

Environmental Performance Partnership Agreement

EPA Region 5 and MPCA Joint Priorities

FFY 2017-2020 (October 1, 2016 – September 30, 2020)

Federal Fiscal Year (FFY) 2018 Self-Assessment

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Air Quality Permitting Joint Priority

FFY 2017-2019 (October 1, 2016 – September 30, 2019)

Federal Fiscal Year 2018 Report • Activities during timeframe: 10/1/17 – 9/30/18

Objective:

Reduce the MPCA's renewal backlog

Statement of Environmental Problem/Issue:

The MPCA implements the requirements of Title V of the Clean Air Act through its combined construction and operating permits program, which was approved by EPA on December 4, 2001 (66 FR 62967). Through regular program interactions, our annual planning process, and periodic program reviews, EPA and MPCA discuss program progress and implementation issues. MPCA and EPA agree that there is a large backlog of Title V renewal applications. EPA and MPCA seek to work jointly to significantly increase issuance of Title V operating permit renewals, thereby reducing MPCA's renewal backlog. EPA and MPCA agree that the Title V Program provides significant environmental benefit and as such the MPCA agrees to continue to look for ways to increase resources assigned to Title V permitting.

Actions to be accomplished or Progress Update:

- By 12/31/16 reduce backlog to 124 permits
- By 12 /31/17 reduce backlog to 112 permits
- By 12 /31/18 reduce backlog to 90 permits
- By 12 /31/19 reduce backlog to 60 permits
- By December 31 of each year, discuss with EPA which permits will be targeted for issuance in the following calendar year, based on evaluation of environmental impact, age of application, EPA assistance, and other factors.
- Update EPA monthly during scheduled conference calls, in addition to continued quarterly and TOPS reports

Fiscal Year Reports:

FFY 2017 Report

- On 12/21/16, the backlog was 123 permits.
- In December 2016, EPA was provided with a spreadsheet showing MPCA's tentative list of permits targeted for issuance in calendar year 2017.
- The list of permits targeted for issuance is adjusted through the year as needed, and discussed with EPA during scheduled monthly calls.
- Quarterly and TOPS reports have been submitted as scheduled.

EPA R5 Response: MPCA's Title V permit backlog as of December 31, 2017 was 120 permits, 8 permits short of the milestone.

MPCA Response: The report is for FFY 2017, which ended 9/30/17 and should not include the backlog status as of 12/31/17. The backlog status as of 12/31/16 is within the reporting period; the backlog status as of 12/31/17 will be a part of the FFY 2018 report.

Proposed EPA Commitments:

Assist with the oldest backlogged applications:

- By 12/31/16, complete a pilot project on 2 backlog applications jointly selected by EPA and MPCA, to determine how EPA can deliver the most effective assistance.
- Provide that assistance in following years, for additional backlog applications jointly selected by EPA and MPCA by December 31 of each year.

FFY 2017 Report

- In mid-May, MPCA and EPA finalized a process by which EPA will assist MPCA in collecting updated information for backlogged applications. That process was used to collect information for 2 backlogged Title V applications.
- MPCA and EPA started an additional pilot project, where EPA will assist with writing the Title V renewal permits, in addition to collecting the updated information.

EPA R5 Response: EPA will continue to work with MPCA to finalize the pilot projects, with the potential to expand the Title V renewal permit writing project, as interest and resources allow.

FFY 2018 Report

- Pilot Project #1 (where EPA collects updated information for backlogged applications): Updated information was collected for 2 permits. Both permits are still in process, as there was still a significant amount of information needed as the assigned MPCA staff began work on the permits.
- Pilot Project #2 (where EPA assists with writing of Title V renewal permits): Two permits were selected in August 2017. One of the facilities applied for and received a registration permit. The draft permit and TSD for the second were received by MPCA in early November 2018. Significant work remains to be done on that permit. An additional permit was selected for EPA to work on in July 2018; that permit application is still under review by EPA. It has not yet been determined if the pilot project can be considered successful.
- The Title V backlog on 12/31/17 (the milestone within FFY 2018) was 120 permits, 8 permits short of the milestone. It is anticipated that the backlog on 12/31/18 (which is actually within FFY 2019) will be 113 permits.

EPA response (2018):

- MPCA's backlog as of 12/31/18 was 113 permits, 23 permits short of the backlog permit reduction milestone.
- EPA renews its commitment to assist MPCA in their efforts to increase the rate of permit

issuance. Discussions on methods to improve coordination and results of pilot project initiative continue.

Contact Information:

- MPCA: Don Smith at 651-757-2736 or Don.a.Smith@state.mn.us
- EPA Region 5: Genevieve Damico at 312-353-4761 or Damico.Genevieve@EPA.gov

Mining Permits Joint Priority

FFY 2017-2020 (October 1, 2016 – September 30, 2020)

Federal Fiscal Year 2018 Report • Activities during timeframe: 10/1/17 – 9/30/18

Objective:

To address regulatory and communication issues and facilitate timely completion of NPDES permit actions for metallic mining projects in Minnesota that will address outstanding environmental issues, eliminate permit backlog, and issue permit decisions for existing and new mining operations.

Statement of Problem/Issue:

Water quality permits for the metallic mining sector are critical to the protection of surface waters. These permits are often associated with economic development, are under increased public scrutiny, and involve complex permitting and water quality situations. As a result, NPDES permits for the metallic mining sector have a higher than average reissuance backlog and permit decisions for new or expanding facilities are often delayed. EPA and MPCA had previously established a joint priority on metallic mining which was focused on reducing the permit backlog in the mining sector. MPCA reports that the current regulatory environment makes it difficult to propose new or renewed permit actions that will survive administrative procedures and become successful final actions. NPDES permit actions for metallic mining operations are affected by water quality standards and the need to address impacts to downstream waters regulated by other state/tribal governments.

Scope:

Minnesota's Class 3 and Class 4 water quality standard revisions (including wild rice), numeric interpretation of aquatic life standard, and NPDES permits for new, expanding and existing metallic mining operations in Minnesota.

Strategy:

The metallic mining joint priority will include a focused effort on development and review of Minnesota revised Class 3 and Class 4 water standards and an implementation strategy for a chloride water quality standard (including a discussion on use of a numeric interpretation of the narrative aquatic life standard). It will also include identification and prioritization of metallic mining permit issuance, and improvements to the permitting process to assure timely NPDES permit decisions consistent with CWA requirements and elimination of the permit backlog. EPA and MPCA agree to approach interactions constructively and well prepared, minimize surprises and focus on joint problem solving.

Actions to be accomplished or Progress Update:

1. Update Minnesota's Class 3 and Class 4 water quality standards.
 - a. MPCA provides information to USEPA throughout the rulemaking process;
 - b. MPCA completes state rulemaking process by January 1, 2018; and
 - c. USEPA completes timely review and has a goal of providing a decision within 90 days of receiving the complete rule package, including the Attorney General certification, from the state.

Responsible Staff: Catherine Neuschler, MPCA and Linda Holst, USEPA

2. Evaluate the need for a numeric interpretation of the narrative aquatic life standard (including a discussion on use of conductivity)
 - a. MPCA and USEPA agree on an approach for developing the evaluation.
 - b. MPCA prepares a draft evaluation and submits to USEPA for comment.
 - c. USEPA provides timely comments.
 - d. MPCA finalizes action plan, if needed, and begins implementing.

Responsible Staff: Catherine Neuschler, MPCA; and Linda Holst and Kevin Pierard, USEPA

3. Conduct tribal community consultations.
 - a. USEPA will follow its existing Tribal Consultation SOP for work conducted under this joint priority.

4. Provide resources, as available, to complete permitting and certification analyses to assure timely decisions for the metallic mining sector, including copper/nickel mining proposals (e.g. Polymet).
 - a. Use the MOA as a guiding document

Responsible Staff: Jeff Udd, Jeff Stollenwerk, MPCA and Kevin Pierard, Peter Swenson USEPA

5. Identify annual permit issuance/reissuance priorities and timelines by October 1 of each year.

Responsible Staff:

- MPCA: Jeff Udd
- USEPA: Steve Jann

6. In the event of adoption of new water quality standards MPCA will make necessary adjustments to permitting procedures and permit review checklists used in the State's permit issuance process.

Fiscal Year Reports:

FFY 2017 Report

(MPCA staff: Catherine Neuschler, Jeff Udd, and Jeff Stollenwerk)

Class 3 & 4 WQ Standards

MPCA has made significant progress to update the sulfate water quality standard to protect wild rice. Due to increasing public interest, the MN legislature extended the timeline for completing the rulemaking to January 1, 2019 (1-year extension). In August 2017, MPCA published notice of intent to adopt new rules and administrative hearings commenced in October 2017. The rebuttal comment period closes December 1, 2017. After ALJ review, MPCA expects to adopt the rule and send to EPA for approval in 2018.

While the extension of the sulfate water quality standards timeframe caused a delay in other portions of the Class 3 & 4 standards work, we have made some progress. The formal Request for Comments was published in February 2016. Planned changes to the Class 3 use include replacing numeric standards for the existing subclasses (3A–3D) with a single narrative standard. EPA provided initial comments on the use of a numeric interpretation of the narrative aquatic life standard - specifically regarding chloride. MPCA will schedule further discussions with EPA to better understand the comments and find a workable path forward on this issue.

Permits

The top priority permits include PolyMet and US Steel Minntac Tailings Basin/Plant Site permit. The PolyMet permit application was received in July 2016. MPCA staff are processing the application and ~~have prepared a~~ preparing a draft permit. This process has resulted in additional information and clarifications being made available to the MPCA. To reflect this additional information, PolyMet submitted an updated version of the application in October 2017 along with an updated version of the Waste Water Treatment System Design and Operation Report.

The US Steel Minntac Tailings Basin/Plant Site permit reissuance was public noticed in December 2016. MPCA received numerous comments on the permit from a variety of commenters. In addition to providing comments, US Steel requested a contested case hearing, submitted a new variance request, and sought state district court intervention to prevent MPCA from reissuing the permit as proposed. MPCA is currently working through each of these items with the goal of successfully reissuing the permit.

We will send the annual permit issuance/reissuance priorities to EPA by November 22 or sooner.

FFY 2018 Report

(MPCA staff: Catherine Neuschler, Jeff Udd, and Jeff Stollenwerk)

Class 3 & 4 WQ Standards

As noted above, in August 2017, the MPCA proposed revisions to the wild rice standard. The goal of the revisions was to: 1) revise the numeric standard to incorporate the latest scientific understanding of the impacts of sulfate; 2) clarify the beneficial use and which waters support the beneficial use; and 3) clarify what it means to meet or exceed the standard.

As required by Minnesota law, the proposed revisions were reviewed by an administrative law judge. The judge, with concurrence of the Chief ALJ, disapproved the revisions in January 2018. As articulated in the ALJ report, the main reasons for the disapproval were that the MPCA's proposed equation based standard was unconstitutionally vague, presumably because of the lack of data to immediately calculate the results of the equation for each waterbody. The ALJ also disapproved the list of wild rice waters, stating that waters contained on lists compiled by the DNR and 1854 Treaty Authority had already been designated as wild rice waters and that the MPCA should have included those as proposed wild rice waters. The MPCA provided additional information to the ALJ and Chief ALJ in March 2018, arguing for the equation based standard and disputing the judge's characterization of the designation of the wild rice waters. However, the Chief ALJ upheld the disapproval in April 2018. The MPCA then withdrew the proposed revisions and changes have not been promulgated. The Governor has convened a Wild Rice Task Force that is meeting on some key issues, with a report due to the outgoing Governor in December 2018.

The MPCA intends to publish a second Request for Comments on the Class 3 and 4 rules, along with a draft technical support document, in the first quarter of 2019. We will share that document with EPA so that we can discuss any technical issues. The draft document does include narrative standards and a plan for implementation of those narrative Class 3 and 4

standards in permits. The draft TSD will undergo peer review. The current plan is to formally propose the rule in the last quarter of 2019.

Permits

The top priority permits include PolyMet and US Steel Minntac Tailings Basin/Plant Site permit. The PolyMet draft permit was on public notice from January 31 through March 16, 2018 (45 days). During the public notice period, the MPCA (jointly with the MDNR) held two public meetings – February 7 in Aurora and February 8 in Duluth. Approximately 1500 people attended. We received over 700 comment letters and 4 contested case hearing requests. MPCA spent the next several months reviewing/responding to comments and revising the permit conditions based on those comments. The final permit was issued on December 20, 2018.

The US Steel Minntac Tailings Basin/Plant Site permit reissuance was public noticed in December 2016. MPCA received numerous comments on the permit from a variety of commenters. In addition to providing comments, US Steel requested a contested case hearing, submitted a new variance request, and sought state district court intervention to prevent MPCA from reissuing the permit as proposed. MPCA held a public meeting in Mountain Iron on January 23, 2018 to take comments on the MPCA's preliminary determination to deny the variance request. The MPCA spent the next several months reviewing/responding to comments and revising the permit based on those comments. The permit was reissued on December 1, 2018.

The annual permit issuance/reissuance priorities were sent to EPA on October 1.

Joint Priority Responsibilities:

1. MPCA and USEPA R5 participate in quarterly calls for updates, information exchanges and problem solving on all joint priority actions. EPA R5 will invite EPA HQ staff to participate in quarterly calls for updates.

Staff Responsible to Schedule: Jeff Stollenwerk, MPCA; and Kevin Pierard and Linda Holst, USEPA
Staff Responsible to Participate: All involved in Actions above.

2. As process impediments are identified EPA and MPCA agree to evaluate and resolve the impediment within a fixed period of time, which will be identified and agreed upon. If an impediment is not resolved in the established period it will be elevated to the Assistant Commissioner (MPCA) and Water Division Director (EPA) level for resolution.
3. Annually review metallic mining permit issuance/reissuance priorities and timelines to track progress in addressing the permit backlog.

Responsible Staff: Jeff Stollenwerk, MPCA and Kevin Pierard, USEPA

FFY 2017 Report

(MPCA: Jeff Stollenwerk)

Joint calls are occurring for updates, information exchanges and problem solving on all joint priority actions. Impediments are being elevated to the Assistant Commissioner (MPCA) and Water Division Director (EPA) level for resolution.

Joint Priority Guiding Principles:

1. Approach each interaction focused on problem-solving
2. Constructive Communications - Advance discussions followed up by formal letters or emails outlining planned actions, including steps for issue resolution.
3. Come prepared for interactions

FFY 2018:

(MPCA: Jeff Udd)

No additional updates.

Contacts Information:

- MPCA: Jeff Udd at 218-302-6637 or jeff.udd@state.mn.us
- Kevin Pierard at 312-886-4448 or Pierard.Kevin@epa.gov

CWA Section 319 Grants Joint Priority

Minnesota Watershed Approach and U.S. EPA

FFY 2017-2020 (October 1, 2016 – September 30, 2020)

Federal Fiscal Year 2018 Report • Activities during timeframe: 10/1/17 – 9/30/18

Objective:

Both agencies seek a well-coordinated effort to distribute U.S. EPA CWA Section 319 grants according to the current federal guidance, while supporting the Minnesota Watershed Approach.

Statement of Environmental Problem/Issue:

U.S. EPA Section 319 guidelines currently require a fairly detailed 9-element watershed based plan for each watershed project receiving Section 319 funding, in which detailed project activities are described down to a smaller, sub-watershed scale. However, the Minnesota Watershed Approach focuses on a larger, major watershed level, and this larger scale is not compatible with the level of detail needed in a 9-element plan. But the Minnesota Watershed Approach has already been successful at identifying major sources of water pollution, making the correct strategies more apparent across the state. To reconcile this situation, U.S. EPA and Minnesota are working together to ensure the Project Work Plans for Section 319 funded projects meet the 9 elements.

In Minnesota there are 80 HUC8 watersheds. In a ten-year period, all 80 HUC8 watersheds will be intensively monitored or sampled, assessed for impaired waters and waters in need of protection, modeled with U.S. Geological Service HSPF (Hydrological Simulation Program-FORTRAN) model, and investigated for biological stressors. Using this data, TMDLs are developed. This information is gathered in a WRAPS report that uses the collected data to create a table of strategies (generally BMPs) needed to achieve clean surface water in that major watershed. Input from not only local governmental units, but also citizens, is integral to the process of creating the WRAPS reports. Ownership by the local stakeholders of the WRAPS report is the central tenet of the process: with that ownership, the right conservation practices are more likely to be implemented in the areas where they're most effective.

Both agencies agree that Section 319 funding should be focused on Best Management Practices (BMPs) that address a particular water body with an approved TMDL. Furthermore, Section 319 funding should be targeted toward critical areas in any given watershed. MPCA also requires that an approved Watershed Restoration and Protection Strategy (WRAPS) report or TMDL Implementation Plan (former plans recently replaced by WRAPS in most cases) be completed for the project area.

The timeline between the grant application acceptance and submittal of the needed Project Work Plan is short, and is a cumbersome process at this time. An additional goal is that as a Joint Priority, the process can be streamlined and made more efficient.

Progress Update:

One round of Section 319 applications was scored but the resulting Project Work Plans were largely unfocused and oftentimes vague. Specific problems involved plans not being targeted towards BMPs for water bodies with TMDLs without extensive editing. Many applicants asked for funding to be spent across a watershed or county without regard for critical areas. Some wanted to further study an area for

which sufficient data had been collected but hadn't been used. This "pre-test" of Project Work Plans highlighted challenges that can focus future efforts.

MPCA plans to hire a new staff (0.5 FTE) to develop guidance documents, conduct training, and revise the request for grant applications to improve this situation. This staff person will be overseen by the Statewide Administration Supervisor and the Metro Watershed Section Manager.

FFY 2017 Report

EPA reviewed and approved MPCA's FY17 Workplan. Based on issues raised during the course of EPA's review, however, MPCA requested in October 2017 a two-year waiver from the Section 319 guidelines, in order to choose a number of small watersheds and create detailed nine-element watershed based plans (9E-WBP), similar to detailed grant work plans, for each small watershed. EPA is in the process of completing its review of MPCA's request. If approved, FFY2018 and 2019 Section 319 monies would fund projects as described in the waiver request, until several 9E-WBP can be reviewed and approved by U.S. EPA.

FFY 2018 Report

On October 23, 2017, US EPA Region 5 granted a two-year waiver for FFY2018 and FFY 2019 from meeting the WBP requirements. For FFY2018, Section 319 funds continued to be competitively funded under the temporary waiver of the 9E-WBP requirement.

Several meetings were held from December 2017 to mid-summer with local partners to discuss the intent and proposed designs of the new Section 319 program, branded "Section 319 Small Watersheds Focus" and often referred to as 319 Focus for short. Once the program design was settled upon, MPCA issued a continuously open request for interest. Once we received a sufficient number of expressions of interest (approximately 40), the interested LGUs were evaluated. The 19 likely recipients were interviewed at their sites across the state. From these requests, 10 were prioritized for funding beginning in 2020. These prioritized watersheds are spread across the state geographically, honoring the Minnesota Watershed Approach and meeting our state priorities.

Pass-through funds were used as allowed for a temporary staff to assist with the selection of the applicants. Abel Green, a military veteran and water resource specialist, was hired for the position. He is now in the process of reviewing information to help the selected applicants create 9E-WBPs for each of their watersheds.

Joint Priority Responsibilities:

1. MPCA will continue to refine the Request for Grant Application, and train both MPCA project managers and local applicants on the objectives and requirements for project funding for Section 319 grants.
2. MPCA, in coordination with U.S. EPA, will develop state guidance for Section 319 applications, including a template for a 9-element Project Work Plan.
3. U.S. EPA will continue to review Project Work Plans for adherence to the 9-element plan requirements.
4. U.S. EPA and MPCA will continue discussions on the directions and outcomes of the programs, and additional paths to streamline the Section 319 grant program for both agencies.
5. Process improvement will be measured by the following:

- a. To measure the success in ensuring the Project Work Plans focus on the appropriate components, we will track the number of Section 319 work plans that fully meet the requirements of the 9-element plan without extensive editing, thus improving efficiencies for both agencies.
- b. To measure the efficiency and streamlining of the grant submittal and acceptance process, we will track the timeliness of the process. Process timelines will be established prior to the FY2017 application period start (January 2017).

FFY 2017 Report

Responsibilities above were addressed as follows:

1. The MPCA continued to refine the Section 319 grant application. Training was provided to the MPCA project managers and local applicants to increase interest and improve applications in January 2017.
2. A template for the Section 319 program was used successfully in FFY2016, but then deemed inadequate by the U.S. EPA during the FFY2017 application cycle. It is unlikely that the template, which referenced existing reports, will be needed in the future. Instead of referencing existing reports, those relevant parts of the existing reports will be repeated in the 9E-WBP.
3. The U.S. EPA stringently reviewed project work plans for the nine-element requirements, far more than in previous years. This led to several challenges including frustration by the local partners, MPCA staff and U.S. EPA staff. Local partners commented on the difficulty of project review with a detailed description of each of the nine elements in one short period.
4. The MPCA and U.S. EPA are currently working on a Section 319 program shift. MPCA has submitted a request for a waiver for the next two years to allow for the creation of 9E-WBP for a number of watersheds. Over the course of the two-year waiver, the project money would be passed through in a similar manner to years past, without the need for a 9E-WBP (until such time as several 9E-WBP can be reviewed and approved by U.S. EPA).
5. Process improvement measures:
 - a. Very few project work plans met the nine-elements in FFY2017. Of the 10 project work plans submitted, nine required extensive additional information and editing. This was markedly different from FFY2016, when minor edits were required for similar work plans.
 - b. MPCA had drafted a timeline that was used internally, but was not communicated well with U.S. EPA in FFY2017. This oversight was probably due a changeover in staff for both agencies. Currently, a draft timeline exists and the agencies will discuss the details further as part of the Section 319 program shift.

FY2018 Report:

With the waiver from US EPA, the requirements above were modified; and progress is reported in the paragraphs above.

Contact information:

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