Create tiered environmental permitting goals

MPCA and DNR issue many types of permits and the agencies seek to set issuance goals based on permit complexity. The following MPCA permitting tiers are proposed.

Tier 1 permit goal = 90 days: includes most general and registration permits for air, water and land, both construction and reissuance

Tier 2 permit goal = 150 days: includes air, water and land construction and reissuance permits that require individualized actions and/or public comment periods

Create ten-year non-federal permits

MPCA proposes to expand the coverage period for non-federal water state disposal system (SDS) and solid waste facility permits from five to ten years. Non-federal permits typically have no surface water discharge and generally represent less risk to human health and the environment because of the smaller size. To ensure adequate regulatory oversight, changes proposed to a facility within the ten-year period would require submittal of an application for permit modification. Expanding the permit term would result in reduced administrative burden and permit application fees for regulated parties. The change would also reduce the work load of MPCA permit staff.

Increase flexibility in expedited permitting process

MPCA proposes to increase the flexibility in the expedited permitting process by using a combination of staff overtime, private consultants and the regular permitting process. The current process allows project proposers to pay for MPCA staff overtime or the Agency's use of a consultant to receive expedited service. Using staff overtime is sometimes insufficient because these projects often require significant coordination, during regular office hours, with federal and other state agencies. In addition, working with consultants requires substantial staff oversight, which can minimize the advantage of using them. The proposal allows the Agency to determine the appropriate staffing for large, complex projects while allowing other staff to support more traditional projects.

Create a fee-for-service business early assistance program

MPCA proposes to create a fee for service model for the very early stages of a project's development or to expand the expedited permit process to include pre-application efforts. Currently, the expedited process only allows a project proposer to pay for work completed by Agency staff after a permit application has been submitted. Project proposers are currently advised to meet with MPCA staff prior to submitting a permit application, however, usually by the time the meetings occur, the project details are solidified and changes are difficult to make. This fee-for-service proposal encourages the involvement of MPCA and other state agencies earlier in the process; potentially at the conceptual state of the project. State agency staff could advise

regulated parties on rule applicability and impacts as well as pollution prevention strategies. To be most effective, this approach must be connected to Minnesota First Stop. Regulated parties would be billed the cost of the additional services using a fee-for-service model.

Expand the existing statutory authority for water quality trading

Pollutant trading is based on the idea different sources of pollution may face substantially different costs of controlling that pollution. Current statute focuses on a narrow period of time (between the listing of a waterbody on the “impaired waters list” and the development of a watershed study - TMDL) and only nutrients are available for trading. MPCA proposes modification to the current law to expand its possible use to all pollutants and eliminate the time restriction.

Sources facing high pollution control costs may realize substantial cost savings by securing environmentally equivalent, or superior, pollutant reductions by purchasing water quality credits generated by sources with substantially lower pollutant reduction costs. Depending on the credit generation methods, co- benefits such as restored wildlife habitat, wetland creation, stream bank stabilization and carbon sequestration may also result from water quality trading.

Modification of the Minnesota Data Practices Act for submittal of electronic information

MPCA proposes a modification to the Minnesota Data Practices Act to ensure that data entered into MPCA-owned online system is treated the same as paper submittals. The Agency is currently updating and expanding its electronic information management systems, so applications, reports, and other documents can be submitted electronically. Since the system is owned by MPCA, documents drafted on it, but not yet submitted, would be considered government data and public information under the current language in Minnesota Data Practices Act.

Allowing the data to be “non-public” until the regulated party makes the decision to officially submit it to the agency will encourage the regulated parties to not only use the system but will expedite document transfer, collaboration and improve overall permit timeliness. Finally, the MPCA is not building the online services system to provide access to draft or un-submitted documents, only those officially submitted.

Make the Permitting Efficiency Report annual instead of semi-annual

MPCA proposes to eliminate the February 1st six month Permitting Efficiency report and continue the August 1st twelve month report. The current schedule does not add benefit since the data is so similar and doing a report every 180 days for a 150-day process offers a very small sample size.

Compliance and enforcement

While the MPCA has improved timeliness for the permitting process, it is important to have a balance of improved timeliness for compliance and enforcement efforts too. Just like permitting, compliance and enforcement efforts, seek to protect and improve the environment, enhance public health, and provide a level playing field for regulated parties. Also, since compliance issues must be resolved before issuing new permits there are numerous times where faster resolution of compliance issues would benefit permit timeliness.

Aggregate Administrative Penalty Orders (APOs) correction

MPCA proposes clarification to a provision of the APO authority that limits how an APO can be used. The current language has been interpreted to mean that multiple parties involved in an inspection could collectively be penalized up to \$10,000 for all APOs, rather than up to \$10,000 for each responsible party. MPCA believes the interpretation is contrary to the intent of the law. An example scenario is during a significant asbestos removal violation, involving the removal contractor, demolition contractor and project management contractor could only be fined \$10,000 all together through an APO, not \$10,000 each. The MPCA believes the intent of the law was each responsible party could be issued an APO up to \$10,000, not a total collective penalty of up to \$10,000. The current interpretation gives violators a fleet rate on violations.

Amend when an Administrative Penalty Order (APO) is used

MPCA proposes that when an APO may be used be changed from penalties up to \$10,000, to penalties up to \$20,000. MPCA was granted statutory authority to issue APOs in response to violations of rules, statutes, and permit conditions in 1998. MPCA proposes increasing it to \$20,000 to protect the APO's deterrent effect and improve timeliness from having to use lengthier enforcement processes such as Stipulation Agreements. MPCA also proposes the creation of a process for the \$20,000 amount to be reviewed every five years and adjusted for inflation as needed, which is similar to EPA's process.

The average time from discovery to closure for APOs is 256 days; for Stipulation Agreements the average jumps to 865 days. Lengthier timeframes to settle enforcement actions may delay a regulated party's return to compliance or cleanups and permit (re)issuance. APOs are a more efficient use of resources and often result in a much faster return to compliance, ensuring protection of the environment and human health.

Allow MPCA field citations for specific SSTS (septic system) violations

MPCA proposes allowing the SSTS program to issue field citations similar to those issued by other MPCA programs. MPCA has found that some violations of septic system laws occur on a frequent basis (e.g. working without a license or an expired license; inadequate land spreading records; or a total failure to have any land spreading records). The use of the field citation would be another tool in the enforcement toolbox – repeat offenses would likely revert to the Administrative Penalty Order (APO) process. Parties would retain their right of appeal under the field citation scenario. The change would result in a more efficient and comprehensive use of staff resources in the compliance effort.