

34479 Minnesota Pollution Control Agency Request for Comments

Closed Mar 13, 2020 · Discussion · 38 Participants · 1 Topics · 40 Answers · 0 Replies · 6 Votes

38

PARTICIPANTS

1

TOPICS

40

ANSWERS

0

REPLIES

6

VOTES

SUMMARY OF TOPICS

SUBMIT A COMMENT

 40 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.

Trevor Russell · Citizen · (Postal Code: unknown) · Feb 06, 2020 2:02 pm

 1 Votes

Please find FMR's comment on chloride training fees in the attached document.

Bradley Gratz · Citizen · (Postal Code: unknown) · Feb 10, 2020 4:03 pm

 3 Votes

We have a small feedlot. None of the surrounding states have this fee. Being a commodity business, we cannot pass this fee to any customers. Therefore Minnesota feedlots are disadvantaged. These feedlot fees should not be added or increased. Minnesota farms already voluntarily enroll in state and industry programs promoting best management practices and should be exempt from water fees.

Stephen Simones · Citizen · (Postal Code: unknown) · Feb 10, 2020 5:43 pm

 1 Votes

I understand that our MS4 permit fees only cover 1% of the cost to operate the permit. This is not the fault of the MS4 permit holders. The MPCA should have made fee increases each time at reissuance. The amount of increase you are asking for is far over the top of what anyone expected. I did attend the meeting in Alexandria and know that you expect each type of permit fee to cover 30% of operations costs. The increase to 1,000.00 /yr for Townships is very burdensome. We do not have the power to raise taxes, our suggested general revenue fund has to be passed by the people attending our

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annual meeting. They don't always pass the levy we ask for. Townships have a much lower tax capacity than any city with a MS4 permit. to comply with the last permit some townships were paying engineering firms between \$5,000.00 and \$9,000.00 to write the new SWPPP ordinance language to be in compliance with the new permit. I know that you won't reach 30% by using the fees that I will present but I feel that \$1,000.00 for the 5 year term of the permit would be more feasible for Townships. Thank You
Steve Simones Minden Township

Stephen Simones · Citizen · (Postal Code: unknown) · Feb 19, 2020 7:34 pm

👍 1 Votes

I should have mentioned that the total population of our Township is only about 1750 people. Cities with populations under 5000 are not required to be permitted. Our total tax capacity for the Township is \$2,573,191.00. I support every thing that our MS4 program does for water quality. We need to keep our waters drinkable ,swimmable and fishable . Thank you
Steve Simones Minden Township

Larry Remmen · Citizen · (Postal Code: unknown) · Feb 24, 2020 9:53 am

👍 1 Votes

MS4 regulations represent a significant cost to the City and require a great deal of staff time for enforcement and monitoring. Additional permitting costs would be a burden to the City and also the residents as these costs would have to be passed on through additional taxes or fees.

As a City of 9,475 people, the MS4 permit requirements puts a tremendous burden on our budget and staff. The City of Detroit Lakes has made significant investments in recent years to improve our MS4 enforcement including training, staffing, consultant fees, and public relations. This additional permitting cost adds to that burden and takes away funds that could be used for local enforcement. The City is always willing to collaborate with the MPCA to protect our waters but we hope this additional funding is used to improve that collaboration and not for overbearing enforcement and levying of penalties.

The proposed increase would be from \$400 every 5 years to potentially \$20,000 every 5 years.

Dallas Cornell · Citizen · (Postal Code: unknown) · Feb 24, 2020 3:11 pm

👍 0 Votes

Please see attachment for the Lincoln County Environmental Office comment in regards to Feedlots and SSTs.

Michael Behan · Citizen · (Postal Code: unknown) · Feb 27, 2020 12:15 pm

👍 0 Votes

Please find Dakota County's comments on the Planned Amendments to Rules Governing

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Water Quality Fees, Minnesota Rules, Chapters 7002 and 7083; Revisor's ID Number R-4476 attached.

Andi Moffatt · Citizen · (Postal Code: unknown) · Mar 01, 2020 10:57 am

👍 0 Votes

Comments from the City of Lauderdale

Renee Molstad · Citizen · (Postal Code: unknown) · Mar 04, 2020 4:04 pm

👍 0 Votes

The Minnesota Onsite Wastewater Association respectfully submits the attached comments on behalf of our members to the Minnesota Pollution Control Agency (MPCA) under the request for Comments to Rules Governing Water Quality Fees, Minnesota Rules, chapters 7002 and 7083; Revisors ID Number R-4476, OAH Docket No. 65-9003-34479.

Toni Blomdahl · Citizen · (Postal Code: unknown) · Mar 05, 2020 1:18 pm

👍 0 Votes

Comments from City of Rice Lake.

Randy Anhorn · Citizen · (Postal Code: unknown) · Mar 06, 2020 9:32 am

👍 0 Votes

Attached are Nine Mile Creek Watershed District's comments on the proposed amendments to the MPCA rules governing WQ fees

Michael Welch · Citizen · (Postal Code: unknown) · Mar 06, 2020 12:46 pm

👍 0 Votes

Attached are Riley-Purgatory-Bluff Creek Watershed District's comments on MPCA's authority to charge fees for the Smart Salting training and certification.

Russ Hilbert · Citizen · (Postal Code: unknown) · Mar 09, 2020 2:08 pm

👍 0 Votes

Attached are comments from the Minnesota Association of County Feedlot Officers regarding planned amendments to rules governing water quality fees.

Marlene Schlichting · Citizen · (Postal Code: unknown) · Mar 10, 2020 1:38 pm

👍 0 Votes

As a farmer, I agree with Bradley Gratz comment "Minnesota farms already voluntarily

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enroll in state and industry programs promoting best management practices and should be exempt from water fees." There are multiple agencies in MN studying and/or regulating water. I suggest combining some of those agencies to save money and the redundancy.

Cody Holmes · Citizen · (Postal Code: unknown) · Mar 10, 2020 2:32 pm

👍 1 Votes

Comments from City of St. Michael regarding planned amendments to rules governing water quality fees.

Glen Groth · Citizen · (Postal Code: unknown) · Mar 11, 2020 3:42 pm

👍 0 Votes

Attached are comments on behalf of Winona County Farm Bureau regarding water quality fees.

Rebecca Haug · Citizen · (Postal Code: unknown) · Mar 11, 2020 3:43 pm

👍 0 Votes

Please find attached comments from the city of Blaine on the proposed amendments to rules governing water quality fees.

Todd Carlson · Citizen · (Postal Code: unknown) · Mar 11, 2020 4:06 pm

👍 0 Votes

Please see the attached comments from the City of Duluth on the proposed Water Quality Fee increase

Ben Scharenbroich · Citizen · (Postal Code: unknown) · Mar 12, 2020 10:08 am

👍 0 Votes

Please see the attached comments from the City of Plymouth on the proposed amendments to the rules governing water quality fees.

Laura Jester · Citizen · (Postal Code: unknown) · Mar 12, 2020 12:25 pm

👍 0 Votes

Attached please find comments from the Bassett Creek Watershed Management Commission on MPCA's authority to charge fees for the Smart Salting training and certification.

Bill Weber · Citizen · (Postal Code: unknown) · Mar 12, 2020 2:17 pm

👍 0 Votes

See attachment

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David Preisler · Citizen · (Postal Code: unknown) · Mar 12, 2020 4:55 pm

👍 0 Votes

Please see attached comments from the Minnesota Pork Producers Association on the proposed water fee increases.

Brian Martinson · Citizen · (Postal Code: unknown) · Mar 13, 2020 9:20 am

👍 0 Votes

Please see attached comments from the Association of Minnesota Counties on the proposed water quality fees rules.

Brian Martinson · Citizen · (Postal Code: unknown) · Mar 13, 2020 9:22 am

👍 0 Votes

Please see attached comments from the Minnesota Association of County Planning and Zoning Administrators on the proposed water quality fees rules.

Randy Neprash · Citizen · (Postal Code: unknown) · Mar 13, 2020 9:40 am

👍 0 Votes

Please see the attached comments from the Minnesota Cities Stormwater Coalition.

Derek Asche · Citizen · (Postal Code: unknown) · Mar 13, 2020 10:37 am

👍 0 Votes

Please see attached comments from the City of Maple Grove. Thanks!

Samantha Berger · Citizen · (Postal Code: unknown) · Mar 13, 2020 10:38 am

👍 0 Votes

Please find the attached comments on behalf of the City of Apple Valley.

Jane Byron · Citizen · (Postal Code: unknown) · Mar 13, 2020 10:55 am

👍 0 Votes

Please see the attached comments from the City of Rosemount. Thank you for the opportunity to comment.

Noah Czech · Citizen · (Postal Code: unknown) · Mar 13, 2020 11:07 am

👍 0 Votes

Please see attached comments from the City of St. Cloud. Thank you.

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Steven Huser · Citizen · (Postal Code: unknown) · Mar 13, 2020 11:37 am

👍 0 Votes

Please see attached comments from Metro Cities

Patrick Sejkora · Citizen · (Postal Code: unknown) · Mar 13, 2020 11:46 am

👍 0 Votes

Please see the attached comments from the City of Eden Prairie. Thank you for your consideration.

Josie Lonetti · Citizen · (Postal Code: unknown) · Mar 13, 2020 1:49 pm

👍 0 Votes

Minnesota Farm Bureau Federation comments.

Mitch Robinson · Citizen · (Postal Code: unknown) · Mar 13, 2020 2:19 pm

👍 0 Votes

Please see the attached comments from the City of Brooklyn Park.

Elizabeth Wefel · Citizen · (Postal Code: unknown) · Mar 13, 2020 2:22 pm

👍 0 Votes

Attached please find comments from the Coalition of Greater Minnesota Cities

Tony Kwilas · Citizen · (Postal Code: unknown) · Mar 13, 2020 3:00 pm

👍 0 Votes

Please find the Minnesota Chamber of Commerce comments attached

Lucas Sjostrom · Citizen · (Postal Code: unknown) · Mar 13, 2020 3:21 pm

👍 0 Votes

Please find attached the comments from Minnesota Milk Producers Association.

Bruce Kleven · Citizen · (Postal Code: unknown) · Mar 13, 2020 3:53 pm

👍 0 Votes

Attached please find comments from the Minnesota Turkey Growers Association and the Minnesota State Cattlemen's Association.

Tony Kwilas · Citizen · (Postal Code: unknown) · Mar 13, 2020 4:01 pm

👍 0 Votes

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Minnesota Chamber of Commerce comments (corrected)

Gretel Lee · Citizen · (Postal Code: unknown) · Mar 13, 2020 4:18 pm

 0 Votes

Please find the attached comments submitted on behalf of the Minnesota Environmental Science and Economic Review Board (MESERB). Thank you.

Kristin Seaman · Citizen · (Postal Code: unknown) · Mar 13, 2020 4:28 pm

 0 Votes

Please find the attached comments submitted on behalf of the City of Woodbury.

LINCOLN COUNTY ENVIRONMENTAL OFFICE

221 North Wallace Avenue • P.O. Box 66 • Ivanhoe, MN 56142

Phone: (507) 694-1344 Fax: (507) 694-1341

www.co.lincoln.mn.us

RECEIVED

By: OAH on 2/24/20 @ 3:11 pm

Dallas Cornell



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

RE: Lincoln County Environmental Office Comments on Amendments to Rules Governing Water Quality Fees

February 21st, 2020

Dear Denise,

At the Lincoln County Environmental Office we monitor and regulate a multitude of different water quality divisions. After reviewing the Minnesota Pollution Control Agencies Draft Amendment to Rules Governing Water Quality Fees, there are two areas that would affect our office: Septic (SSTS) and Feedlots. Our office does not find that the SSTS fee increase would be burdensome to the consumers in our county as the fee increase per tank is an additional \$5.00 one-time fee that could be incorporated in the total cost of installing the system. Our office does disagree with the fees associated with Feedlots. In Lincoln County our office, and County Commissioners, have decided that we will not charge our feedlot producers a fee for having a feedlot operation through a county ordinance. In Lincoln County there are currently 391 active feedlots. Per our delegation agreement with the Minnesota Pollution Control Agency (MPCA) we monitor/regulate Minnesota 7020 rules on 375 of those 391 active feedlots. Of those 391 active feedlots there are currently 380 feedlots that have never been accessed fees for having a feedlot operation. Upon review of the proposed feedlot fee schedule this would cost Lincoln County producers approximately \$6,487.50 annually to have an active feedlot registration. Feedlot registrations are done once every 4 years so in order to have an active feedlot registration it would cost our producers approximately \$25,950.00 every 4 years. After attending the public meeting at the Marshall Library in Marshall, MN on February 6th, 2020 Katie Smith and Randy Hukriede, with the MPCA, advised that they plan to acquire the registration fees through an online registration system. On Tuesday March 26th, 2019 the MPCA advised County Feedlot Officers at the 2019 Minnesota Association of County Feedlot Officers Annual Conference that the online registration system would be operational by June 2019. Still in February 2020 the online registration system is not operational. It is our belief that if fees are created for feedlots, that delegated counties are required to register and regulate, that some of these producers will not register or cease operation of their feedlot. It is also our belief that this will make our office collect money for the fees on behalf of the MPCA, with no return benefit from the MPCA to Lincoln County. In the past we have had very little success with receiving assistance from the MPCA regarding feedlot issues in Lincoln County, so how will this change after the MPCA receives money from feedlots that we are required to regulate/monitor? In conclusion the Lincoln County Environmental Office believes that having registration fees for all required to be registered feedlots in delegated counties should be a county ordinance decision as the delegated counties are the people providing the service to the producers in their county not the MPCA. The Lincoln County Environmental Office would understand if the MPCA would create fees for all required to be registered feedlots in non-delegated counties since they are the ones that monitor and regulate those feedlots.

Sincerely,

Dallas Cornell
Environmental Technician

Robert Olsen
Environmental Administrator

Pete Doyscher
Environmental Technician

Robert E. Olsen
Administrator
ROlsen@co.lincoln.mn.us

Susan Krier
Administrative Assistant
SKrier@co.lincoln.mn.us

Pete Doyscher
Environmental Technician
PDoyscher@co.lincoln.mn.us

Dallas Cornell
Environmental Technician
DCornell@co.lincoln.mn.us



FRIENDS OF THE MISSISSIPPI RIVER



Working to protect the Mississippi River
and its watershed in the Twin Cities area.

Trevor Russell

101 East Fifth Street
Suite 2000
Saint Paul, MN 55101

651-222-2193
www.fmr.org
info@fmr.org

RECEIVED

By: OAH on 2/6/20

February 6th, 2020

**Re: Planned Amendments to Rules Governing Water Quality Fees,
Minnesota Rules, Chapters 7002 and 7083**

Revisor's ID Number: R-04476

To whom it may concern,

The Minnesota Pollution Control Agency (MPCA) is currently planning amendments to rules governing water quality fees (Minn. R. chapters 7002 and 7083).

Chloride training fees

The final page of the [Water Fees Rule Concept Document](#) specifically addresses chloride training fees.

The document notes that authority to charge fees to cover the agency's costs of providing "smart salt" trainings for commercial applicators is not currently granted under state statute.

As a result, such authority must be pursued legislatively rather than through the administrative rule-making process.

Chloride & water quality

As you know, chlorides used in deicing chemicals are damaging Minnesota's water quality. When snow and ice melts, chloride from deicers dissolve in runoff water and pollute our rivers, lakes and streams, along with our groundwater.

Minnesota currently has 50 chloride-impaired water bodies, with 75 more close to the limit.

Chloride training & certification

Thanks to the efforts of the MPCA and Fortin Consulting, hundreds of public applicators have been trained and certified in smart salt techniques.

Board of Directors

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George Dunn
Forrest Flint
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Hokan Miller
Susan Vento
Deanna Wiener
Nou Yang

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John Linc Stine
Dr. Deborah Swackhamer
Liz Wielinski

They report reductions of 30% - 60% in deicer use after the first year of training. This demonstrates that participation in smart salt training reduces product waste, saves money and reduces environmental degradation.

By contrast, only small share of commercial applicators (entities that maintain privately owned parking lots, streets and sidewalks) are trained in best practices.

Chloride training fees

FMR strongly supports modifying state statute to allow the MPCA to charge a modest fee (up to \$350) to recover a portion of the costs associated with providing smart salt training to commercial applicators across the state.

Thank you,

Trevor Russell

A handwritten signature in grey ink, appearing to be 'TR', followed by a horizontal line extending to the right.

Water Program Director
Friends of the Mississippi River
101 East 5th Street - Suite 2000
St. Paul, MN 55101



RECEIVED

By: OAH on 3/4/2020 @ 4:04 pm

Renee Molstad

March 2, 2020

Minnesota Office of Administrative Hearings
Court Administrator
600 North Roberts Street
St. Paul, MN 55164-0620

To Whom It May Concern,

The Minnesota Onsite Wastewater Association (MOWA) has reviewed the proposed fee changes and “Water Fees Rule Concept” Document dated January 2020 from the MPCA and respectfully submits these comments on behalf of our members to the Minnesota Pollution Control Agency (MPCA) under the request for Comments to Rules Governing Water Quality Fees, *Minnesota Rules*, chapters 7002 and 7083; Revisors ID Number R-4476, OAH Docket No. 65-9003-34479.

MOWA currently opposes the proposed fee increases as laid out by the MPCA “Water Fees Rule Concept” document. The current proposal does not provide more than vague concepts and offers no final language for any part of the proposal. Until the final language is drafted and made public it is difficult to give any support to a concept alone.

As an organization we support the overall goal for the proper treatment of sewage to protect human health and the environment. We acknowledge the need for regulations and accountability for the public and for the septic industry. We support the judicious use of state funding to improve programs that enhance and improve the welfare of human health and the environment. However, we feel that there is not enough transparency or accountability for the use of the new proposed funding. We believe with any request for increased funding there should also be specific details outlining where these funds are intended to be allocated.

We have no doubt the MPCA costs more to run every year. Everyone in our industry is fully aware of the increases to an annual bottom line. However, there has also been a reduction in seniority as well as program expertise over the past 5 years within the MPCA. With these changes, we are unsure of the validity of the current accuracy in the stated \$2,832,763 to run the program.

Assistant Division Director Katie Smith from the MPCA presented information regarding the proposed fee increase to the MOWA Board of Directors in November 2019. The MPCA program costs were questioned at that time and in subsequent emails received from the MPCA, there was an error identified in the costs of the program. The training costs for the SSTS program were listed on their documents as \$454,000 but the actual training costs were \$4000. In reality, the \$454,000 was a combination of training costs with all wastewater and solid waste programs. This leaves a \$450,000 discrepancy relating to the SSTS program. We do not believe this error was corrected in their final published document.

Also, the 15 staff are listed as \$1,544,000 for Salary and Fringe, \$535,000 Indirect costs, \$16,000 Attorney General Office support giving a total of \$2,099,000 not the \$2.8M as listed. The known errors were not addressed in the January 2020 document and therefore the necessity for the increase in funds may be misrepresented. The numbers are not clear as to the applicability of costs or what is listed under each category. Simply stated, the math does not equate. Just as we are all required to provide accuracy and perfection under our licenses through the MPCA, we believe we can also request the same from the MPCA. Before any increases in fees based on a program cost percentage, the total needs to be accurate, accountable and transparent.

During the MPCA's February 10, 2020 web-ex defending the proposed water fee increases, there was a claim made stating there have not been fee increases in any of the water program fees in the past 25 years. Under this reasoning for increasing fees, this appears to be supplanting a program not increasing program value to our industry. Additionally, the statement of no increases in 25 years is simply not true, as there have been several fees added, as well as increases to these fees over the past 25 years. In 1996 business license fees were established for each license category at \$100. Currently the cap on multiple licenses is \$400 annually. In 2003 the tank fees were established in Statue 115.551 at \$25 for each septic tank installed. Currently multiple tanks and larger tanks are being utilized on some systems due to the last Rule changes, this in turn, lead to multiple tank fees being assessed on the same system. Has the MPCA ever thought about a per system fee to simplify reporting? This would also provide a fairer more consistent way of applying fees. Speaking of fee collection, how will the MPCA ensure any fees collected in the program area, stay within the program and not be shifted to other areas to fill budget deficits?

During the MPCA web-ex on February 10, 2020, Assistant Division Director Katie Smith, stated on one of her slides the proposed license and tank fees are to assist with new technology review, technical assistance, training professionals, program planning, and enforcement. MOWA would like specific examples of what these items will be and how each will assist the subsurface sewage treatment system (SSTS) industry.

Currently tank fees are not collected from individual homeowners, only licensed installation contractors. Is the intent of MPCA staff to continue this policy with the proposed increase? Why are homeowner installations exempted from paying the tank fee and only licensed individuals? Is there a better way to ensure that all tank fees are collected? How will the increase in tank fee assist the permittee as quoted in the statement for increasing fees?

Tank fees as we recall, were initiated to aid in the enforcement of the code. The increase in these fees theoretically were to be used to aid in enforcement. As an Association, we would appreciate a seat at the table when it comes to determining how fines, fees and enforcement are being managed by the MPCA. We believe a dialog to initiate change in how determinations are made is very much needed as we are currently not satisfied with the inconsistencies and the non-defined penalties that we have witnessed through our member accounts across the stated related to the compliance with state rules. We have assisted the MPCA to make many improvements and changes over the years and we would very much appreciate assisting the MPCA with this issue as well.

The final bullet point listed on page 2 of the document as written; "Exploring the need to raise the fees for subsurface sewage treatment systems (SSTS) professional licenses/certifications and

enacting a fee to cover the cost for salt applicator training classes”, indicates a proposal for increasing fees to look into adding training in the application of salt (assumed to be related to septage). The training listed currently appears to pertain to practices of salting roads and sidewalks as listed on the MPCA SALT Training program website does not seem to be assisting the subsurface sewage treatment system (SSTS) industry as septage is land applied as agronomic fertilizer or taken to a POTW (wastewater plant) and is not applied to surfaces as a salt. Additionally, septage is not allowed to run into surface water so the applicability to salt contamination reduction relating to the SSTS needs to be further explained. While our maintainers do utilize trucks on roadways to haul septage, however they also pay taxes which equal that of other industries utilizing the same roadways. Therefore, this is also not a viable reason for SSTS’s to be included in this category.

MOWA appreciates the opportunity to comment on the proposed Rules governing water quality fees. However, until our comments and questions above can be specifically and definitively addressed, MOWA cannot support the notion of raising these fees. As always, we look forward to working with the MPCA as they continue to review their policies and programs to ensure they continue to be in the best interest of our state and our membership.

Sincerely,

MOWA BOARD of Directors,

Travis Johnson – President

Alex Pepin – President Elect

Pete Otterness – Treasurer

Jessica Fosberg – Board Secretary

Mike Capra – Past President

Dean Flygare – Past President

Cindy Tiemann – Board Member

Stacey Feser – Board Member

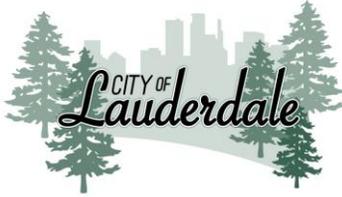
Ben Rynda – Board Member

Matt Summers – Board Member

Ryan Lashinski – Board Member

Brian Humpel – Board Member

Kurt Christopherson – Board Member



CITY OF LAUDERDALE
LAUDERDALE CITY HALL
1891 WALNUT STREET
LAUDERDALE, MN 55113
651-792-7650
651-631-2066 FAX

RECEIVED

By: OAH on 3/1/2020 @ 10:57 am

Andi Moffatt

March 1, 2020

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

The City of Lauderdale has reviewed the proposed fee changes from the Minnesota Pollution Control Agency for the municipal MS4 program. The City of Lauderdale is approximately 0.4 square miles in size with a population of 2400 in Ramsey County. We are a small city in between Minneapolis and St. Paul – and while we are an urban city, we have the budget of a small community.

The City recognizes that the current fee revenue for the MPCA's water programs is inadequate to support its water quality regulatory program. Because of this, and that Lauderdale recognizes the importance of clean water and protecting our natural resources, the City supports some fee increases, but provides the following comments.

- Protecting clean water is a statewide issue, so we would prefer to see revenue coming from the General Fund where it can be a shared expense throughout the state.
- We recognize that the current \$400 fee every five years is minimal, so we understand the agency's desire need to increase the fee. We request that a fee increase be phased in over time so our small community budget can work to accommodate this rather than resulting in a large levy increase to our residents.
- We support the use of the increased revenue from this program going to improve interactions between the agency and permittees and providing tools for cities, especially small cities, to aid in implementation of the permit.
- We very much support a tiered fee structure based on population size or amount of storm sewer outfalls. The current proposal would be for Lauderdale to have a \$1,000 fee every year (\$5,000 total) rather than a \$400 fee every five years. Again, while we are an urban city between Minneapolis and St. Paul, our operating budget is \$1,400,000. Even small increases in costs to the City result in levy increases for our residents. Our community income is below the regional average, so these increases are burdensome for our population. Therefore, we recommend a fee of \$1,000/year or less for our city's size.

Sincerely,
Heather Butkowski, City Administrator
Andi Moffatt, City Council Member



RECEIVED

By: OAH on 2/27/2020 @ 12:15 pm

Michael Behan

February 27, 2020

Physical Development Division
Steven C. Mielke, 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
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Transportation
Highway
Surveyor's Office
Transit Office

The Honorable Ann O'Reilly
Minnesota Office of Administrative Hearings
600 North Roberts Street
St. Paul, MN 55164

Dear Judge O'Reilly,

We respectfully submit these comments on behalf of Dakota County (County) in response to the Minnesota Pollution Control Agency (MPCA) Request for Comments to Rules Governing Water Quality Fees, *Minnesota Rules*, Chapters 7002 and 7083; Revisor's ID Number R-4476, OAH Docket No. 65-9003-34479.

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. The County appreciated the presentation provided by the MPCA on February 10, 2020 and the opportunity to provide comments on the proposed rule amendments governing water quality fees.

General Comments

Dakota County recognizes 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. Dakota County suggests the MPCA share 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) The County has identified 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.

Dakota County requests that the MPCA make the following changes to the Construction Stormwater fee policy and structure.:

- 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. Dakota County objects to this determination because the nature of the MnDOT MS4 is similar to that of a county MS4 with respect to drainage area and impervious surfaces. While Dakota County disagrees with the proposed fee increases, 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. The County does 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) Dakota County understands the MPCA reviewed the MS4 fee structure and policies implemented by the State of Michigan as justification for its proposed fee increases. The County suggests 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 Dakota County believes that 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, Dakota County does not support the MPCA's proposal to expand or maintain its current budget, or to provide significantly increased "assistance" to permittees.

Again, Dakota County appreciates 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 Environmental Resources Department

CC: Matt Smith, County Manager
Jean Erickson, Deputy County Manager
Steve Mielke, Physical Development Division Director
Mark Krebsbach, Transportation Director
Todd Howard, Assistant County Engineer



Nine Mile Creek Discovery Point
12800 Gerard Drive
Eden Prairie, MN 55346
(952) 835-2078
ninemilecreek.org

RECEIVED

By: OAH on 3/6/2020 @ 9:32 am

Randy Anhorn

March 5, 2020

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

Submitted via web: minnesotaoah.granicusideas.com

Re: Planned Amendments to Rules Governing Water Quality Fees, *Minnesota Rules*, Chapters 7002 and 7083; Revisor's ID Number R-4476; OAH Docket No. 65-9003-34479

Ms. Collins,

Nine Mile Creek Watershed District is a special purposes local unit of government with purposes and powers specified in Minnesota Statutes chapters 103B and 103D. NMCWD has been a leader in addressing chloride pollution, coordinating a Total Maximum Daily Load study of chloride pollution in Nine Mile Creek that was completed in 2010. (The creek was listed as impaired for chlorides in 2004.) NMCWD was also the first local governmental entity in the state to implement a regulatory requirement addressing chlorides, requiring permit applicants to prepare a chloride-management plan to meet its stormwater-management rule starting in 2018. The regulatory approach supplements the education and outreach efforts NMCWD has been vigorously engaged in since the creek was listed. Reducing chloride concentrations in the creek remains a high-priority issue for NMCWD,¹ and we continue to collaborate with our fellow local governmental entities on development and implementation of reduction strategies.

NMCWD strongly supports establishment of a program-fee structure that facilitates MPCA's provision of the Smart Salting education and certification program for commercial applicators. NMCWD's support is contingent on amendment of state law to provide liability limitations for those having received such certification. That is, no fee should be charged for commercial salt applicators unless and until a tort-liability limitation for certified applicators is incorporated into state law, as provided in bills presently pending in the Legislature: House File 1502 and Senate File 1667. NMCWD strongly encourages the agency to implement both of these key upgrades to its current chloride program as soon as possible.

¹ Sec. 4.4.6, NMCWD Water Management Plan, October 2017, available at <https://www.ninemilecreek.org/about-us/reports/water-management-plan/>.



Nine Mile Creek Discovery Point
12800 Gerard Drive
Eden Prairie, MN 55346
(952) 835-2078
ninemilecreek.org

NMCWD appreciates the opportunity to comment, and stands by to provide any further notes or feedback the agency may find useful in pursuing solutions to the critical water-resources problem of chloride contamination.

Sincerely,

Jodi Peterson
President

c/ Katie Smith, Assistant Division Director, MPCA (via email)



RECEIVED

By: OAH on 3/5/2020 @ 1:18 pm

Rice Lake City Hall
4107 West Beyer Rd.
Rice Lake, MN 55803
218-721-3778
www.ricelakecitymn.com

Toni Blomdahl

February 28, 2020

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

RE: 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 planned amendments to the rules governing water quality fees. The City of Rice Lake is opposed to any increase in the permit fees and would be greatly affected by the increase. City Council has reviewed the proposed amendments and have the following comments:

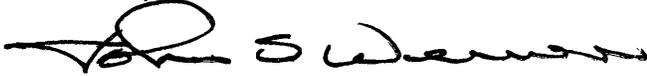
- The proposed fee would increase from \$400 to \$20,000 every five years.
- Cities with populations under 5,000 do not receive additional funding that cities over 5,000 receive. Why not use the same population structure as other state regulations; under 5,000 with one fee and communities over 5,000?
- If there isn't enough revenue generated now to cover expenses, why is the MPCA looking at expanding services thus requiring more revenue? Do you have statutory authority to raise fees to use for expanding services.
- Why isn't the MPCA asking the State Legislature to assist with funding?
- Raising MS4 permit fees at the same time you raise fees on Municipal Wastewater fees would mean communities with municipal sewer would be hit twice by this increase.
- Additional regulations imposed by MS4 permits have already created an additional burden on municipalities through increased engineering fees and increased staff needs to regulate and enforce the additional regulations. Most small municipalities cannot afford an on staff engineer or stormwater specialist, so these require outsourcing this work and/or additional training for our already overburdened current staff members.
- Requiring additional regulatory functions from the MS4 communities has placed a larger burden on municipalities thus creating more local enforcement. This should in turn lessen the need for additional regulatory functions from MPCA which should reduce your expenditures. Why should local municipalities be forced to regulate something that the MPCA is tasked to regulate and

then charge us additional fees to regulate our regulations? How much oversight regulation is needed? We also have the EPA, Watershed Districts, DUWAC, RSPT, Corp of Engineer, and the DNR that are regulating water quality. How many different organizations do we need to regulate water quality? Are we fighting against ourselves?

- Has the MPCA considered reviewing their workflow or staff allocation to help with the operating costs?

Rice Lake City Council as well as its residents are concerned with water quality and are willing to work with the MPCA to protect our waters but there has to be a better way of handling these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "John Werner". The signature is fluid and cursive, with a large initial "J" and "W".

John Werner
Mayor

Michael Welch

March 5, 2020

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

Submitted via web: minnesotaoah.granicusideas.com

Re: Planned Amendments to Rules Governing Water Quality Fees, *Minnesota Rules*, Chapters 7002 and 7083;
Revisor's ID Number R-4476; OAH Docket No. 65-9003-34479

Ms. Collins,

Riley-Purgatory-Bluff Creek Watershed District is a special purposes local unit of government with purposes and powers specified in Minnesota Statutes chapters 103B and 103D. RPBCWD pursues water-resources protection and improvement and flood risk mitigation strategies in accordance with its watershed-management plan *Planning for the Next Ten Years 2018-2027*. Among the water-quality goal statements in RPBCWD's plan is a commitment to "assist and cooperate" with cities in the watershed, the Minnesota Pollution Control Agency and other state agencies and stakeholders in "implementing projects or other management actions based on the ... Twin Cities Metro Chloride TMDL."¹ In keeping with this explicit strategy, RPBCWD was among the first local governmental entities in the state to adopt a stormwater-management regulatory requirement aimed at reducing chloride contamination in watershed creeks, wetlands and lakes.² In short, RPBCWD is keenly aware of and concerned about the threat posed to water resources from the overuse of chloride (salt) compounds for deicing on impervious surfaces.

With regard to the above-captioned agency request for comments, RPBCWD strongly supports establishment of a program-fee structure that facilitates MPCA's provision of the Smart Salt education and certification program for commercial applicators. RPBCWD's support is contingent on amendment of state law to provide liability limitations for those having received such certification. That is, no fee should be charged for commercial salt applicators unless and until a tort-liability limitation for certified applicators is incorporated into state law, as provided in bills presently pending in the Legislature: House File 1502 and Senate File 1667. RPBCWD strongly encourages the agency to implement both of these key upgrades to its current chloride program as soon as possible.

¹¹ Plan p. 3-9, available at http://rpbcwd.org/application/files/5915/3210/6194/3.0_Goals_and_Strategies.pdf.

² See Rule J – Stormwater Management, section 3.8, available at http://www.rpbcwd.org/application/files/5115/7781/4335/Rule_J-Stormwater_Management_12.19.pdf.

In response to specific questions posed by the agency in its request for comments:

1. RPBCWD does foresee that the cost of complying with the proposed rule revision will exceed \$25,000. But until details on the structure of the chloride-program fee are released, RPBCWD cannot make a definitive statement on this point.
2. RPBCWD may need to adopt an amendment to its Stormwater Management Rule to conform to a new fee structure established by MPCA. Until details on the structure of the chloride-program fee are released, though, RPBCWD cannot make a definitive statement on this point.

RPBCWD appreciates the opportunity to comment, and stands by to provide any further notes or feedback the agency may find useful in pursuing solutions to the critical water-resources problem of chloride contamination.

Sincerely,



Dick Ward
President

c/ Katie Smith, Assistant Division Director, MPCA (via email)

Minnesota Association of County Feedlot Officers

March 9, 2020

RECEIVED

By: OAH on 3/9/2020 @ 2:08 pm

Russ Hilbert

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

Ms. Collins,

The Minnesota Association of County Feedlot Officers (MACFO) Board met to discuss the Minnesota Pollution Control Agency's (MPCA) request for comments on planned amendments to the water quality fee rules, *Minnesota Rules* Chapter 7002. The 50 delegated counties in Minnesota contain 80% of the registered feedlots, most of which are under County administration not MPCA.

The MACFO Board is not in favor of the proposed fee increases to feedlots particularly those feedlots where the registration is administered by delegated counties. A few of the reasons for opposing these fees are as follows:

- Feedlots would either fail to register as required or be reluctant to register resulting in County Feedlot Officers having more difficulty gaining access to feedlots for inspections and a likely greater difference in compliance between delegated counties and undelegated counties.
- Some delegated counties already impose their own fees causing a "double" fee for a registered feedlot in those counties.
- Undelegated counties that are considering delegation may reconsider because of the registration fees and the increased administrative complexity, and minimally funded delegated counties may decide to become undelegated due to the fees resulting in a higher amount of feedlots that may fail to register.
- The MPCA would likely be unable to keep up with non-payments of the registration fee and managing these non-payments would only raise MPCA expenses further.

The MACFO Board understands solutions are still needed for the budgetary concerns the MPCA has stated and offers the following suggestions in place of raising fees on feedlots under delegated county administration:

- The MPCA should provide the legislature with reasonable general fund allocation increase requests and benefits, or

Page 1 of 2

MACFO is a not for profit organization. Our Mission is to further educate the general public about livestock operations, to assist livestock producers with recognizing the benefits of proper nutrient management, and to foster working relationships with livestock producers so that the environmental permitting process and the requirements of Minnesota Rules, Chapter 7020 are better understood and implemented



President

Russ Hilbert
Kandiyohi County
400 Benson Aye SW
Willmar, MN 56201
(320) 231-6229 EXT
5251

Vice President

Garett Rohlfling
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Mankato, MN 56002
(507) 304-4381

Past President

Doug Bos
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311 W. Gabrielson Rd
Luverne, MN 56156
(507) 283-8862 Ext: 4

Secretary

Amanda Lang
Brown/Watonwan County
14 South State Street
New Ulm, MN 56073
(507)766-9640

Treasurer

BethyJo Juetten
Stearns County
Administration Center,
Room 343
705 Courthouse Square
St. Cloud, MN 56201
(320) 656-6484

Minnesota Association of County Feedlot Officers

- Increase CAFO fees that are not constructing where most MPCA staff time is occurring instead of feedlots under delegated county administration, or
- Do not charge a registration fee unless the feedlot is at least 500 AU to make better use of fee collection time and a greater assurance of fee collections, or
- Decrease MPCA staff time in other areas such as reducing the complexity of the county delegation agreement and reporting requirements to reduce time spent in delegated counties so that MPCA staff focus on feedlots under MPCA administration rather than feedlots under delegated county administration and delegated counties can increase time spent in the field with feedlot owner/operators under their administration.

If the MPCA proceeds with the proposed fees, MACFO requests that the MPCA seek and utilize feedback from MACFO on how to increase assistance and improve interactions with permittees. MACFO also requests that MPCA seek MACFO feedback when configuring any fee administration.

The MACFO Board believes the County Delegated Program adds value to the MPCA feedlot program by providing additional services in delegated counties and the County Delegated Program would be damaged by the proposed feedlot fees; however, the MACFO Board does support the MPCA generating or receiving additional revenue via the legislature or other fees not associated with the County Delegated Program as long as those fees better serve permittees.

Sincerely,



Russ Hilbert
MACFO President



RECEIVED

By: OAH on 3/10/2020 @ 2:32 p.m

Cody Holmes

11800 Town Center Dr. NE
St. Michael, MN 55376
Phone: 763-497-2041
www.ci.st-michael.mn.us

March 9, 2020

Ms. Denise Collins
Office of Administrative Hearings Court Administrator
600 N Robert St, PO Box 64620
St. Paul, MN 55164

Re: Planned Amendments to Rules Governing Water Quality Fees, *Minnesota Rules*, Chapters 7002 and 7083

Dear Ms. Collins:

The City of St. Michael is a permitted MS4 community and would be directly affected by the proposed fee increases. We are opposed to the proposed rule changes and offer the following comments on the amendments to the water quality fee rules, *Minnesota Rules*, Chapter 7002 (Permit Fees):

1. The MS4 permit operates on a 5-year cycle; however, the past two permit terms were approximately 7-years in length. If the MPCA shifts to an annual fee cycle, would MS4s be required to pay annually when the permit reissuance process exceeds the 5-year permit term? We believe that MS4 permittees should not be required to pay an annual fee when the permit is 'expired'. Therefore, we would prefer that the MPCA keep the permit fee cycle on a 5-year cycle to be renewed with the reissuance of each MS4 permit.
2. We appreciate that the MPCA is proposing a tiered fee structure to account for differences in sizes and types of MS4 permittees; however, the increased fees may be a hardship for some communities. Many MS4 communities have fixed budgets, and an increased permit fee means that less funds will be available for stormwater improvements and needs. Further, many communities do not have the ability to address the technical and more time-consuming aspects of developing and implementing an MS4 SWPPP due to resource constraints. The increased permit fees will likely mean less resources can be allocated to these items at a community level and MS4 communities will become more dependent on the MPCA for support to address permit requirements.
3. During the MPCA webinar on February 10, 2020, the justification provided for the allocation of the fee revenue seems inadequate as no responsibilities or requirements are being removed from MS4s. For example, many MS4 communities can successfully fulfill the requirements for MCM 1 and 2 without support from the MPCA through existing partnerships, resources available online, etc. We appreciate that the MPCA is requesting input on where the funds from the increased fees should go; however, we request more transparency from the MPCA on their current budget and their proposed budget. What steps or actions has the MPCA taken to reduce program costs? Does the MPCA have a workplan that they can share with the public regarding how and where the funds from the proposed fee increase will be allocated?

4. The NPDES program also covers construction stormwater and industrial stormwater permits, but these water quality permit fees are not included in the proposed fee increase, though there is overlap between all three permits. Why aren't other program fees increasing at the same rate?

Thank you for providing the City of St. Michael the opportunity to comment on the proposed amendments to the water quality fee rules. We appreciate your consideration of our input.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven G. Bot". The signature is fluid and cursive, with the first name "Steven" and last name "Bot" clearly legible.

Steven G. Bot
City Administrator

Glen Groth



To: The Honorable Ann O'Reilly

Minnesota Office of Administrative Hearings

From: Winona County Farm Bureau Board of Directors

Glen Groth, President

Date: March 11th, 2020

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

OAH Docket No. 65-9003-34479

To whom it may concern,

Winona County Farm Bureau opposes the water quality fees proposed by the Minnesota Pollution Control Agency to be listed in *Minnesota Rules*, Chapters 7002 and 7083. Our organization opposes annual feedlot fees as well as duplicative and redundant feedlot fees from multiple levels of government.

Many farm families in Winona County are currently facing considerable financial stress and these fees add an additional burden. Currently many farm families already pay a fee to the Minnesota DNR under the Water Appropriations Permit Program, making this additional proposed statewide fee redundant. What is especially worrisome to our organization is the proposal to impose a fee on all sizes of livestock feedlots. When these fees are written into the state rules, it will be easier to increase them in the future. What may start out as a small charge could easily expand to be a considerable expense in times of economic hardship.

Respectfully Submitted,

Glen Groth

President, Winona County Farm Bureau



RECEIVED

By: OAH on 3/12/2020 @ 10:08 a.r

Ben Scharenbroich

March 9, 2020

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

OAH MAR13 '20 AM 8:41

RE: Comment on Planned Amendments to Rules Governing Water Quality Fees, *Minnesota Rules*, Chapter 7002 and 7083; Revisor's ID Number R-4476

The City of Plymouth appreciates the opportunity to comment on the planned amendments to the Water Quality Fee Rules, Minnesota Rules Chapter 7002 Permit Fees. The City takes pride in having a robust MS4 program and investing our limited resources towards improving water quality and delisting water bodies from TMDLs. As a regulated MS4 community with a population of 75,001 – 100,000 residents, the City would be directly affected by the proposed fee increases. The City has the following primary concerns about the rules as proposed:

- 1) The proposed rule change would increase the State's administrative permit fee from \$400 to \$60,000 over a 5-year period. This proposed change will reduce the City's ability to deliver real projects which help reduce sediment and other pollutants from reaching our prized water bodies.
- 2) The documentation for these fee increases discusses the Minnesota Pollution Control Agency (MPCA) using the additional fee revenue to provide additional services to permittees. The City has appreciated the MPCA's historic approach to the permit, which primarily focused on permittees completing minimum control measures and projects to make progress toward meeting TMDL goals and delisting waterbodies. We are not supportive of the MPCA collecting additional revenue to administer more time intensive data collection, more stringent audits and enforcement actions, and additional regulations. Many permittees such as Plymouth already have local controls and enforcement authority and if performed by the State appear duplicative and would take away from where the investments should really be made... projects and education.
- 3) The City budgets and plans for capital projects on a 10-year horizon. A sudden increase in fees such as is proposed will require the City to make real cuts to currently programmed capital projects and education efforts. Maintaining the current fee structure or phasing in a change over time would allow the City to position itself to better deliver on its commitments.

Thank you for allowing the City of Plymouth to comment on the proposed Water Quality Fee Rules amendments and hearing our concerns.

Sincerely,

Michael Thompson, P.E.
Director of Public Works





City of Blaine

10801 Town Square Drive NE
Blaine MN 55449-8100
City Hall 763-784-6700 | BlaineMN.gov

March 10, 2020

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

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

Dear Mrs. Collins,

Thank you for the opportunity to provide comments on the planned amendments to the water quality fee rules, *Minnesota Rules* Chapters 7002 (Permit Fees) and 7083 (Subsurface Sewage Treatment Systems Credentialing and Product Registration). Below is a list of comments and questions the city has on the planned amendment:

1. The city of Blaine has been a Municipal Separate Storm Sewer System (MS4) community since 2003 and has implemented a storm water utility fee as well as hired dedicated staff to manage the city's National Pollutant Discharge Elimination System (NPDES) program. The city understands the need for the state to recover costs for the administration of the program however, the city believes the cost for state's water resources should be paid for by all residents of the State and not only by the residents of Blaine and other MS4 communities.
 - a. As Blaine is a developing city, we are concerned about impacts on development. A developer is more likely to not build in our MS4 community if our fees are considered too high. If a developer can still be close to a large community but be in a community that doesn't have additional fees, they are more likely to build elsewhere.
2. The city of Blaine would like more information on what the proposed "phase in fee schedule" will look like and when it will be implemented.
 - a. Currently, the city pays \$400 each new permit cycle. The new fee for the city will be \$9,000 per year. Permit cycles are supposed to be every 5 years but due to delays in permit issuance they have been every 7 years. What is the proposal for permit cycles and fee payments?
 - b. This is a significant cost increase out of the city's Stormwater Utility fund with substantial impact to the city's budget. Details regarding the amount and timing of fees will assist our ability to properly budget for any increases.
 - c. What is the anticipated schedule for this increase? The city has started budget discussions for 2021 and the fee schedule is unclear.
3. It has been stated that the Stormwater Construction program makes money for the Minnesota Pollution Control Agency (MPCA). Part of the city's MS4 program requires

the city to conduct erosion control inspections. Has the state looked at transferring some of the extra money from the Construction program to the MS4 program?

4. The city understands that the fees will be used for additional monitoring. With the changing precipitation patterns, cities are dealing with more water quantity issues versus water quality issues. Has the state recognized this and does the state plan on using some of the money to look at how to deal with the additional precipitation versus continuing to do more water quality monitoring?
5. Please provide the city of Blaine with information outlining that the efforts of the MS4 program to date that has had a positive impact since the first permit was issued in 2003. This will enable city staff to make the case that the work is providing a benefit and justifies an increase in our permit fees to our policy makers.
6. Has the state reviewed the amount of resources the city has going into the permit requirements and considered giving communities that are going over and above a reduction in their fees?
 - a. The fee increase will take away from the city of Blaine's ability to continue to meet all Minimum Control Measures (MCMs) at a higher level.
7. The city of Blaine has dedicated stormwater funds to pay Metro Watershed Partners and partnerships with Coon Creek and Rice Creek Watershed Districts to complete the Minimum Control Measure (MCM) for outreach and education. It is our understanding that the new fees would provide additional outreach and education. Please outline what additional education programs will be provided and the associated costs.
8. The MN Stormwater Manual is being used by more entities than the city of Blaine and other MS4's. A majority of engineering firms use the manual for design of redevelopment and new development projects. Has the state considered a user fee for the stormwater manual rather than having the MS4s pay for all of the updates to the manual?

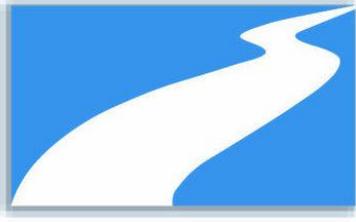
In summary, this proposed amendment has a significant cost increase to the city's Stormwater Utility fund. In order to justify and plan for this proposed increase staff needs to be able to answer the questions above to the city council and residents of the city. This proposed increase creates substantial impacts to the city's projected 10-year Stormwater budget.

Thank you for the opportunity to comment. Please let me know if you have any questions.

Sincerely,



Michelle A. Wolfe
City Manager



Minnesota Cities Stormwater Coalition

Municipal stormwater professionals
working together for clean water

RECEIVED

By: OAH on 3/13/2020 @ 9:40 a.m

Randy Neprash

March 13, 2020

Mary Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Planned Amendments to Rules Governing Water Quality Fees,
Minnesota Rules, Chapters 7002 and 7083; Revisor's ID Number R-4476
OAH Docket No. 65-9003-34479

Dear Ms. Lynn:

Thank you for the opportunity to comment on the above-referenced proposed 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 this rulemaking.

1. The MPCA has had multiple occasions to determine the appropriate fees for MS4 permits, both general permits and individual permits. For the MS4 General Permit, this was done when the permit was first promulgated in 2003. We assume the fee structure was revisited when the MPCA revisited the Air & Water Permit Fees Rule in 2009. The MS4 General Permit fees were deliberately and consciously set quite low and kept that way for many years. We believe the MPCA had multiple reasons for this decision. Despite the Agency's current stated "need" to use increased permit fees as a source for additional revenue, we believe that the MPCA's reasons to set and keep MS4 permit fees low are still valid and fair today. We request that the MPCA provide the rationale and the reasons for setting and maintaining the MS4 General Permit fee at \$400 per permit cycle. If the Agency believes that this rationale and these reasons are no longer valid, please provide an explanation for this change.

Staff:

Randy Neprash, P.E.
Stantec
733 Marquette Ave. S., Suite 1000
Minneapolis, MN 55402
(651) 271-5535
randy.neprash@stantec.com

MCSC is an affiliate of the
League of Minnesota Cities



2. The 2004 Rule SONAR (“STATEMENT OF NEED AND REASONABLENESS, In the Matter of Proposed Amendments to Minnesota Rules Chapter 7001, Governing Stormwater Permits, Chapter 7002, Governing Water Quality Permit Fees, and New Rules to be Codified as Chapter 7090, Governing the Stormwater Regulatory Program”, September 3, 2004) estimated the cost of MS4 permit compliance at \$10 to \$50 million. With TMDLs and more stringent permits, this cost of compliance is significantly higher today. In our view and, we suspect, the view of the MPCA and the Legislature, when the MS4 General Permit fee was set at \$400 every 5 years, this was considered to be enough of a burden to impose on the public entities that are MS4 permittees, in addition to the Permit requirements. Why does the MPCA now feel that a higher burden, in the form of a significantly increased MS4 General Permit fee, is fair or appropriate?
3. Only a relatively small portion of water pollution due to stormwater runoff comes from permitted urban sources. Most of it comes from nonregulated land uses. Based on the information in #2 above, it appears that most of the cost to reduce and manage water pollution due to stormwater runoff is imposed on permitted urban public entities. In light of these facts, MCSC believes that it is not appropriate to increase the costs for permitted public entities at this time.
4. Please answer the following questions. In light of #2 and #3 above, should a significant portion of the monies to cover the MPCA’s program costs for MS4 permitting come from the General Fund? It appears that little or no funding for the MS4 program comes from the General Fund. Has the MPCA sought General Fund monies for this program? If no, why not? If yes, what has been the reasoning of the Legislature’s response? Is the MPCA willing to commit to seeking General Fund monies to cover a significant portion of the MS4 permit program costs?
5. Cities have very limited funds to address water quality. There are multiple constraints on increasing local implementation funding. An increase in MS4 permit fees will simply result in less money spent on local implementation to comply with the permit requirements and improve & protect water quality. This is not a desirable goal for the MPCA or the permitted cities. Of the work that cities currently do to improve and protect water quality, which programs does the MPCA recommend that we reduce or eliminate in response to these permit fee increases?
6. The MS4 permits differ from other types of water permits issued by the MPCA.
 - 6.a. The concept of “polluter pays” is applicable to and appropriate for permits for specific sites for private companies. It is much less applicable to a permit that covers non-point pollution from sources everywhere in an urban landscape in the context of a permit held by a local governmental unit. The MS4 cities are not private business or commercial enterprises. Discharging stormwater from cities is not part of a business enterprise. It is simply a physical fact – rain falls on land in our jurisdictions. Our discharges are not from business or commercial operations

that we have chosen to operate. Our residents, who will bear the burden of these new fees, are the same people as State taxpayers.

- 6.b. Local governments are permitted for their wastewater discharges. Along with septic systems, some regulatory expense for wastewater is expected and accepted by all individuals in the State. Such universal regulatory coverage and expense is not the case for urban stormwater permitting. Only some cities in Minnesota are required to have MS4 permits and that requirement is arbitrary. It is defined by inclusion in an Urbanized Area, the size of the population, and proximity to a special or impaired water.
7. Permit fees should only be used when a specific group benefits from the service more than the general public. The MS4 permitting program benefits the entire state by regulating the stormwater discharges from a limited number of cities. This can be seen in the analysis in several large-scale TMDL studies and reports in Minnesota. Therefore, the general populace of Minnesota benefits from this program and should support the cost of the program. This can best be accomplished through General Fund support for the MPCA's MS4 permitting costs, instead of increased fees to MS4 permittees.
8. 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.
9. Minnesota has a state-wide construction site stormwater permitting program, administered directly by the MPCA. Using its permitting authority, the State has chosen to require that MS4 cities have completely parallel and duplicative construction site stormwater programs at the local level. It is now a very rare event to see a State construction site inspector in an MS4 city. In the context of determining program costs relative to permit fees, we request that the MPCA estimate and provide a program cost "credit" for cities with MS4 permits for the work they do as part of their local construction site stormwater programs. MCSC will, upon request, provide assistance with estimating the cost of local construction site stormwater programs.
10. If the MPCA is so concerned about the cost of administering the MS4 stormwater permitting program, we recommend that the Agency consider significantly simplifying the MS4 General Permit. Such simplification would streamline local compliance, reduce the Agency's technical assistance costs, increase compliance rates, streamline auditing, and reduce the Agency's enforcement costs.

We especially commend this concept to the MPCA for small cities and townships. Understanding and complying with the current MS4 General Permit is a significant challenge and burden for small cities and townships. These cities and townships turn to the MPCA for technical assistance and guidance, thus increasing MS4 program costs. We recommend that the MPCA develop a significantly simpler and streamlined MS4 General Permit for these smaller permittees. Such a simpler and streamlined permit for smaller permittees would be a good example of an innovative approach to stormwater permitting.

MCSC is very concerned that the MPCA's approach to the MS4 General Permit is heading in exactly the reverse direction. The recent new draft MS4 General Permit is more complex and has significantly more documentation requirements than the current Permit.

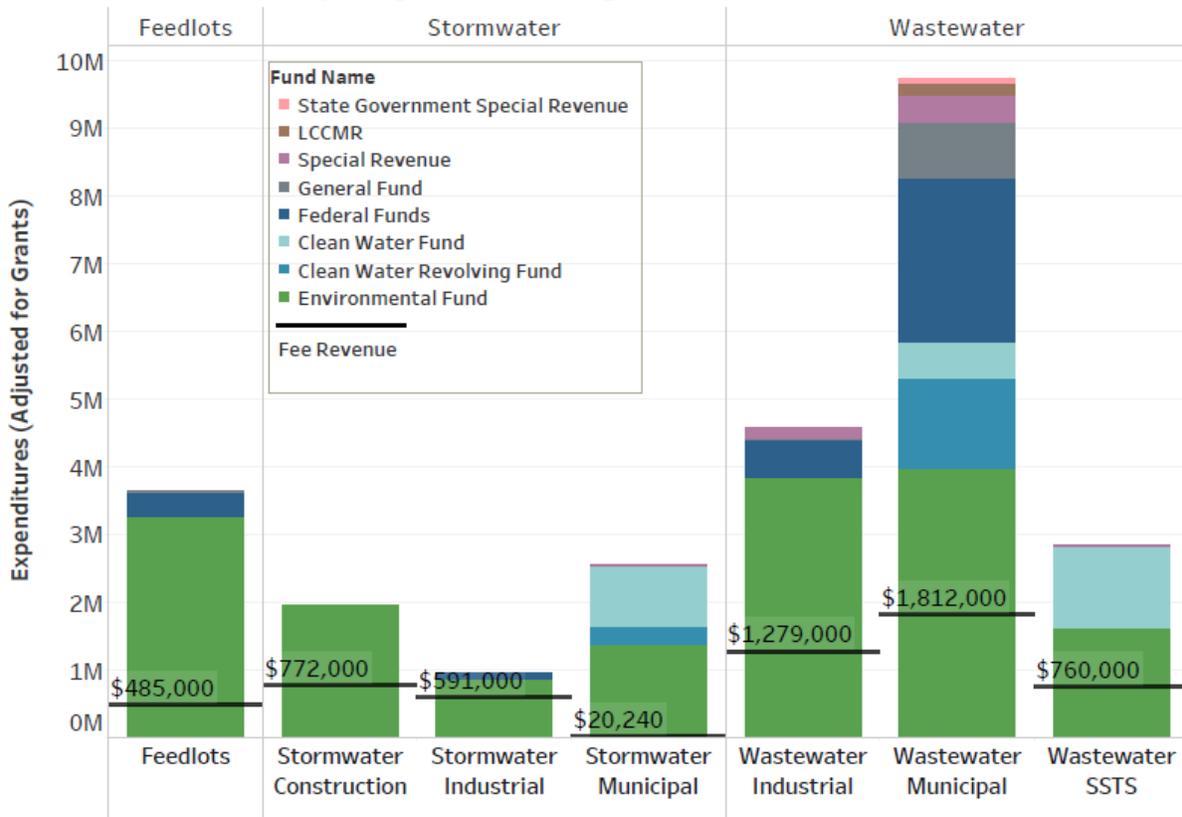
11. The documentation for these fee increases indicates the MPCA would use the additional fee revenue to provide additional services to the permittees. Most of the MPCA's work in the MS4 program results in additional burdens for the permittees. The MPCA writes more stringent permits, audits city programs, and pursues enforcement actions. The MS4-permitted cities do not wish to see their increased permit fees used to increase their regulatory burden.
12. If the MPCA is going to dramatically increase MS4 permit fees, MCSC requests that the MPCA provide detailed and transparent information about the Agency's staff budget and time allocation. In this document, "STATEMENT OF NEED AND REASONABLENESS, In the Matter of Proposed Amendments to Minnesota Rules Chapter 7001, Governing Stormwater Permits, Chapter 7002, Governing Water Quality Permit Fees, and New Rules to be Codified as Chapter 7090, Governing the Stormwater Regulatory Program", September 3, 2004, the MPCA provided the following breakdown of staff time and allocation:

Municipal		Construction		Industrial	
Activity	FTE	Activity	FTE	Activity	FTE
Support staff	0.8				
Permit, annual report, and Outstanding Resource Value Waters review	2.8	Support staff and permit processing	3.2	Support staff, permit processing and annual report processing	1.6
Data compilation and management, shared with local units of government.	0.4	Data compilation and management	0.3	Data compilation and management	0.4
BMP effectiveness monitoring	0.4	BMP effectiveness monitoring and standards development	0.8	BMP effectiveness monitoring	0.1
Technical assistance and enforcement	3.2	Compliance and enforcement (complaints)	4.9	Compliance and enforcement (complaints)	0.6
Program assistance and approval for local units of government.	0.4	Enforcement plan review (includes engineer)	2.4	No exposure certification	0.8
		Technical assistance	1		
		Environmental Assessment Worksheets and sewer extensions	1		
	8.0		13.6		3.5

We request that the same detailed information about staff allocation be provided for the stormwater program today. We request that this information be provided for the current staff allocation and the proposed staff allocation after the permit fees are increased.

13. In the documentation provided for this rulemaking, the MPCA provided information about the current program funding.

FY 2017 - Water Quality Programs - Funding



The single largest source of funding for the Stormwater Municipal program is the Environmental Fund. If a significant amount of those Environmental Fund monies is going to be replaced by permit fee revenues, please tell us to which programs within the MPCA those Environmental Fund monies will be directed.

14. Based on the same data, the chart showing the program funding sources for 2017 indicates that a significant portion of the funding for municipal stormwater came from the Clean Water Fund. Please answer the following questions:
 - 14.a. Was most of that funding used to update, revise, and improve the Minnesota Stormwater Manual?
 - 14.b. Isn't funding from the CWF viewed as a "grant"? Why would work supported by that type of funding be considered a "program cost"?
 - 14.c. Under the non-substitution principle applied to the monies from the Constitutional Amendment, can CWF monies be viewed as "program costs"?
 - 14.d. The MN Stormwater Manual is explicitly listed as not a regulatory document. Why would work on the Stormwater Manual be considered a program cost for municipal stormwater permitting?
 - 14.e. The MN Stormwater Manual provides important useful information for all types of stormwater design work in Minnesota. Why is the cost to update, revise, and improve the Stormwater Manual listed as a program cost only for the Municipal Stormwater program?

15. In the rulemaking documentation, the fee increase, relative to the current permit fee, was presented in this table:

Type of Permittee	Fee based on	Fee Detail	Current Fee (every five years)	30% Fee Scenario (annual fee)
City or township	Population	1,000 or fewer	\$400	\$500
		1,000 – 3,000	\$400	\$1,000
		3,001 – 10,000	\$400	\$2,000
		10,001 – 30,000	\$400	\$4,000
		30,001 – 50,000	\$400	\$6,000
		50,001 – 75,000	\$400	\$9,000
		75,001 – 100,000	\$400	\$12,000
		100,001+	\$400	\$18,000
County	Percent urbanized area	0% – 24%	\$400	\$1,000
		25% – 49%	\$400	\$2,000
		50%+	\$400	\$3,000
Non-traditional (colleges, prisons, etc.)	Developed land (acres)	0-149	\$400	\$500
		150+	\$400	\$1,000
MNDOT	Flat fee		\$400	\$3,000
Watershed districts	Flat fee		\$400	\$500

The MCSC cities found this presentation to be confusing and inaccurate. The current fee was presented as a single charge for an entire permit cycle (at least five years) while the proposed fee was presented as an annual fee.

Instead, MCSC finds the following table to be much more accurate and useful.

MS4 Permit Fee Increase - MPCA Proposal							
January 2020							
Excerpted from MPCA Concept Document for Rulemaking							
Columns & rows added by Randy Neprash, PE for MCSC							
Type of Permittee	Fee based on	Fee Detail	Current Fee (every five years)	30% Fee Scenario (annual fee)	30% Fee Scenario (every five years)	Comparison with current fee (rounded)	
City or township	Population	1,000 or fewer	\$400	\$500	\$2,500	6	times
		1,000 - 3,000	\$400	\$1,000	\$5,000	13	times
		3,001 - 10,000	\$400	\$2,000	\$10,000	25	times
		10,001 - 30,000	\$400	\$4,000	\$20,000	50	times
		30,001 - 50,000	\$400	\$6,000	\$30,000	75	times
		50,001 - 75,000	\$400	\$9,000	\$45,000	113	times
		75,001 - 100,000	\$400	\$12,000	\$60,000	150	times
County	Percent urbanized area	100,000+	\$400	\$18,000	\$90,000	225	times
		0% - 24%	\$400	\$1,000	\$5,000	13	times
		25% - 49%	\$400	\$2,000	\$10,000	25	times
		50%+	\$400	\$3,000	\$15,000	38	times
Non-traditional (colleges, prisons, etc.)	Developed land (acres)	0 - 149	\$400	\$500	\$2,500	6	times
		150+	\$400	\$1,000	\$5,000	13	times
MnDOT	Flat fee		\$400	\$3,000	\$15,000	38	times
Watershed districts	Flat fee		\$400	\$500	\$2,500	6	times
Program Cost	Current fee revenue	% covered by fees	30% Cost Fees (rounded)	Comparison with current fee (rounded)			
\$2,909,391	\$20,240	0.70%	\$873,000	43 times			

MCSC requests that this table, or something very similar, become the manner in which the MPCA presents this information from this point forward.

16. Please work with the stakeholders to resolve the following problem with an annual fee for a permit on an irregular reissuance schedule. If the new draft MS4 General Permit is reissued in 2020, the permit reissuance schedule for the past two cycles will have been seven years. The current permit fee is \$400 for a single permit cycle. For a city of 40,000 people, the proposed fee for a permit cycle would be \$30,000. If, though, this fee was charged as an annual fee of \$6,000 and the permit cycle was seven years, the total fee for the city for an entire cycle would be \$42,000 (\$6,000 per year x 7 years). This seems illogical and unfair.

The fee for a permit cycle should be predictable and constant, no matter how long the permit cycle may be. We do not want the permittees to be charged more due to a delay in the permit reissuance. We also, though, do not want the permit fee to become a motivating pressure on the MPCA to force the permit reissuance to stay on schedule. If it takes longer to reach a good and fair version of the permit, we do not want the process to be rushed.

17. MCSC is concerned that funds from our permit fees will be used by the MPCA to provide services that we can better provide on our own. For example, in the past few years, the MPCA has assembled and provided the MS4 Digital Document Library for MS4 permittees, using program funds to staff this work. This Library duplicated a similar collection of high-quality permit-related documents that MCSC had assembled and distributed to our members many years ago and updated since then. If the MPCA believes that such a library of good quality model documents and materials is valuable, we request that the Agency use our permit fees to fund the continued support and expansion of the MCSC library by providing funding to MCSC. If the Agency supports the MCSC library, we will be happy to extend access to it to all MS4 permittees. MCSC firmly believes this will be a better use of our permit fee monies than having the library maintained by MPCA staff.

18. The Water Fee Advisory Recommendations document includes this recommendation: “The MPCA should use additional fee revenue to increase and improve interactions with permittees.” MCSC’s view on this varies with the type of interactions.

- 18.a. Audits – MCSC does not support the use of our permit fee-increase monies to increase the frequency or detail of local MS4 program audits. The MPCA’s MS4 auditing program is already far more active and detailed than the audit programs of almost every other state in the United States. We see no reason why audits should be more frequent or more detailed. Fewer documentation requirements in the MS4 General Permit would make audits shorter and more efficient.
- 18.b. Enforcement – Not surprisingly, MCSC does not support the use of our permit fee monies to fund the staff work for enforcement actions.
- 18.c. Permit writing – MCSC believes the MS4 General Permit should be simpler, with fewer documentation requirements. Writing such a permit should save staff time

- for the MPCA. Writing a separate and simpler permit for small cities and townships would require more staff time. MCSC would support this.
- 18.d. Permit application processing – If the MS4 General Permit were simpler, processing the applications would require less staff time.
 - 18.e. Technical support – MCSC would like to see the MS4 General Permit to be simpler, with fewer documentation requirements. Such a permit would require less technical support. MCSC also recommends a significantly simpler permit for small cities and townships. This would also reduce the need for technical support from MPCA staff.
 - 18.f. Stormwater Manual – MCSC finds the Stormwater Manual to be an extraordinarily valuable resource. We support its continued maintenance, updating, and expansion. To the best of our knowledge, the funding for the staff work on the Manual has come from the Clean Water Fund, not MS4 program funds.
 - 18.g. TMDL support and coordination – MCSC would like to see this support continue and be expanded as more TMDLs come on-line.
 - 18.h. MPCA Administration and Leadership – MCSC does not support expanded staff time for these functions.
 - 18.i. Digital Document Library – As stated earlier, MCSC supports having the MPCA fund MCSC to maintain and expand our existing library, instead of using MS4 program staff and monies for this function.
 - 18.j. Reporting to the Legislature - MCSC does not support expanded staff time for this function.
 - 18.k. Data compilation – MCSC supports the expansion of data compilation. MCSC requests that the MPCA work with stakeholders to determine what information, products, and analyses would be most valuable. MCSC does not support the expansion of reporting requirements or making annual reports more burdensome.
 - 18.l. BMP effectiveness monitoring and analysis – MCSC supports additional work in this area.
 - 18.m. Urban stormwater research - MCSC supports additional work in this area. It is our understanding that most of this work is coordinated and administered by the University of Minnesota Water Resources Center, not MS4 program staff.
19. Please explain the significant disparities between the MS4 permit fees for cities and the fees for MnDOT and watershed organizations. The land area covered under MnDOT's MS4 permits is large and they own and operate an immense number of stormwater BMPs. MnDOT's MS4 permit fees should not be less than the fee for a city of 10,000 population. Watershed organizations have land areas similar or larger than many cities. They manage complex stormwater systems. They also have greater funds devoted to water quality improvement and protection compared to cities. The MS4 permit fees for watershed organizations should be commensurate with the fees for medium to large cities.

20. There are a set of issues and concerns about these fee increases that are unique to Phase I MS4 permittees.
- 20.a. What are the 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?
 - 20.b. The level of service the Phase I permittees receive from the MPCA is not equivalent to the level of service received by the Phase II permittees:
 - The MN Stormwater Manual is, at times, tailored to provide resources to Phase II permittees (i.e. public education required topics are not always equivalent).
 - The Phase I permittees are required to implement extensive and expensive stormwater runoff monitoring and analysis programs. No guidance on this requirement is included within the MN Stormwater Manual.
 - The Phase I permittees are required to prepare an extensive annual report, instead of the online annual reporting interface available to Phase II MS4s and ISW permit holders.
 - 20.c. Is there an ability to include the annual permit fee as a component of the Phase I permit renegotiation? It may allow for better transparency on what service/deliverables MPCA is going to provide the Phase I permittees, in conjunction with the new permit requirements MPCA is mandating.
21. 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 for cities' stormwater permits, that are focused only on water quality.
22. As the MPCA works to determine changes in program staffing and any measures to "increase and improve interactions with permittees" because of changes to permit fees, MCSC urges the MPCA to work closely with the stormwater stakeholders to determine which services and interactions would be useful and productive.
23. MCSC is concerned that we are also seeing fees from the MPCA related to Smart Salting at the same time we are facing these permit fee increases.

Thank you for the opportunity to comment on this rulemaking. We look forward to the MPCA's Response to Comments based on these comments and those submitted by others. Please contact Randy Neprash with any questions about these comments.

Sincerely,



Elizabeth Stout
Chair, MCSC Steering Committee
City of Minneapolis



Randy Neprash
Staff, MCSC

CC: Craig Johnson, League of Minnesota Cities



Minnesota Association of County Planning & Zoning Administrators

125 Charles Avenue, St. Paul, MN 55103-2108

www.macpza.org

RECEIVED

By: OAH on 3/13/2020 @ 9:22 a.m

Brian Martinson

March 8, 2020

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

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

Dear Ms. Collins:

The Minnesota Association of County Planning and Zoning Administrators (MACPZA) is an organization formed for professional development, to promote land use planning and to advocate for sound public policy. We appreciate the opportunity to offer comments and share our concerns with the proposed amendments to rules governing water quality fees.

We appreciate the diversity of work under the Minnesota Pollution Control Agency (MPCA) water quality programs. These programs also have varied needs and require different levels of involvement and interaction on the part of the state.

his proposal to increase funding to 30 percent of program costs does not directly correlate with a demonstrated need for additional revenues in each program area. Generalized claims that water quality fees have not been adjusted in 25 years does not hold true. New fees and fee increases have occurred in several programs including feedlots and subsurface sewage treatment systems (SSTS) programs. Furthermore, it does not ensure that funds raised in each program will benefit those constituencies. The MPCA should ensure fees collected in each program will stay in that program.

The work of MACPZA's membership through planning, zoning and land use authorities undertaken by counties involve water quality programs and related aspects of health, safety and the environment. We work closely with the feedlot and SSTS programs. It is the fee proposals for these two programs that we would like to address.

Feedlots:

Counties have delegated authority in 50 counties that contain 80% of the registered feedlots, most of which are under County administration not MPCA. The MPCA proposes to create a new registration fee scheduled, which will result in most new revenues coming from sites that are under county oversight.

The MPCA should not charge a fee for responsibilities that are administered by delegated counties. Some delegated counties already impose a fee in order to support local costs. This new registration fee would result in a “double” fee for these facilities. According to the web-ex presented by Assistant Division Director Katie Smith, on February 10, 2020, 28% of MPCA’s time is spent working on feedlot sites in delegated counties. The agency has added layer after layer of program requirements, that have no direct environmental benefit. The agency should work to improve program requirements to lessen oversight of county programs and allow for more work in nondelegated counties.

Creating the new registration fee is ill suited for this program and will have negative impacts on the work counties do, especially with smaller operations. Registration is meant to enable contacting the feedlot owner so they can be educated about the law or rule’s requirements and to assist in preventing or mitigating any pollution from the registered facility. Imposing a fee will possibly deter some small feedlots operators from registering defeating the purpose of registration.

Feedlots register once every four years, but the proposal calls for an annual fee. How does MPCA plan to collect a registration fee from producers that are not required to obtain a state feedlot permit? The cost of collecting fees, making sure sites continue to register, and enforcement of unpaid fees, could end up costing more than the fee itself.

Increased assistance and improved interactions with permittees are stated goals of the MPCA. How are they planning to do that with smaller sites and sites in delegated counties? Does the agency have a plan to change its practices in undelegated counties?

SSTS:

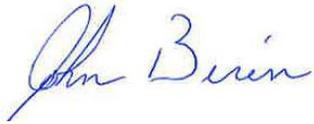
The costs attributed to the SSTS program to justify this increase are in question. The training costs for the SSTS program are around \$4000 but were listed on PCA documents as \$454,000. That figure was a combination of training costs for all wastewater and solid waste programs. This leaves a \$450,000 discrepancy relating to the SSTS program. There are also discrepancies with the funding necessary for staff, program and supports costs factored into the total figure, \$2.8 million, used to establish how much in new revenues would be collected. It is not clear that these errors were corrected in the published document.

The MPCA should consider taking another look at how fees are implemented for SSTS and whether broader changes make sense. Currently tank fees are not collected from individual homeowners, only contractors. Is the intent of MPCA staff to continue this policy? Counties and contractors put a great deal of time and work into this fee collection and reporting structure with very little return on investment.

New technology review, technical assistance, training professionals, program planning, and enforcement are suggested for these additional funds. We would be interested in more details on how these additional dollars will benefit the program. The PCA has continued to grow its staff to implement program controls and grow its training program. This has not offered much in the way of environmental benefits.

MACPZA appreciates the opportunity to comment on the proposed Rules governing water quality fees. Our membership is interested in working with the MPCA to continually improve the efficiency and outcomes of our shared water quality responsibilities.

Sincerely,

A handwritten signature in blue ink that reads "John Biren". The signature is written in a cursive style with a large initial "J" and "B".

John Biren

MACPZA President



Association of
Minnesota Counties

RECEIVED

By: OAH on 3/13/2020 @ 9:20 a.m

Brian Martinson

March 8, 2020

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

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

Dear Ms. Collins:

The Association of Minnesota Counties, a voluntary association representing all 87 counties, respectfully submits the following comments on the proposed amendments to rules governing water quality fees.

County governments through voluntary efforts and mandates are actively involved in water quality programs. We appreciate the diversity of work under the Minnesota Pollution Control Agency (MPCA) water quality programs. However, we question if this proposal to increase funding to 30 percent of program costs directly correlates with a demonstrated need for additional revenues in each program. Furthermore, it does not ensure that funds raised in each program will benefit those programs.

1. The proposed MS4 Stormwater Permit fee is a huge percentage increase ranging from 1150% for affected counties with 0% to 24% urbanized area to 3650% for affected counties with 50% or greater urbanized area (assuming the current fee applied once every 5 years instead of 7 years as it has in practice). Unlike cities, counties do not use stormwater fees to cover stormwater management costs. Thus, the increased costs will come directly from existing funding resources or require property tax increases.

Given the large proposed increase in the stormwater permit fee, it should be phased-in over at least a five-year period with 20% of the new fee applying in the first year, 40% in the second year, etc.

2. Registration of a feedlot with MPCA should not result in a fee. Those feedlots not requiring SDS or NPDES permits that currently register with the MPCA or a delegated county should not be assessed a fee. Registration is meant to enable contacting the feedlot owner so they can be educated about the law or rule's requirements and to assist in preventing or mitigating

any pollution from the registered facility. Imposing a fee will possibly deter some small feedlots operators from registering defeating the purpose of registration.

If the MPCA nevertheless goes forward with the new fee for registered feedlots, delegated counties do not want the role of collecting the fee. Some delegated counties already impose their own fees causing a “double” fee for a registered feedlot in those counties. If MPCA wishes to impose the fee - particularly when there will be no fee sharing with the county, MPCA should collect it, not the county. County Feedlot Officers do not want to have even further difficulty gaining access to registered feedlots for inspections.

3. The MPCA Environmental Fund, largely populated by the solid waste management tax (SWMT), is one source that currently subsidizes water permit fees. Should water fee increases be adopted, the MPCA should consider redirecting more of the SWMT for its intended purpose of waste management through SCORE grants to counties.
4. Regardless of the outcome of the rules promulgation process, pass-through funding should not be adversely affected. Services to permittees should not be reduced if the agency’s proposed fee increases fail to be adopted.
5. Once fee increases are authorized by the adopted rules, the agency must communicate the fee increase to existing permit holders, not wait until permits need to be renewed.

Thank you for the opportunity to comment on the proposed rules relating to water permit fees. We look forward to continuing in the rule’s promulgation process as it proceeds.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rich Sve', with a horizontal line underneath.

Rich Sve
AMC President

March 12, 2020

David Preisler

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

Re: Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapters 7002 and 7083; Revisor's ID Number R-4476, OAH Docket No. 65-9003-34479

Thank you for the opportunity to comment on the proposed water fee increase. On behalf to the Minnesota Pork Producers Association (MPPA), have a two of concerns about the proposed increases.

Duplication

In the case of feedlots, most permitting actively occurs at the county level the 50 delegated counties. Those counties have made decision locally to either charge fees or not. While some have chosen not to charge fee there are examples of counties such as Blue Earth that charge substantial yearly fees of up to \$1,000.

The MPPA objects to paying both a local and state fee for feedlots. This double dipping will create and expense for farms without any discernable improvement in service.

Evaluate Permitting

The NPDES is no longer required by Federal Law for feedlots. We recommend that the MPCA do a comprehensive review of permitting. That review should include the need for NPDES permits in Minnesota for non-discharging farms and also adjusting the reality of fewer feedlots in Minnesota. In fact, there are drastically fewer sites to provide oversight compare to any time in the history of the gram. The sits that have been built since the chapter 7020 rules were adopted, implemented, and last revised in 2003 have shown that they are protective of water quality through engineering and construction standards.

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 show in the legislatively funded study conducted by the Minnesota Department of Agriculture in 2015. We urge the MPCA to examine costs and processes and come forward with recommendations to operate differently rather than look to fee increases.

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.

Regards,



David Preisler
Chief Executive Officer
Minnesota Pork Producers Association

SENATOR BILL WEBER
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Senate

State of Minnesota

RECEIVED

By: OAH on 3/12/2020 @ 2:17 p.m

3/12/2020

Commissioner Laura Bishop
520 Lafayette Rd
St. Paul, MN 55155

I am writing in response to the MPCA's Request for Comments on its proposed rules raising water fees. As a general matter, I believe that the agency is overstepping its authority by proposing this massive fee increase. Such a request for increased spending should occur only after the Legislature has adopted legislation approving such an increase.

There are many provisions of the proposal that are problematic, but I would like to specifically object to the proposal to eliminate the waiver of variance fees for municipalities seeking chloride variances. This proposal directly contradicts reassurances provided to me by MPCA staff last month. In an email sent Saturday February 8, 2020 by Assistant Commissioner Greta Gauthier to me and Rep. Peter Fischer, Ms. Gauthier stated:

[M]any communities choose to pursue a variance to the chloride standard. MPCA has worked extensively to make this path accessible and affordable for all cities by waiving variance application fees, providing alternatives analysis for chloride treatment, and developing a streamlined variance process.

I am deeply disappointed that MPCA is proposing to reverse itself by overriding the previous commissioner's decision to waive the application cost for chloride variances. I am also concerned that MPCA staff would fail to clearly communicate that change to the legislature. This type of decision making and failure to communicate clearly generates mistrust of the agency among cities and the legislature. I believe this variance fee waiver is an important part of the strategy for addressing chloride and MPCA should keep its word by allowing the fee waiver to remain in place.

Sen. Bill Weber
District 22



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COMMITTEES: Agriculture, Rural Development, and Housing Policy, Chair • Agriculture, Rural Development, and Housing Finance • Environment and Natural Resources Policy and Legacy Finance • Environment and Natural Resources Finance





Bassett Creek Watershed Management Commission

RECEIVED

By: OAH on 3/12/2020 @ 12:25 p.r

Laura Jester

March 11, 2020

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

Submitted via web: minnesotaoah.granicusideas.com

Re: Planned Amendments to Rules Governing Water Quality Fees, *Minnesota Rules*, Chapters 7002 and 7083; Revisor's ID Number R-4476; OAH Docket No. 65-9003-34479

Ms. Collins,

The Bassett Creek Watershed Management Commission (Commission) is a joint powers watershed management organization established in conformance with Minnesota Statutes Section 103B.211. The Commission works cooperatively with its nine member cities (Crystal, Golden Valley, Medicine Lake, Minneapolis, Minnetonka, New Hope, Plymouth, Robbinsdale, and St. Louis Park) to protect and improve waterbodies within its jurisdiction in accordance with its state-approved 2015 Bassett Creek Watershed Management Plan (Plan). This work includes implementing the Plan's policy to "assist and cooperate with member cities, MPCA, MDNR, MnDOT, other watersheds and other stakeholders in implementing projects or other management actions resulting from the Minnesota Pollution Control Agency's Twin Cities Metro Chloride Project or future chloride TMDL."

As chloride concentrations continue to increase in our lakes and streams, the Commission has increased its outreach and education program to include smart salting certification classes, education to residents through newspaper articles, social media, written brochures, flyers, videos, and other materials. The Commission is also cooperating with all watersheds in Hennepin County on an initiative to better understand the barriers to using chloride management best practices.

With regard to the above-captioned agency request for comments, BCWMC supports establishment of a program-fee structure that facilitates the Minnesota Pollution Control Agency smart salting education and certification program for commercial applicators. BCWMC's support is contingent on amendment of state law to provide liability limitations for those having received such certification. In other words, no fee should be charged for the training for commercial salt applicators to take the training unless a tort-liability limitation for certified applicators is incorporated into state law, as provided in bills presently pending in the Legislature: House File 1502 and Senate File 1667. BCWMC strongly encourages the agency to implement both of these key upgrades to its current chloride program as soon as possible.

Thank you for the opportunity to comment. We look forward to continuing to cooperate with the State and others on this important issue.

Sincerely,
James Prom, Chair

CC: BCWMC Administrator, Commissioners, Technical Advisory Committee Members



Engineering

Room 240
411 West First Street
Duluth, Minnesota 55802



218-730-5200

RECEIVED

By: OAH on 3/11/2020 @ 4:06 p.m

Todd Carlson

March 11, 2020

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

RE: 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 proposed Water Quality Fee increase amendments. The following comments are offered on behalf of the City of Duluth Stormwater Utility.

1. The City of Duluth has been an MS4 permit holder since 2003, and at the local level Cities are left to actually implement the MPCA's MS4 program and standards that are updated and expanded each time the permit is reissued (every 5 years). The proposed increased permit fees would be better left within the cities budgets where it could be spent on projects or programs that will improve storm water quality instead of going into the budget of the MPCA. The proposed fee increase will directly reduce the resources available for permit implementation and reduce the effectiveness of the MS4 program.
2. How will the MPCA phase in the increased permit fees? The City of Duluth currently pays \$400 per 5 year permit cycle. The proposed fee increase states the City of Duluth with a population between 75,001 – 100,000 will pay \$12,000 annually or \$60,000 per 5 year permit cycle. This is an increase of 150 times.
3. Currently the permit fee is based on a permit cycle. Why has MPCA based the proposed the new permit fee to be an annual permit fee?
4. The MPCA first issued the MS4 General Permit in 2003 and this permit has been reissued several times since without a permit fee increase. The MS4 General Permit fee appears to have been left low for a reason, and we believe that reason was to allow MS4 cities to be spend all available monies on water quality issue that cities are facing. The MPCA stated they need the increased permit fees as a source for additional revenue to fund 30% of the MPCA stormwater budget. Please provide the reason and rationale for increasing the fee from \$400 per permit to a \$12,000 *annual* permit fee? Again, this is an increase of 150 times?



Engineering

Room 240
411 West First Street
Duluth, Minnesota 55802

 218-730-5200

5. The MPCA Construction Stormwater Permit costs applicants \$400 for each permit. Per the MS4 permit; each permitted MS4 city reviews the construction plans, enforces the MPCA requirements, inspects the sites, and are held responsible for any non-compliance with the MPCA permitted sites. The MS4 permitted cities do all the work for the MPCA construction stormwater permit, but the MPCA does not fund the cities to carry out this work and program. Please provide a reason why the MPCA does not fund the cities to enforce this program? Or will the MPCA be taking back this responsibility to review, inspect and enforce their program in full, eliminating that task for the MS4s.

6. MPCA is proposing to use the new fee increase to increase the MS4 programs and provide new resources:
 - a. What are those resources, and estimated budget for those resources?
 - b. How will the MPCA develop those resources?
 - i. Which MS4 programs will be increased and how? As example; will the MPCA use this new revenue source to add additional program audits of the MS4 cities programs?

Thank you

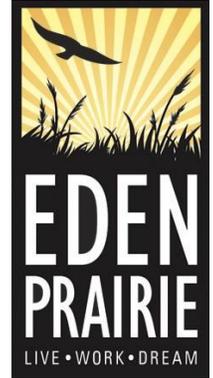


Todd Carlson
Program Coordinator – Stormwater Utility
City of Duluth, MN

RECEIVED

By: OAH on 3/13/2020 @ 11:45 a.r

Patrick Sejkora



OFC 952 949 8300
FAX 952 949 8390
TDD 952 949 8399

8080 Mitchell Rd
Eden Prairie, MN
55344-4485

edenprairie.org

March 13, 2020

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

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

Ms. Collins

Thank you for the opportunity to comment on the proposed amendments to the fees associated with water quality permitting. The City of Eden Prairie is a municipality that currently operates a Phase II municipal separate storm sewer system (MS4) permit from the Minnesota Pollution Control Agency (MPCA). The City has maintained a strong commitment to preserving and promoting water quality as an MS4 community.

The City is discouraged by the steep increase proposed fees for municipalities who are MS4 permit holders. The City currently pays \$400 every 5 years for a permit. Under the proposed rate increase, this fee would jump to \$9,000 per year for a City the size of Eden Prairie. This represents an increase of over 100-fold over the five year permit period. The City does recognize that the MPCA's stormwater program is underfunded. However, compared with other MS4 permittees, it appears that municipalities would bear the brunt of the proposed fee increases, even though they represent only a fraction of the pollutant load in the State's waterbodies. The fee increases should be instituted in a more equitable manner amongst MS4 permittees instead of disadvantaging municipalities.

Additionally, although Eden Prairie will remain committed to investing in water quality, our City's stormwater budget is limited. The increased fees levied on an annual basis will inevitably impact funding for some of the City's other stormwater initiatives for preserving water quality. This could include items such as BMP maintenance; education and outreach; stormwater research and modeling initiatives; incorporation and implementation of new technologies; staff training; and water quality treatments.

The fees also come at a time when the City is evaluating how to implement the proposed changes to the MS4 permit within this already limited budget. These changes, which include increased inspections, recordkeeping, and monitoring, represent an increased investment in staff time and

municipal funds. The combination of the changes to the MS4 program as well as a significantly increased fee presents a significant burden on the City's stormwater budget and staff.

The City sees and appreciates the MPCA's continued commitment to preserving water quality and other Minnesota resources. However, we oppose the magnitude and timing of the permit fee increases the MPCA has proposed. We also support the comments provided by the Minnesota Cities Stormwater Coalition.

Thank you again for the opportunity to provide input and official comments. Please let me know if you have any questions.

Thank you,

A handwritten signature in black ink, appearing to read 'Patrick Sejkora', with a long horizontal flourish extending to the right.

Patrick Sejkora, PE
Water Resources Engineer
City of Eden Prairie



RECEIVED
By: OAH on 3/13/2020 @ 11:37 a.r

Steven Huser

March 12, 2020

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

Re: Water Fee Rule Making Amendments, MN Rules Ch, 7002 and 7083

Dear Ms. Lynn,

Metro Cities, an association representing the shared interests of cities in the metropolitan area at the Minnesota Legislature, Metropolitan Council and Executive Branch, supports the goals of the Clean Water Act and efforts by the federal and state government to implement it. Metro Cities also supports a strong state and local fiscal partnership that emphasizes adequacy, accountability and predictability for public resources and state programs.

The following comments are in response to proposed changes to MN Rules, Chapters 7002 and 7083:

- The MPCA Water Fees Rule concept document does not include an accounting for permit work and staffing levels currently not being met within the scope of the agency's budget and fee structure for the MS4 permit. Metro Cities requests that the MPCA provide this level of information and additional details as a justification for the fee increase.
- The MPCA has not articulated a rationale for increasing fee revenues to levels that will cover 30% of costs to implement each program. Metro Cities' legislative policies stipulate that state funding should be provided for programs of statewide value and significance. Metro Cities encourages the agency to provide information on how the 30% level was reached, and why this funding would not be proposed to come from the state budget. The convenience of raising a fee, rather than working to receive funding through the state budget process, would be a concerning rationale for Metro Cities.
- MPCA has articulated a desire to work with permit holders to develop further guidance and assistance not currently being provided by the MPCA. Metro Cities would ask the MPCA to articulate a clear budgetary or programmatic reason for why these permit fee increases, which are proposed to cover the costs of future increases in the MPCA's workload, would not be better funded through a state appropriation.
- Metro Cities opposes the use of MS4 fee increases to fund additional audits or other agency action that could contribute to regulatory burdens that would increase costs to permit holders.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steven Huser', is written over a faint, larger version of the signature.

Steven Huser

Government Relations Specialist, Metro Cities



RECEIVED

By: OAH on 3/13/2020 @ 11:07 a.r
Submitted via the OAH Rulemaking e-Comments website

Noah Czech

March 13, 2020

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

Re: Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapters 7002 and 7083; Revisor's ID Number R-4476 OAH Docket No. 65-9003-34479

Dear Ms. Lynn

Thank you for the opportunity to comment on the above referenced proposed water quality fee amendments. The City of St. Cloud (City) is a permittee under the current general MS4 permit. The proposed fee increases to the MS4 permit greatly affect the City. Below is a detailed account of comments from the City of St. Cloud.

City Comment #1

Action

The City supports the comments and questions submitted by the Minnesota Cities Stormwater Coalition (MCSC) submitted for this public comment period.

Reasons

The City is a MCSC member and supports the work the MCSC completes on behalf its 130 members.

City Comment #2

Action

Request to modify the proposed 30% of MS4 permit fees to cover MS4 permit program costs to 10% or less.

Reasons

- a) The proposed MS4 permit fee increase ranges from 6 - 225 times the current fee, assuming a five-year scenario. The City of St. Cloud's increase would be 113 times the current MS4 permit fee under the current proposal. This range of increase, even if phased in, is simply not appropriate or acceptable. Why does the MPCA feel this drastic increase is fair or appropriate?
- b) Cities have very limited funds to address water quality and quantity issues along with MS4 permit costs. The "polluter pays" concept is much less applicable to the MS4 permit than other NPDES permits. All water quality permit fees should not be looked at to cover the same percentage of program costs. Permit fees should only be used when a specific group benefits from the service more than the general public. The MS4 permitting program benefits the entire state by regulating the stormwater discharges from a limited number of cities. Therefore, it seems appropriate that a larger percentage of MS4 program costs continue from current funding sources or the State General Fund.

Please supply details where current funding sources (e.g. Environmental Fund) for the MS4 program will be directed if not going to the MS4 permit program.

- c) The MS4 permit has significant overlap with the NPDES Construction Stormwater and Industrial Stormwater Permit. For example, the City completes an average of 350 construction site stormwater compliance



inspections annually in the City compared to about 5 by MPCA inspectors. The MPCA's Stormwater Division should consider this overlap as a reason to review Division expenditures and partnerships together for each stormwater program (MS4, Construction, Industrial) and the value MS4 permittees provide to both the Construction and Industrial Stormwater Programs.

- d) MS4 Cities have a long record of very successful water quality improvement projects and programs. It is critical to keep money in MS4 stormwater budgets to continue implementing these projects and programs. The proposed MS4 permit fee increase for the City to \$9,000 annually will account for ~2% of our operating budget versus the current fee accounting of ~0.01% of our annual operating budget. This significant increase will undoubtedly result in a reduction of water quality projects and programs the City is able to complete.
- e) The Draft MS4 permit proposes significant new requirements and is more complex with unknown costs to the City. The City is very concerned these new requirements in combination with the proposed permit fee increase will negatively impact our stormwater program and reduce its valuable impact to water quality.

City Comment #3

Action

Modify the proposed MS4 permit fee tiered system (14 fee categories proposed) to better represent the level of service needed for MS4's, and to spread the permit fee revenue more evenly and fairly amongst MS4 permittees. The number of categories should be reduced with consideration given to MS4 annual budgets.

Reasons

The MS4 permit is a general permit for all MS4 permittees, except Minneapolis and St. Paul. The MPCA provides very similar services and technical assistance to all MS4 permittees. Population and size does not necessarily reflect the level of service or technical assistance needed from the MPCA. The MS4 permit fee should better reflect this by being significantly reduced per City comment #2 along with restructuring the tiered proposal.

The City appreciates the opportunity to comment on the proposed water quality fee changes. Please contact me if additional information is required.

Sincerely,

Lisa Vollbrecht
Assistant Public Utilities Director

March 13, 2020

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

RE: Comments on Planned Amendments to Rules Governing Water Quality Fees, *Minnesota Rules*, Chapters 7002 and 7083; Revisor's ID Number R-04476 noticed January 27, 2020

Dear Ms. Collins:

The purpose of this letter is to provide comment on Planned Amendments to Rules Governing Water Quality Fees, put out for public notice and comment on January 27, 2020. As an MS4 community, the City of Rosemount would be directly affected by planned fee increases. The City of Rosemount provides the following comments on the Planned Amendments to Rules Governing Water Quality Fees:

1. The City of Rosemount fully supports the comments provided by the Minnesota Cities Stormwater Coalition and the League of Minnesota Cities.
2. Additional detail is needed regarding budgets and spending to provide sufficient comment. At this time, we only have half of the story. Information presented at the February 10, 2020 Stakeholder Meeting, on the rulemaking website, and Advisory Committee website has focused heavily on revenue sources with next to no information provided on what the money is being spent on. This ties stakeholders' hands with regards to suggestions on potential program cuts or more efficient use of existing funds while at the same time proving no guarantees that the money would not be spent on unrelated programs. We need a budget for the programs affected by the fee increase that shows expenditures in addition to revenue. Expenditures should be sufficiently detailed. Cities usually have budget documents available for public viewing on their websites. Here is ours if you are looking for a good example of what is required for level of detail as far as detailing program expenditures <https://www.ci.rosemount.mn.us/192/Budget>.
3. Information presented at the February 10, 2020 Stakeholder Meeting shows little if any funding coming to the Municipal Stormwater Program from the General Fund. We question the lack of funding coming to Municipal Stormwater from the General Fund. Municipal stormwater is different from some of the other programs listed in that the pollution is not generated by the stormwater system that is put in place. The stormwater

SPRIT OF PRIDE AND PROGRESS

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www.ci.rosemount.mn.us

system is put in place largely to help move runoff to prevent frequent flooding of streets and structures. Pollution coming to the system is nonpoint source pollution that is generated outside of the system, substantial portions of which often originate outside of the jurisdiction of the permittee, and in some cases from unregulated land uses like agriculture. At the same time, the benefit to the resource is felt by all Minnesota taxpayers, not just those of the permitted jurisdiction, making General Fund revenue appropriate for this program.

4. At the February 10, 2020, Stakeholder Meeting, MPCA Staff indicated that the additional revenue could be directed toward better/more services to permittees. We question how additional services or improved services can be provided when the agency has indicated that the current program is underfunded and is predicting reduced revenue in the future based on current funding sources.
5. The fee for the City of Rosemount will go from \$400 per permit term to \$4,000 per year. A permit term at minimum lasts 5 years, and the average has been 7 years for the MS4 Permit. The proposed fee would be 50 to 70 times larger than the current fee. We believe that 3-6 years is an insufficient time to phase in a fee increase of this magnitude. We would suggest no less than 3 permit terms to phase in a fee increase this large.
6. The *Water Fee Rules Concept Document* mentions on page 10 that the Agency will be seeking to begin charging for chloride training through a different effort. This would be an additional cost burden for MS4 Permittees, and an estimate of the proposed cost would be appreciated. Many cities currently certify a large number of if not all of their winter maintenance staff through the Smart Salting Certification Program. The current Draft MS4 Permit calls for required annual training of all staff that perform winter maintenance (item 21.7 <https://www.pca.state.mn.us/sites/default/files/wq-strm4-93c.pdf>). The description of training requirements is comparable to current chloride training offered by the Agency. We're not aware of another comparable training, nor of an effort by the Agency to offer a train the trainer program. This could mean another redirection of significant city funds to the Agency to meet permit requirements. We are also concerned that charging a fee will be a disincentive toward private contractors, which we feel are more of a problem and need more training, getting Smart Salt Certified. Training is voluntary for private contractors; safety liability concerns regarding slips and falls create an incentive to over salt for private contractors.
7. It should be understood that charging such a large fee will mean that cities have less money to complete water quality improvements. Over 5 years, that would be an additional \$16,000 for the City of Rosemount that would go to the Agency. \$16,000 can pay for a new large raingarden or removal of a large sediment delta in a pond and is more

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than 5 times the annual budget for our new residential stormwater rebate program for residents that voluntarily install stormwater BMPs on their property. These are just a few examples of work that we have to choose from to cut from our budget to pay for this exorbitant fee increase.

8. This fee increase needs to be looked at within the context of other burdens being placed on communities by the Draft MS4 Permit. The Draft MS4 Permit proposes to place an increased administrative and operation burden on communities. Extensive increased record keeping measures; lowered construction thresholds that will lead to escalating capital costs for city projects; and increased staff and public training and education requirements are all proposed components that will require increased city spending to remain compliant with the permit on the order of tens of thousands of dollars per year for the average community. At the same time that the Agency is seeking to put in place measures that will drastically increase city expenses, they are essentially pulling away a significant chunk of city revenue to deal with these additional burdens in the form of a fee increase. Something has to give. To substantially increase city regulatory burdens and pass on to cities a significant fee increase is unacceptable.

The City of Rosemount appreciates the opportunity to provide comment on the Planned Amendments to Rules Governing Water Fees and encourages the Pollution Control Agency to work with the Minnesota Cities Stormwater Coalition and League of Minnesota Cities on this issue. Should you have questions about the comments provided herein, please feel free to contact me at 651-423-4111 or brian.erickson@ci.rosemount.mn.us.

Sincerely,



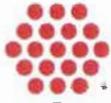
Brian Erickson

Director of Public Works/City Engineer

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City of **Apple Valley**

7100 147th Street West
Apple Valley, MN 55124-9016

RECEIVED

By: OAH on 3/13/2020 @ 10:38 a.r

Samatha Berger

Telephone (952) 953-2588
Fax (952) 953-2515
www.cityofapplevalley.org

March 13, 2020

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 of Apple Valley is a regulated MS4 community, with a population of over 50,000 people. As an MS4 community, we cannot support the fee increases as proposed for the MS4 General Permit. The City would go from paying \$400 every 5-7 years, to \$9,000 annually, which is 113 times greater than the existing fees.

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 recognizes that the existing program costs are not enough to fund the existing program. Therefore, the City of Apple Valley recommends that the MPCA phase in more reasonable, fair, and annual costs into the new permit cycle. We also support 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 to review more approachable and phased permit fee policies in the future.

Sincerely,

Samantha Berger
Water Resource Specialist

March 13, 2020

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

SUBJECT: PLANNED AMENDMENTS TO RULES GOVERNING WATER QUALITY FEES
MN RULES, CHAPTERS 7002 AND 7083
REVISOR'S ID NUMBER R-044756

Dear Ms. Collins,

Thank you for the opportunity to comment on the above-referenced proposed amendments. Please accept these formal comments on the planned amendments to rules governing water quality fees, MN Rules Chapters 7002 & 7083.

1. The City of Maple Grove has an extensive investment into managing both the quantity and quality of stormwater in our city as well as meeting the terms of State mandated municipal storm water requirements. We consider ourselves partners with the MPCA, MnDNR, BWSR, watersheds, Three Rivers Park District, lake associations, and others in working toward our common goal of clean water.
2. As a member of the Minnesota Cities Stormwater Coalition (MCSC), we are supportive of their involvement and any formal comments the MCSC may provide regarding water quality fees on behalf of their members.
3. Please elaborate on the composition of the Water Fee Advisory Committee. There are no less than 19 municipalities in Minnesota with populations over 50,000. We are concerned there was no municipal representation for cities with populations of 50,001 and larger based on the "Invited Participants of the Water Fee Advisory Committee" document with the concern being the Water Fees Rules Concept Document, as drafted by the MPCA and said committee, proposes the largest burden for fee increases both in dollars and by percentage for communities with populations over 50,000.
4. Regarding fee structure:
 - A. What services will cities receive from the MPCA in return for the fees?
 - B. Other than population as a basis for storm water fees, what other funding strategies were explored?
 - C. Why are municipal stormwater fees based on population while wastewater fees are largely based on design flow, i.e. use, which seems more appropriate?
 - D. The City of Maple Grove is supportive of a storm water fee structure based on a municipality's use of MPCA resources in administering the MS4 permit rather than population.



12800 Arbor Lakes Parkway, Maple Grove, MN 55369-7064

763-494-6000

In conclusion, the City of Maple Grove understands the MPCA's need to recover additional costs in operating the MS4 program, however, population based fee structures are inequitable and fail to consider the extent to which larger communities are already invested in stormwater management.

If you have any questions regarding these comments, please feel free to reach out to me directly at 763-494-6354 or dasche@maplegrovern.gov.

Sincerely,

Derek Asche
Water Resources Engineer

Cc: Ken Ashfeld, Director of Public Works and City Engineer
Jupe Hale, Asst. Public Works Director/Asst. City Engineer



RECEIVED

By: OAH on 3/13/2020 @ 1:49 p.m

Josie Lonetti

March 13, 2020

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

Re: Planned Amendments to Rules Governing Water Quality Fees; OAH Docket No. 65-9003-34479

Dear Ms. Collins,

The Minnesota Farm Bureau Federation (MFBF) has concerns with the proposed rule changes put forward by the Minnesota Pollution Control Agency (MPCA) regarding a new statewide registration fee for feedlot sites and a new registration fee for concentrated animal feeding operations (CAFOs) without NPDS/SDS permit coverage.

Agriculture continues to experience serious financial and emotional challenges. Farmers and ranchers across Minnesota struggle with economic instability due to low prices, bad weather, and now the threat of additional and redundant regulatory costs and requirements. Currently, there is no registration fee assessed for those with less than 999.9 Animal Units or CAFOs without NPDS/SDS permit coverage. Additionally, many counties with feedlot authority already impose fees at the county level. MFBF is concerned the MPCAs fee proposal for the Feedlot Program would be on top of the county fees already in place.

While the MPCA has stated water quality fees have not seen comprehensive increases in nearly 25 years, it does not include recent fee increases to the feedlot program, implemented within the last decade. In addition, MPCA does not have the statutory authority to collect a registration fee. Under Chapter 7002, the MPCA has the authority to collect permit fees, a fee type different than the registration fee included in the proposed rule change.

MFBF stands opposed to an annual fee for livestock permits, as well as duplicative and redundant feedlot rules and fees from multiple levels of government.

For these reasons, MFBF strongly requests the MPCA reevaluate the proposed amendments to rules governing water quality fees to remove fee increases within the Feedlot Program.

Respectfully,

Kevin Paap
President

Physical Address: 3080 Eagandale Place, Eagan, MN 55121-2118 Mailing Address: P.O. Box 64370, St. Paul, MN 55164-0370

Phone: 651.768.2100 Fax: 651.768.2159 Email: info@fbmn.org www.fbmn.org

Elizabeth Wefel



DEDICATED TO A STRONG GREATER MINNESOTA

March 13, 2020

Mary Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Dear Ms. Lynn,

I am writing on behalf of the Coalition of Greater Minnesota Cities (CGMC) in response to your request for comments on potential amendments to water program fees. The CGMC is a nonprofit, nonpartisan advocacy organization that represents 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 members will be affected by amendments to program fees, we appreciate the opportunity to provide comments.

In its request for comment, the Minnesota Pollution Control Agency (MPCA) provided a draft concept of the proposed fee increase. Although we believe that the agency should look to the general fund rather than user fees to cover increased costs, we appreciate that the proposal uses a tiered approach to make fees more equitable.

The following are our concerns with the concept document:

Any Increase in Fees Should Be Tied to Demonstrable Results

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

General Fund Dollars Should Cover Increases in Program Costs

If the MPCA can demonstrate that 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 storm water system enhances water 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 this added cost 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.

Straight Percentage of Program Costs

The concept document suggests establishing a baseline in which fee revenue will cover 30% of costs for each program. We oppose any effort to establish this baseline for several reasons. We are concerned that as we see consolidation of facilities in the future, a percentage approach will have a disproportionate impact on the remaining facilities. In other words, remaining facilities could have to pay even more to make up for consolidation.

Even more concerning is that it creates a disincentive for cost-effective operations and could lead to unnecessary fee increases. If the Legislature increases the dollars flowing to these programs and the fees are set at a proportion of the total, MPCA could increase the fees to match the additional dollars from the Legislature. If MPCA can demonstrate that additional fees are necessary, the increase should be tied to actual need and a community's ability to afford them rather than an arbitrary percentage.

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; local governments should not be required to pay \$10,000 for the opportunity to request relief from that mandate. We are pleased that MPCA is making an effort to decrease the fees, but we believe that they should be eliminated for municipal wastewater.

In addition to lowering or eliminating this fee, 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. In the absence of that, however, 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 that made 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 recommended strategy focused on a streamlined variance procedure and a waiver of the fee for these variances. Then-MPCA Commissioner John Linc Stine issued an order adopting various aspects of the proposal including the waiver of the variance fee.

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

Stormwater Fee Increase is Unreasonable

The concept document outlines a proposal that would change the stormwater fee from \$400 every five years to an annual fee that is scaled to the population size of the city or township. Although we appreciate

that smaller cities and towns will be charged less, all cities will face a significant and unreasonable increase. For example, a city with a population between 3,001 and 10,000 will see its fees jump from \$400 every five years to \$10,000 for that same period, a fee that is 25 times larger. A city with a population between 30,001 to 50,000 will see its rates multiple by 75, moving from \$400 to \$30,000 for a five-year period. What makes these increases even more troubling is that MPCA does not propose any increase in services in exchange for those jumps.

For these reasons, the CGMC urges to the MPCA to pause the rulemaking and seek general fund assistance from the state to fund the services for the water program.

Thank you again for the opportunity to comment. Responses to any of the foregoing may be provided to my attention at anelson@willmarmn.gov. Please also copy any such written responses to CGMC's attorney, Elizabeth Wefel, at ewefel@flaherty-hood.com.

Best regards,

A handwritten signature in black ink, appearing to read "Audrey Nelsen", written in a cursive style.

Audrey Nelsen, Council Member, Willmar
President, Coalition of Greater Minnesota Cities

Mitch Robinson

Engineering Services Division

March 13, 2020

Denise Collins
Office of Administrative Hearing Court Administrator
600 North Robert Street, P.O Box 64620
St. Paul, MN 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 under the \$12,000 annual fee. This equates to an astounding raise of 15,000% presuming a 5-year permit cycle. 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 are extreme.

Based on the February 10th, 2020 Stakeholder meeting, there were two questions that did not have a direct answer. The questions and City's comments to those questions are below:

- Would the fee be based on an annual fee or per permit cycle of 5 years?

The City would prefer an annual fee that can be consistently budgeted for. This should be a fee that is paid for a 5-year permit cycle. If the permit becomes expired and there is a period of time before a new permit is issued (similar to the previous two permit cycles that lasted 7 years), the City should not have to pay permit fees until a new permit is issued.

- What would the additional permit fee be allocated to?

The City believes the MPCA should have a better direction for the allocation of the purposed permit fees rather than looking for feedback from MS4 cities. The bullet points provided at the stakeholders meeting seemed vague. A budget layout as to how the money is currently spent on the program and how the increased permit fees would affect the budget would be helpful.

Additional comments that the City has include:

- The substantial increase in permit fees will cause the City to be able to do less water quality projects which is the exact opposite intent of the MS4 program. The City recently raised stormwater rates in 2018 by 10%. and would be hard pressed to pass another rate increase through the City Council to offset these purposed permit fee increases.

- Through the proposed tiered approach, a City or township of more than 10,000 people would pay more than any county or MNDOT. This proposed change seems to put an unbalanced amount of the fees on the cities compared to the state or county.

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 blue ink, appearing to read "Mitch Robinson".

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

RECEIVED

By: OAH on 3/13/2020 @ 3:00 p.m

Tony Kwilas

March __, 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:

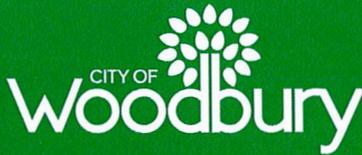
The Minnesota Chamber of Commerce (Chamber) is a statewide business organization representing 6,300 business with more than 500,000 employees (including utilities, mining, manufacturing, services provides, etc.) which will be impacted by this proposed rule. The Chamber appreciates the opportunity to 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.

Respectfully submitted,

Tony Kwilas
Minnesota Chamber of Commerce
Director, Environmental Policy



RECEIVED

By: OAH on 3/13/2020 @ 4:28 p.m

March 13, 2020

Kristin Seaman

Mary Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
St Paul, MN 55155-4194

Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapters 7002 and 7083; Revisor's ID Number R-4476 OAH Docket No. 65-9003-34479

Dear Ms. Lynn:

Thank you for the opportunity to comment on the above-referenced proposed amendments. The City shares goals with the Minnesota Pollution Control Agency around water quality, quantity and resilience across the City's jurisdiction, as stated in the City of Woodbury's Surface Water Management Plan. The City also shares in the MPCA's experience with increasing costs and emerging threats to water resources and understands the need to revisit permit fees and increase services to permit holders. However, the increase proposed for MS4 communities is unjustifiable and should be lessened. We ask that you consider the following in your next step of the rule update:

1. It is the City's understanding that the Wastewater Municipal fee in the metropolitan area is administered to the Metropolitan Council, who then charges municipalities that send wastewater to their treatment facilities. In turn, the City charges this fee to residents connected to the sanitary sewer system. From our standpoint, it is difficult to understand how this fee increase will impact the City and its rate payers as we do not fully understand how the Metropolitan Council divides this fee across communities or how it will respond to this fee increase. The City requests additional insight and information from the MPCA and Metropolitan Council, followed by an opportunity to respond.
2. The MPCA's Strategic Plan lists water as the first main focus area for long-term goals but very little of the stormwater program is funded by the State General Fund. This proposed fee change reallocates the burden to MS4 communities who are already burdened with implementing and enforcing the MS4 permit and associated TMDLs. For a state that takes pride in its 10,000 lakes, the cost should be shared equally throughout, not focused on communities that are already paying high stormwater costs and contributing significant resources for water resource protection.
3. In the last six months, the MPCA has issued a draft update to the MS4 General Permit. The provisions in the draft permit will result in increased operational costs for MS4 communities, specifically to add documentation and redundant training requirements that may not result directly in improved water quality. Based on the public meeting held on February 10th, 2020 it was evident that the MPCAs efforts to increase the fee were carried out completely separate from the efforts to update the Permit requirements.

From a Permit holder's perspective, we see the lack of collaboration as an oversight to the fact that we are now faced with potentially, a very dramatic fee increase as well as extensive additional permit requirements, both of which are above what we have financially, and procedurally prepared for. Ultimately, the combination of the fee increase and extensive permit updates will require that communities send more money outside of their boundaries additional to allocating more time, money and resources within their boundaries. The political capital for the City to increase fees is limited, so the proposed fee increase will ultimately result in a decrease of stormwater efforts, whether directly or indirectly. The City has already begun preemptively planning for the proposed additional requirements of the Permit update, of which one of the options includes the potential for an additional staff member. This option will be even more challenging when we will be now paying \$12,000 each year to the MPCA.

4. The MPCA staff has stated that the proposed fee increases will go into effect over three to six years. Permit holders need a more defined timeline in order to properly assess and adjust rates and accommodate the final fee into proper budgets. The City of Woodbury's budget follows the calendar year and is drafted nine months in advance.
5. The City requests a detailed breakdown of how these funds are intended to be utilized. The City is required to justify and seek approval from multiple stakeholders at the City level in order to increase fees to accommodate the proposed changes, and we find it reasonable to request that the MPCA do the same prior to sending this proposal to the legislature. If the MPCA is amenable for permit holders and groups of permit holders, like the Minnesota Cities Stormwater Coalition, to provide input and feedback on how additional funds will be allocated, we request to see the plan for engagement and development of the budget prior to furthering the proposed changes.

We ask that the MPCA review and consider comments received from permit holders and the Minnesota Cities Stormwater Coalition prior to taking proposed fees to the legislature. Again, we thank the MPCA for the opportunity to understand and comment on the proposed changes and look forward to further discussion around accomplishing our shared goals.

Respectfully submitted,



Kristin Seaman
Environmental Resources Specialist
City of Woodbury
651-714-3593

Gretel Lee

**MESERB**Minnesota Environmental Science
and Economic Review Board

Using science and economics to improve environmental regulations

March 13, 2020

VIA EMAIL ONLY

Mary Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

RE: Comments on the proposed water quality fee increases.

Dear Ms. Lynn:

Thank you for the opportunity to comment on the proposed water quality fee amendments. The following comments are offered on behalf of the Minnesota Environmental Science and Economic Review Board (“MESERB”), a municipal joint powers organization with more than 50 member cities, sanitary districts, and public utilities commissions in Greater Minnesota that own and operate wastewater treatment facilities. MESERB’s mission is to work to protect our state’s water resources by ensuring that water quality regulations that impact our communities are scientifically based, cost-effective, and produce meaningful benefits to water quality.

Our entire membership stands to be impacted by the proposed changes to the rules governing water quality fees. At this time, we do support a modest fee increase with a gradual phase-in under the parameters laid out below, but do not support all of the proposed changes that the Minnesota Pollution Control Agency (“MPCA” or “agency”) is considering in this rulemaking.

Any Fee Increases Should Not be Tied to Percentages, but Innovative Outcomes.

The current proposal that the agency has put forward ties the municipal wastewater program fee increases to a fixed percentage; namely 30 percent. The agency should not fix fee increases by percentage. This kind of fixed application will have a negative impact on our members, specifically our larger member cities. Over time, an increased burden will be placed on larger facilities as communities grow and smaller facilities are absorbed. With fewer facilities permitted, the larger facilities will comprise an increased portion of all permitted facilities, requiring them to pay an increased portion of fees.

Instead of tying increases to percentages, the agency should ensure that any increases in fees are tied to innovative outcomes. When faced with a push for such innovation, the agency has stated that it does not have sufficient funds for such approaches. We believe that the agency needs to demonstrate a commitment to innovation in conjunction with any fee increases. This includes the agency assisting cities in the development and implementation of strategic and cost-effective water quality treatment methods such as trades between point and non-point sources, trades within watersheds, and adaptive management strategies.

General Fund Dollars Need to Cover any Increases MPCA's Costs.

We recognize that MPCA is facing increasing demands from citizens, the regulated community, and the legislature for enhanced environmental protection, innovation, and efficiency. We also understand that MPCA's existing budget constraints make meeting those priorities very difficult. In the past, the MPCA has sought additional funds from the state's general fund to help support increased program costs. We believe the current situation presents the MPCA with an opportunity to do so again by leading a coalition of diverse stakeholders, including local governments, businesses, and environmental advocacy organizations working together to develop a reasonable legislative ask for increased general fund dollars. MESERB would be happy to participate in such an effort.

However, we have concerns as it appears that MPCA is abandoning this approach and increasingly relying on funding its wastewater program through permit fees. Put simply, it is difficult for permittees to accept a large fee increase when the agency is not willing to spearhead a meaningful effort to advocate for increased general fund dollars. We believe that general fund money should be a primary source for most or all of the MPCA's wastewater permitting budget needs for several reasons:

- **Water Quality is a Statewide Issue and Should be Addressed as Such.** Statewide initiatives and resulting statewide benefits need their costs to be borne by the state. Minnesotans value clean water, and when a municipal wastewater facility or storm water system enhances that quality, everyone benefits.
- **External Parties Drive up Costs Through Administrative Procedures.** Individuals and entities not subject to water permits often engage in activities that increase the costs of the water program through extensive comment periods, litigation, contested cases, and other means. Permittees should not be required to cover added costs that they cannot control. The state has given third parties these procedural rights, and while important, should therefore be willing to pay the additional costs instead of placing it on permittees.
- **Funding Oversight is Necessary 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 a larger portion of the water program through the general fund would allow elected officials in the Legislature to provide oversight for the program.

Municipal Wastewater Variance Fees Should Continue to be Waived.

The MPCA has widely and openly 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. Yet, the high fees (around \$10,000) make the application burdensome for many municipalities. Limits derived from water quality standards constitute an unfunded mandate on local communities; local governments should not be required to pay \$10,000 for the opportunity to request relief from

a mandate with which they cannot otherwise comply. We are very concerned that MPCA is proposing to re-instate variance fees for chloride variance applications.

The MPCA convened a chloride working group made up of representatives from municipal wastewater treatment facilities from across the state that made recommendations on how to implement the chloride standard in wastewater discharge permits. Because it is not feasible to remove chloride at a wastewater treatment facility, the recommended strategy focused on a streamlined variance procedure coupled with a waiver of the variance fee for chloride variances. Former Commissioner Jon Linc Stine issued an administrative order adopting various aspects of the proposal including the waiver of the variance fee. This fee waiver is something the agency has touted publicly as an affordable measure for cities, even as recently as last month.¹ This proposal seeks to undo that work, creates a breach of trust, and provides a clear example as to why the regulated community is generally reluctant to rely upon policy guidance and administrative assurances—which can be changed at the Agency’s whim—to provide regulatory certainty. We respectfully request that MPCA keep its commitment and uphold its policy to waive chloride variance fees for cities.

We appreciate the opportunity to submit these comments and thank the agency for taking time to review them. If you have any questions or concerns, please contact me at andy.bradshaw@ci.moorhead.mn.us or (218) 299-5386, or MESERB’s legal consultant on this matter, Gretel Lee at glee@flaherty-hood.com or (651) 259-1903.

Very truly yours,



Andy Bradshaw
MESERB President
Operations Manager
Wastewater/Stormwater Services Division
City of Moorhead, MN

¹ “Alternatively, many communities choose to pursue a variance to the chloride standard. *MPCA has worked extensively to make this path accessible and affordable for all cities by waiving variance application fees, providing alternatives analysis for chloride treatment, and developing a streamlined variance process.* These save cities the time and expense of having to engage consultants and technical experts.” Email from Greta Gauthier, Minnesota Pollution Control Agency, to Senator Bill Weber and Representative Peter Fischer RE: MPCA Responses from Subcommittee on MN Water (Feb. 8, 2020) (emphasis added).

RECEIVED

By: OAH on 3/13/2020 @ 4:01 p.m

Bruce Kleven

Corrected Version



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 horizontal line.

Tony Kwilas
Director, Environmental Policy
Minnesota Chamber of Commerce

RECEIVED

By: OAH on 3/13/2020 @ 3:21 p.m



Lucas Sjostrom

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

The Minnesota Milk Producers Association thanks you for the opportunity to provide input on water program fees, as we did in our letter dated August 11, 2017. 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 support for no feedlot water fees when we attended the in-person session in Alexandria.

Further opposition in the mechanism to implement these fees comes from county 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 2,400 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. Since this 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 of lax "underfunded" regulation as a result of less 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.

One way to reduce the budget outlay for this program would be to consider enrollment in the Minnesota Ag Water Quality Certification program as good as or better than the investment of paying water fees. This has 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.

Lucas Sjostrom
Minnesota Milk Executive Director

Advancing the Success of Minnesota Dairy Farms



Minnesota Turkey Growers Association

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

RECEIVED

By: OAH on 3/13/2020 @ 3:53 p.m

Bruce Kleven

March 13, 2020

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

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

OAH Docket No. 65-9003-34479

Dear Ms. Collins:

The Minnesota Turkey Growers Association (MTGA) submits these comments on proposed water fee changes as provided in the January 27, 2020 edition of the *State Register*. The MTGA categorically opposes efforts to increase fees on livestock operations. Our central argument is that the livestock industry has never needed the NPDES or SDS permits, yet MPCA representatives have consistently opposed livestock industry efforts to eliminate this unnecessary permit requirement. 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. The poultry industry has long argued that its members do not need water permits (NPDES) because they do not discharge pollutants into the waters of the U.S.

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:

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 and that meet the definition of a “concentrated animal feeding operation” in Code of Federal Regulations, title 40, section 122.23, based on the following schedule:

[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.*

1974 – EPA issued general NPDES permitting guidelines.

1976- CAFO regulations were first issued.

2003 – In February, the EPA proposed a comprehensive rule covering many aspects of feedlots and in particular required all CAFOs to seek coverage under NPDES permits unless they determined there was no potential to discharge. This placed the burden of proving there was no discharge on the feedlot operator. Farm groups challenged portions of the proposed rule arguing they were too stringent, while environmental groups argued the rule did not go far enough. The cases were consolidated and on February 28, 2005, the Court of Appeals for the Second Circuit upheld most of the provisions of the

proposed rule but vacated and remanded others. *Source: Waterkeeper Alliance, Inc. v. U.S. E.P.A., 399 F.3d 486 (2nd Cir. 2005).*

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, and therefore, the MPCA should consider reducing its workload during this rulemaking, rather than extract more unnecessary fees from the livestock industry. Our members oppose both the fee increase on applications for new permits as well as the new fee for livestock registration statements.

Very truly yours,

/s/

Bruce Kleven
Attorney for the MTGA



March 13, 2020

Mary Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapters 7002 and 7083; Revisor's ID Number R-4476
OAH Docket No. 65-9003-34479

Dear Ms. Lynn:

Thank you for the opportunity to comment on the above-referenced proposed amendments. The following comments are offered on behalf of the City of Minneapolis. Minneapolis is one of 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 budget.

The City understands and appreciates the MPCA's need to revisit permit fees. We ask that any increases to the MS4 permit fees be reasonable and justified. We also submit the following comments on this rulemaking.

1. There are a set of issues and concerns about these fee increases that are unique to Phase I MS4 permittees.
 - a. 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?
 - b. The level of service the Phase I permittees receive from the MPCA is not equivalent to the level of service received by the Phase II permittees:
 - The MN Stormwater Manual is, at times, tailored to provide resources to Phase II permittees (i.e. public education required topics are not always equivalent).
 - The Phase I permittees are required to implement extensive and expensive, stormwater runoff monitoring and analysis programs, no guidance on this requirement is included within the MN Stormwater Manual.
 - The Phase I permittees are required to prepare an extensive annual report, instead of the online annual reporting interface available to Phase II MS4s and ISW permit holders.

2. The 2004 Rule SONAR (“STATEMENT OF NEED AND REASONABLENESS, In the Matter of Proposed Amendments to Minnesota Rules Chapter 7001, Governing Stormwater Permits, Chapter 7002, Governing Water Quality Permit Fees, and New Rules to be Codified as Chapter 7090, Governing the Stormwater Regulatory Program”, September 3, 2004) estimated the cost of statewide MS4 permit compliance at \$10 to \$50 million. After more than fifteen years, with TMDLs and more stringent permit requirements, this cost of compliance is significantly higher today. In our view and, we suspect, the view of the MPCA and the Legislature, when the MS4 Phase I fee for Minneapolis and St. Paul was 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, is fair or appropriate?
3. Only a relatively small portion of water pollution across the state is due to stormwater runoff from permitted urban sources. Most of it comes from nonregulated land uses. It appears that most of the cost to reduce and manage water pollution due to stormwater runoff is born by permitted urban public entities. In light of these facts, the City believes that it is not appropriate to increase the costs for permitted public entities at this time.
4. The MS4 permits differ from other types of water permits issued by the MPCA. The concept of “polluter pays” is applicable to and appropriate for permits for specific sites for private companies. It is much less applicable to a permit that covers non-point pollution from sources everywhere in an urban landscape in the context of a permit held by a local governmental unit. The City of Minneapolis is not a private business or commercial enterprises. Discharging stormwater from the City is not part of a business enterprise. It is simply a physical fact – rain falls on land in our jurisdiction. Our discharges are not from business or commercial operations that we have chosen to operate. Our residents, who will bear the burden of these new fees, are the same people as State taxpayers.
5. Permit fees should only be used when a specific group benefits from the service more than the general public. The MS4 permitting program benefits the entire state by regulating the stormwater discharges from a limited number of cities. This can be seen in the analysis in several large-scale TMDL studies and reports in Minnesota. Therefore, the general populace of Minnesota benefits from this program and should support the cost of the program. This can best be accomplished through General Fund support for the MPCA’s MS4 permitting costs, instead of increased fees to MS4 permittees.
6. Minnesota has a state-wide construction site stormwater permitting program, administered directly by the MPCA. Using its permitting authority, the State has chosen to require that MS4 cities, including Minneapolis, have completely parallel and duplicative construction site stormwater programs at the local level. It is now a very rare event to see a State construction site inspector in the City. In the context of determining program costs relative to permit fees, we request that the MPCA estimate and provide a program cost “credit” for the City of Minneapolis for the work that is done as part of our local construction site stormwater programs. We would be happy to provide assistance with estimating the cost of local construction site stormwater programs.
7. If the MPCA is going to dramatically increase MS4 permit fees, the City of Minneapolis requests that the MPCA provide detailed and transparent information about the Agency’s staff budget and time allocation. In this document, “STATEMENT OF NEED AND REASONABLENESS, In the Matter of

Proposed Amendments to Minnesota Rules Chapter 7001, Governing Stormwater Permits, Chapter 7002, Governing Water Quality Permit Fees, and New Rules to be Codified as Chapter 7090, Governing the Stormwater Regulatory Program”, September 3, 2004, the MPCA provided the following breakdown of staff time and allocation:

Municipal		Construction		Industrial	
Activity	FTE	Activity	FTE	Activity	FTE
Support staff	0.8				
Permit, annual report, and Outstanding Resource Value Waters review	2.8	Support staff and permit processing	3.2	Support staff, permit processing and annual report processing	1.6
Data compilation and management, shared with local units of government.	0.4	Data compilation and management	0.3	Data compilation and management	0.4
BMP effectiveness monitoring	0.4	BMP effectiveness monitoring and standards development	0.8	BMP effectiveness monitoring	0.1
Technical assistance and enforcement	3.2	Compliance and enforcement (complaints)	4.9	Compliance and enforcement (complaints)	0.6
Program assistance and approval for local units of government.	0.4	Enforcement plan review (includes engineer)	2.4	No exposure certification	0.8
		Technical assistance	1		
		Environmental Assessment Worksheets and sewer extensions	1		
	8.0		13.6		3.5

We request that the same detailed information about staff allocation be provided for the stormwater program today. We request that this information be provided for the current staff allocation and the proposed staff allocation after the permit fees are increased.

8. In the documentation provided for this rulemaking, the MPCA provided information about the current program funding.

Based on this data, the chart showing the program funding sources for 2017 indicates that a significant portion of the funding for municipal stormwater came from the Clean Water Fund. Please answer the following questions:

- a. Was most of that funding used to update, revise, and improve the Minnesota Stormwater Manual?
- b. Isn't funding from the CWF viewed as a "grant"? Why would work supported by that type of funding be considered a "program cost"?
- c. Under the non-substitution principle applied to the monies from the Constitutional Amendment, can CWF monies be viewed as "program costs"?

- d. The MN Stormwater Manual is explicitly listed as not a regulatory document. Why would work on the Stormwater Manual be considered a program cost for municipal stormwater permitting?
 - e. The MN Stormwater Manual provides important useful information for all types of stormwater design work in Minnesota. Why is the cost to update, revise, and improve the Stormwater Manual listed as a program cost only for the Municipal Stormwater program?
9. The City of Minneapolis is responsible for both water quantity (e.g.: localized flooding) and water quality (e.g.: stormwater permitting) issues and concerns within our jurisdiction. With an increasing number of more intense storms due to climate change, the City is pressed 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 to cost for cities' stormwater permits, that are focused only on water quality.
10. As the MPCA works to determine changes in program staffing and any measures to "increase and improve interactions with permittees" because of changes to permit fees, the City urges the MPCA to work closely with us as a stakeholder to determine which increased services and interactions would be most useful and productive.
11. Is there an ability to include the annual permit fee as a component of the Phase I permit renegotiation? It may allow for better transparency on what service/deliverables MPCA is going to provide the Phase I permittees, in conjunction with the new permit requirements MPCA is mandating.

Thank you for providing the City of Minneapolis the opportunity to comment on these proposed rule changes. If you have any questions please don't hesitate to contact me at Elizabeth.stout@minneapolismn.gov or 612-673-5284.

Sincerely,



Elizabeth Stout, P.E.
Water Resources Manager
City of Minneapolis – Public Works



March 9, 2020

RCUD OAH *28 MAR 18

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

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

Ms. Collins,

The City of East Bethel is opposed the proposed rule change regarding the Municipal Separate Storm Sewer Systems (MS4) permit application fee. Currently, the application fee is \$400 for the five-year permit term. The current proposal is to revise the application fee from \$400 for the five-year permit term, to \$20,000 (\$4,000 annually) for cities with a population of 10,001 – 30,000.

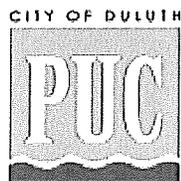
While we recognize there may be justification to increase the fee, the jump from \$80/year to \$4,000/year is extreme. This fee has not been increased for 18 years and that is not the fault of the permit holders. Efforts to recoup revenue shortfalls should not fall upon the fee holder in as a single increase to attempt to reconcile program deficits. The MPCA should have raised their costs on an adjusted basis over a period of years to cover their expenses and not impose what amounts to be a 4,900% increase on the MS4 permit fee.

The cost of our cities MS4 program continues to rise as additional tasks and activities are mandated by the permit terms and program mandates. Additionally, a higher permit fee will redirect funds that would otherwise be available for use for our stormwater program activities.

The East Bethel City Council requests that the MPCA and keep the current fee structure in place, or as a last resort, enact a tiered increase over a period of not less than 5 years to ease the transition to full payment for the proposed raise in fees.

Sincerely,

Jack Davis, City Administrator
City of East Bethel
jack.davis@ci.east-bethel.mn.us



Public Utilities Commission

Room 274 • 411 West First Street
Duluth, MN 55802

 218-730-5320

March 2, 2020

DAH MAR 5 '20 PM 9:09

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

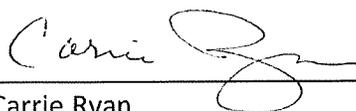
Dear Ms. Collins,

The Duluth Public Utilities Commission has received and reviewed the MPCA's Water Fees Rule Concept Document and would like to submit the following comment:

The Duluth Public Utilities Commission supports the MPCA in seeking additional resources for improved enforcement of Minnesota clean water standards, but urges the MPCA, as part of this process, to identify additional resources that can be provided to communities to meet these heightened enforcement expectations.

Thank you for your consideration.

Sincerely,



Carrie Ryan
President
Duluth Public Utilities Commission

RECEIVED

By: OAH on 2/24/2020 @ 11:32 am



1685 CROSSTOWN BOULEVARD N.W. • ANDOVER, MINNESOTA 55304 • (763) 755-5100

FAX (763) 755-8923 • WWW.ANDOVERMN.GOV

February 24, 2020

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

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

Dear Mrs. Collins,

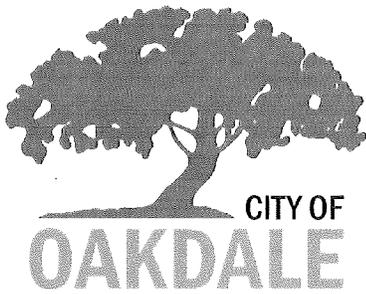
Thank you for the opportunity to provide comments on the planned amendments to the water quality fee rules, *Minnesota Rules* Chapters 7002 (Permit Fees) and 7083 (Subsurface Sewage Treatment Systems Credentialing and Product Registration). The City of Andover is opposed to any increase in the permit fee. The NPDES permit and requirements was an unfunded mandate put on cities. Cities have hired staff and spend thousands of dollars per year to administer the program and make water quality improvements. To increase the permit fee to an unrealistic amount is not fair and/or reasonable. A suggestion to solve the MPCA shortfall would be to reduce the MPCA role and streamline the process by reducing the number of public agencies currently involved in the administration and review process placing the responsibility on the watersheds and cities.

Thank you for your consideration and please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'David D. Berkowitz', is written over a horizontal line.

David D. Berkowitz, P.E.
Director of Public Works/City Engineer



1584 Hadley Avenue N | Oakdale, MN 55128
651-739-5086 | www.ci.oakdale.mn.us

RCVD OAK *20 FEB 19

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

February 14, 2019

RE: City of Oakdale Comments on the draft Water Quality Fee Rule Amendments

Dear Ms. Collins,

The City of Oakdale is a regulated MS4 community, and therefore would be directly affected by the proposed fee increases. The City has reviewed the draft rule amendments, and has the following comments:

1. Please provide clarification for why the correct amount of program costs for fee revenues to cover is 30%.
2. How would these fee increases be phased in?
3. It appears that the existing MS4 funding shortage is \$350,000, but the rule change is proposing to raise \$852,577. The City feels that it is inappropriate to create a budget surplus through fee increases.
4. Diverting \$852,577 from the funding of local MS4 programs seems counter-productive to the goals of the MS4 program. That is a significant amount of money that is being used to inspect and upkeep MS4's. This will create unnecessary work for municipalities to increase the funding for their programs, and many may not be able to increase their budgets to compensate.

If you have any questions about these comments, please feel free to email me at chris@ci.oakdale.mn.us or call me at 651-730-2732.

Thank you,

Chris Buntjer, PE
Engineering Technician/Environmental Inspector
Public Works Department
City of Oakdale



March 13, 2020

Mary Lynn
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Planned Amendments to Rules Governing Water Quality Fees, Minnesota Rules, Chapters 7002 and 7083; Revisor's ID Number R-4476
OAH Docket No. 65-9003-34479

Dear Ms. Lynn:

The League of Minnesota Cities (LMC), on behalf of our 833 member cities, appreciates the opportunity to provide comments related to the Minnesota Pollution Control Agency's (MPCA) draft proposal to increase fees on various state water permits. Our affiliate group, the Minnesota Cities Stormwater Coalition, has submitted detailed comments related to the stormwater portions of the proposal. Rather than repeat their comments, which accurately reflect the concerns of city stormwater professionals, LMC would like to provide some other comments and items for consideration.

The work of the agency over the past five years on these issues is recognized and appreciated by LMC. Past comments and concerns related to overall fee levels, additional program support gained from the increase in resources, equitable staging of permit fee amounts and timelines for the increases, and a commitment to seeking general fund resources for overall MPCA water program needs all have been implemented to some degree in the current proposal.

We understand the MPCA's ongoing stated need to revisit permit fee levels and have worked with the agency on issues related to that request for many years. Consistent with verbal comments made by LMC at public comment sessions, we have several points related to the current water permit fee proposal.

1. The proposed phase-in period of three to six years is appreciated and important, as most communities will need to consider what work can be deprioritized to cover the increase in permit fees. Some communities may have the option of generating more revenue over time to meet that change, but that will take time, both procedurally and to build adequate local support. Weighting the increases to the back end of that time window would obviously provide the most options for cities to adjust to these costs.

«Name»

«Date»

Page 2

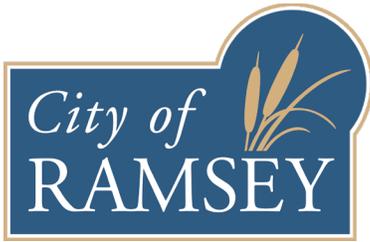
2. While they appear as separate portions of the proposal, it should be noted that almost \$1.5 million of the proposed \$2.08 million annual permit fee increase is being generated from municipal stormwater and wastewater permits. That means that city residents and businesses will be paying an additional \$1.5 million per year in fees to the state, mostly for the same programs they are currently provided. That does not take into account steadily increasing costs to meet permit obligations on wastewater and stormwater permits or the increased operation and management costs these increasingly complex systems require. The proposed water permit fee increases must be considered as part of the cost of building and maintaining the whole public system, which is rapidly escalating.
3. On the municipal stormwater fees, in addition to points raised in the MCSC comments, LMC is concerned with the cost to the lowest tier permittees. In particular, fees for communities under 5000 in population who are generally only required to have a permit due to their location within an urbanized area appear excessively high, especially given the limited resources and often limited complexity of reviewing those smaller permits.
4. A proposed end to the waiver of variance application fees is premature. If the state is going to maintain water quality standards for which there are not technical methods to meet permit requirements or implementing such limits would take extended periods of time, variances are not a request for special permission, but a necessity. The fee schedule should reflect that by an extended waiver for specific limits identified by the agency as fitting that description, as chlorides currently do.
5. While projections of additional program support for cities being part of this funding package are appreciated, the details of what those added services would be are very important. In fact, a much more thorough accounting of exactly what sort of staffing and program services would be added and exactly which existing work would be funded by this increase is necessary. That detail should be specific, not generalized in large agency silos.
6. The need and intent to seek additional general fund resources will need to be explicit in the final rule proposal narrative.

Thank you again for the opportunity to provide verbal and written comments on this proposed fee change. LMC looks forward to continuing to work with the MPCA on overall water program funding and function and how cities can best partner with the state to protect public health and the environment. Please contact me if you have any questions or would like clarification of any of these comments.



Craig A. Johnson

Intergovernmental Relations



7550 Sunwood Drive NW • Ramsey, MN 55303

City Hall: 763.427.1410 • Fax: 763.427.5543

www.cityoframsey.com

March 13, 2020

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

RE: 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 provide comments on the planned amendments to the water quality fee rules, Minnesota Rules Chapters 7002 (Permit Fees) and 7083 (Subsurface Sewage Treatment Systems Credentialing and Product Registration). The City of Ramsey has the following comments and questions on the planned amendment.

1. The city has been an MS4 community since 2003 and has implemented a storm water utility fee and hired dedicated staff to manage the city's NPDES program. The city understands the need for the state to recover costs for administering the program however, the city believes costs to manage the state's water resources should be distributed among all taxpayers state-wide, not only those from MS4 communities.
2. Has the state considered the implications this may have on urban sprawl? If a developer can be close to a large community but instead develop in a smaller community that doesn't have additional stormwater fees, a developer is more likely to move further out.
3. Currently, MS4's pay \$400 each new permit cycle. The new fee proposed for our city will be \$20,000, which is 50 times more than our current fee. How will the new fees be phased in to reduce budget impacts?
4. Permit cycles are supposed to be every 5 years, but due to delays in permit issuance they have generally been every 7 years. How will this be addressed moving forward?
5. Since MS4 cities perform erosion control inspections as part of their permit requirements can some of the funds collected by the MPCA through the construction stormwater program be reallocated to MS4 cities to offset their costs?
6. With the changing precipitation patterns, cities are dealing with more water quantity issues versus water quality issues. Is the state recognizing this and reallocating money to look at how to deal with the additional precipitation versus continuing to do more monitoring?

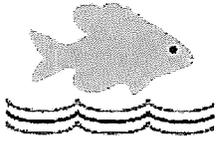
7. Please provide MS4's with information showing that the work they have been doing since the first permit was issued in 2003 is making a difference so that MS4's can better justify the fee increases to their decision makers.
8. Has the state looked at the amount of money and staff resources that already go into some MS4 programs and considered incentivizing communities that proactively exceed program requirements by reducing their fees?
9. The fee increase may take away from a community's ability to continue to meet MCM's at a higher level.
10. Outreach and education in some parts of the state are already being met through partnerships with metro watershed partners and watershed districts and management organizations. What additional outreach and education is the state going to provide, and at what cost?
11. The MN Stormwater Manual is being used by more entities than MS4's. A majority of engineering firms use the manual for redevelopment and new developments. Why are MS4's paying for all of the updates to the manual?
12. Please consider reducing the MPCA's role in water management to allow the MPCA to operate under its current budget. Cities, watershed districts, and watershed management organizations are currently doing many of the things required by the MPCA through BWSR and State Statute.

Thank you for the opportunity to comment on the draft rule revisions. Please feel free to contact me at 763-433-9825 or bwestby@cityoframsey.com with any questions regarding our comment letter.

Sincerely,



Bruce Westby, P.E.
Ramsey City Engineer



**City of Sunfish Lake
Sunfish Lake, Minnesota**

March 11, 2020

DAH MAR 16 '20 AM 9:04

Ms. Denise Collins
Office of Administrative Hearings Court Administrator
600 N Robert St, PO Box 64620
St. Paul, MN 55164

Re: Planned Amendments to Rules Governing Water Quality Fees, *Minnesota Rules*, Chapters 7002 and 7083

Dear Ms. Collins:

The City of Sunfish Lake is a permitted MS4 community and would be directly affected by the proposed fee increases. We are opposed to the proposed rule changes and offer the following comments on the amendments to the water quality fee rules, *Minnesota Rules*, Chapter 7002 (Permit Fees):

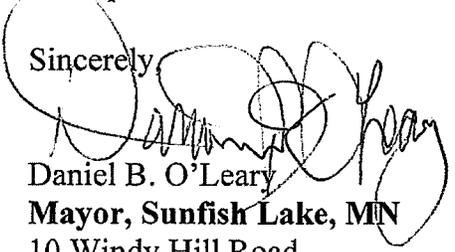
1. The MS4 permit operates on a 5-year cycle; however, the past two permit terms were approximately 7-years in length. If the MPCA shifts to an annual fee cycle, would MS4s be required to pay annually when the permit reissuance process exceeds the 5-year permit term? We believe that MS4 permittees should not be required to pay an annual fee when the permit is 'expired'. Therefore, we would prefer that the MPCA keep the permit fee cycle on a 5-year cycle to be renewed with the reissuance of each MS4 permit.
2. We appreciate that the MPCA is proposing a tiered fee structure to account for differences in sizes and types of MS4 permittees; however, the increased fees may be a hardship for some communities. Many MS4 communities have fixed budgets, and an increased permit fee means that less funds will be available for stormwater improvements and needs. Further, many communities do not have the ability to address the technical and more time-consuming aspects of developing and implementing an MS4 SWPPP due to resource constraints. The increased permit fees will likely mean less resources can be allocated to these items at a community level and MS4 communities will become more dependent on the MPCA for support to address permit requirements.
3. During the MPCA webinar on February 10, 2020, the justification provided for the allocation of the fee revenue seems inadequate as no responsibilities or requirements are being removed from MS4s. For example, many MS4 communities can successfully fulfill the requirements for MCM 1 and 2 without

support from the MPCA through existing partnerships, resources available online, etc. We appreciate that the MPCA is requesting input on where the funds from the increased fees should go; however, we request more transparency from the MPCA on their current budget and their proposed budget. What steps or actions has the MPCA taken to reduce program costs? Does the MPCA have a workplan that they can share with the public regarding how and where the funds from the proposed fee increase will be allocated?

4. The NPDES program also covers construction stormwater and industrial stormwater permits, but these water quality permit fees are not included in the proposed fee increase, though there is overlap between all three permits. Why aren't other program fees increasing at the same rate?

Thank you for providing the City of Sunfish Lake the opportunity to comment on the proposed amendments to the water quality fee rules. We appreciate your consideration of our input.

Sincerely,

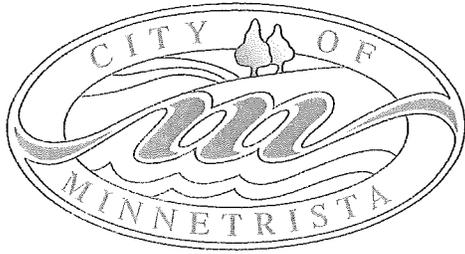


Daniel B. O'Leary

Mayor, Sunfish Lake, MN

10 Windy Hill Road

Sunfish Lake, Minnesota 55077



Municipal Offices
7701 County Road 110 West
Minnetrista, MN 55364-9552
email. minnetrista@ci.minnetrista.mn.us

04H MAR 16 '20 AM 9:05

March 12, 2020

Ms. Denise Collins
Office of Administrative Hearings Court Administrator
600 N Robert St, PO Box 64620
St. Paul, MN 55164

Re: Planned Amendments to Rules Governing Water Quality Fees, *Minnesota Rules*, Chapters 7002 and 7083

Dear Ms. Collins:

The City of Minnetrista is a permitted MS4 community and would be directly affected by the proposed fee increases. We are opposed to the proposed rule changes and offer the following comments on the amendments to the water quality fee rules, *Minnesota Rules*, Chapter 7002 (Permit Fees):

1. The proposed fee increase is outrageous. We appreciate that the MPCA is proposing a tiered fee structure to account for differences in sizes and types of MS4 permittees; however, the increased fees may be a hardship for some communities. Many MS4 communities have fixed budgets, and an increased permit fee means that less funds will be available for stormwater improvements and needs. Further, many communities do not have the ability to address the technical and more time-consuming aspects of developing and implementing an MS4 SWPPP due to resource constraints. The increased permit fees will likely mean less resources can be allocated to these items at a community level and MS4 communities will become more dependent on the MPCA for support to address permit requirements.
2. The MS4 permit operates on a 5-year cycle; however, the past two permit terms were approximately 7-years in length. If the MPCA shifts to an annual fee cycle, would MS4s be required to pay annually when the permit reissuance process exceeds the 5-year permit term? We believe that MS4 permittees should not be required to pay an annual fee when the permit is 'expired'. Therefore, we would prefer that the MPCA keep the permit fee cycle on a 5-year cycle to be renewed with the reissuance of each MS4 permit.
3. During the MPCA webinar on February 10, 2020, the justification provided for the allocation of the fee revenue seems inadequate as no responsibilities or requirements are being removed from MS4s. For example, many MS4 communities can successfully fulfill the requirements for MCM 1 and 2 without support from the MPCA through existing partnerships, resources available online, etc. We appreciate that the MPCA is requesting input on where the funds from the increased fees should go; however, we request more transparency from the MPCA on their current budget and their proposed budget. What steps or actions has the MPCA taken to reduce program costs? Does the MPCA have a workplan that they can share with the public regarding how and where the funds from the proposed fee increase will be allocated?

4. The NPDES program also covers construction stormwater and industrial stormwater permits, but these water quality permit fees are not included in the proposed fee increase, though there is overlap between all three permits. Why aren't other program fees increasing at the same rate?
5. We understand the MPCA is also interested in receiving feedback on where the funds from the increased fees should be allocated. We request that the MPCA consider allocating some of the fee revenue to research on alternative disposal applications for PAH contaminated soils.

Thank you for providing the City of Minnetrista the opportunity to comment on the proposed amendments to the water quality fee rules. We appreciate your consideration of our input.

Sincerely,

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

Gary Peters
Public Works Superintendent

ANOKA

REAL. CLASSIC.

Public Services – Engineering

March 12, 2020

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

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

Dear Mrs. Collins,

It is greatly appreciated for the opportunity to provide comments on the planned amendments to the water quality fee rules, *Minnesota Rules* Chapters 7002 (Permit Fees). The City of Anoka is opposed to any increase in the permit fee. The NPDES permit and requirements was an unfunded mandate put on cities. Anoka had to hire a stormwater consultant, which cost the city thousands of dollars per year to administer the program and make water quality improvements. To increase the permit fee to an impracticable amount is not fair and/or reasonable. A suggestion to solve the MPCA shortfall would be to reduce the MPCA role and streamline the process by reducing the number of public agencies currently involved in the administration and review process placing the responsibility on the watersheds and cities.

Thank you for your consideration and please contact me if you have any questions by telephone at 763-576-2785 or by email at bnelson@ci.anoka.mn.us.

Sincerely,



Ben Nelson | Engineer Technician

cc: Greg Lee, Anoka City Manager

OAH MAR13 '20 AM 8:40

