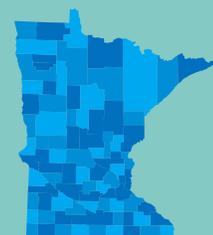


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Water fees rule concept document

Information on the Minnesota Pollution Control Agency's rulemaking to adjust water fees.



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Introduction and background

Introduction

This document provides an overview of what the Minnesota Pollution Control Agency (MPCA) is considering in the water fees rulemaking.

We have taken into consideration the comments we received in two previous Requests for Comments, and we are sharing our new proposal for revising water fees rules. This document will help readers understand the potential rule revisions we are considering and the reasons why changes are needed. We welcome comments on any part of this rule concept document. Instructions for submitting comments can be found at <https://www.pca.state.mn.us/water/amendments-water-quality-fee-rules>.

Background and purpose of the rulemaking

The MPCA protects and enhances water quality through permitting, compliance and enforcement, monitoring and technical assistance, outreach, and training and certification activities. We accomplish this through water quality regulatory programs: municipal wastewater, industrial wastewater, municipal separate storm sewer systems (MS4), construction stormwater, industrial stormwater, septic systems, and feedlots. The fees collected from these programs currently cover about 20% of their overall operational costs. The amount of fees generated varies year to year due to the cyclic nature of permitting.

In 2016, the MPCA determined that it needed to raise fees for its water programs. After an initial Request for Comments (RFC) in June 2017¹, MPCA determined that more input was needed from stakeholders before proceeding with rulemaking. In late 2017, previous MPCA Commissioner Stine formed the Water Fee Advisory Committee with members from cities, businesses, and sanitary districts that hold water permits to analyze the need for water fee increases and make recommendations for MPCA rulemaking.

Between January and June 2018, the Committee met six times. The Committee received briefings from MPCA staff on programs and finances related to water fees. The Committee analyzed data, provided feedback, completed a survey on potential options, and offered recommendations to the Agency. In January 2019, the Committee reported on its recommendations². Members generally agreed on the following key points:

- Current fee revenue is inadequate to support MPCA water quality regulatory programs.
- Although no one wants fee increases, raising fees is reasonable given the circumstances.
- The MPCA should use additional fee revenue to increase assistance and improve interactions with permittees.
- Fees should cover approximately 30% (or between 25-40%) of water program costs.
- The MPCA should phase in fee increases over three to six years.

¹ View 2017 RFC at: <https://www.pca.state.mn.us/sites/default/files/wq-rule4-19a.pdf>

² View the report at: <https://www.pca.state.mn.us/sites/default/files/p-rap2-7.pdf>

Building on the Committee’s recommendations, MPCA engaged with representatives of the water regulatory program sectors to discuss the need for changes to water fees and the findings of the workgroup. The stakeholders included:

- League of Minnesota Cities
- Coalition of Greater Minnesota Cities
- Minnesota Chamber of Commerce
- Minnesota Cities Stormwater Coalition
- Feedlot industry representatives
- Minnesota Onsite Wastewater Association (septic industry professionals).

Proposed water fees were revised per this input, and MPCA issued a second Request for Comments in January 2020³. The comments from the 2020 RFC further established that most permittees agree that it is reasonable to raise fees; however, many shared concerns about the proposed fee structures. Permittees reiterated the comments heard in 2017. The 2020 RFC closed on March 13, 2020, the day that Governor Walz declared a peacetime state of emergency due to the impending COVID-19 pandemic, and shortly thereafter issued a stay-at-home order. Due to the concerns around COVID-19 and respecting the urgency of COVID-19 response, the MPCA suspended rulemaking.

Agency staff reconvened in late summer 2021 to continue developing a rulemaking proposal. In response to permittee concerns, MPCA adjusted the fee proposals again to create a fee structure that reduces the magnitude of impact on smaller projects, cities, and businesses and aligns higher increases with larger projects and areas requiring more MPCA review and oversight.

³ View 2020 RFC here: <https://www.pca.state.mn.us/sites/default/files/wq-rule4-19g.pdf>

Water fees rules proposal

Thanks to public input, MPCA is proposing a more holistic approach to water fees. While the revenue from these fees will not fully cover the cost to operate all water programs, it is a critical step to stabilize the Agency's main funding source, the Environmental Fund, and ensure our commitment to environmental protection now and into the future. The revenue generated from the proposed fee structure would account for about \$9.4 million of the nearly \$30 million in annual water program operating costs, or approximately 31%.

This concept document also no longer includes proposals for subsurface sewage treatment fees or chloride training fees as those changes would require statutory changes as opposed to rulemaking changes.

The following sections outline the proposed fees for each program.

Construction stormwater

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

Subdivision registration

\$100

Proposed tiered application fee structure

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

Feedlots⁴

Comments during the 2020 RFC led MPCA to remove the proposed registration site fee. This new proposal now adds an annual fee for gap sites, in addition to other adjustments. Feedlot program annual fees would phase in over three years. Application fees would be effective immediately following rule adoption.

Gap site annual fee

\$310

General permits

Fee type	Current fee	Proposed fee
New application and renewals; no construction	\$620	\$1,240
New application and renewals; with construction	\$620	\$1,860
Major modification application	\$620	\$1,860
Minor modification application	\$620	\$155
Annual fee	\$345	\$620

Individual permits

Fee type	Current fee	Proposed fee
New application and renewals; no construction	\$1,860	\$1,860
New application and renewals; with construction	\$1,860	\$2,480
Major modification application	\$1,860	\$2,480
Minor modification application	\$1,860	\$155
Annual fee	\$1,230	\$620

⁴ View previous Feedlots proposal here: <https://www.pca.state.mn.us/sites/default/files/wq-rule4-19f.pdf#page=6&zoom=auto,-265,738>

Municipal separate storm sewer systems (MS4)⁵

Currently, all MS4 general permittees pay a flat \$400 application fee every five years, a structure that has been in place since introduction of a fee in 2009. The general permit application fee applies regardless of permittee size, and there is no annual fee for any permittee. Discussions with permittees and comments from the last RFC showed that while permittees agreed that a fee increase was needed and reasonable, they were very concerned about the magnitude of the proposed increase. MPCA evaluated how these fees fit into the context of the MPCA's overall water programs and the interconnected nature of municipal and construction stormwater. The proposed fee structure was adjusted to be more equitable. These fees will be phased in over a three-year period.

MS4 annual fees would be phased in across three years.

Type of Permittee	Fee based on	Fee detail	Proposed annual fee
City or township	Population	3,000 or fewer	\$150
City or township	Population	3,001-10,000	\$750
City or township	Population	10,001 – 30,000	\$1,500
City or township	Population	30,001 – 50,000	\$3,200
City or township	Population	50,001 – 75,000	\$5,000
City or township	Population	75,001 – 100,000	\$8,250
City or township	Population	100,001+	\$13,500
County	Percent urbanized area	0% – 24%	\$750
County	Percent urbanized area	25% – 49%	\$1,500
County	Percent urbanized area	50%+	\$3,200
Non-traditional (colleges, prisons, etc.)	Developed land (acres)	0-149	\$500
Non-traditional (colleges, prisons, etc.)	Developed land (acres)	150+	\$750
MNDOT Outstate	Developed land as approximate right-of-way acreage	N/A	\$2,500
MNDOT Metro	Developed land as approximate right-of-way acreage	N/A	\$12,500
Watershed districts	Flat fee	N/A	\$500

⁵ View previous MS4 proposal here: <https://www.pca.state.mn.us/sites/default/files/wq-rule4-19f.pdf#page=7&zoom=auto,-265,787>

Industrial stormwater

The industrial stormwater program was not included in the original rulemaking, but the proposed new rates takes into account the Agency's holistic water program fee structure approach and serves to better support this understaffed program. Industrial stormwater permittees have paid a flat \$400 application fee and a \$400 annual fee since 2009. Facilities with a no-exposure exclusion have not pay any fee. MPCA staff time is required to issue permits and determine compliance with permit and no-exposure conditions to protect state water effectively and investigate public concerns.

Industrial stormwater fees will become effective upon adoption.

Fee type	Current fee	Proposed fee
Annual fee	\$400	\$760
No exposure fee	\$0	\$100

Industrial wastewater⁶

The fee proposal for industrial wastewater has changed since the last proposal and no longer includes an increase for application fees.

These annual fees would be phased in across three years.

Fee type	Design flow	Current fee	Proposed fee
General	--	\$345	\$725
Major	20-49.99 MGD	\$44,200	\$53,040
Major	5-19.99 MGD	\$18,250	\$21,900
Major	<5 MGD	\$8,450	\$10,140
Cooling water or mine pit dewatering	--	\$16,900	\$20,280
Nonmajor	--	\$1,230	\$3,075
Individual stormwater	--	\$1,230	\$1,476

⁶ View 2020 Industrial Wastewater proposal here: <https://www.pca.state.mn.us/sites/default/files/wq-rule4-19f.pdf#page=8&zoom=auto,-265,779>

Municipal wastewater⁷

The proposed municipal wastewater annual fee structure has changed significantly from the last proposal. MPCA developed a tiered approach to make fees more equitable across the state. Overall, the cost of general permits is increasing due to the complexity of the general permits we issue. These general permits remain at a far lower cost than nonmajor permits.

These annual fees would be phased in across three years.

Fee type	Design flow	Current fee	Proposed fee
General	--	\$345	\$725
Major	50+ MGD	\$175,500	\$368,550
Major	20-49.99 MGD	\$40,350	\$80,700
Major	5-19.99 MGD	\$14,350	\$28,700
Major	<5 MGD	\$5,900	\$11,210
Nonmajor	>100K GD	\$1,450	\$2,755
Nonmajor	0-100K GD	\$505	\$960
Sewage sludge/ landspread	--	\$500	\$825
Non-municipal sewage > 100k gallons	--	\$1,230	\$2,030
Non-municipal sewage < 100k gallons	--	\$495	\$817

⁷ View 2020 Municipal Wastewater proposal here: <https://www.pca.state.mn.us/sites/default/files/wq-rule4-19f.pdf#page=9&zoom=auto,-265,771>

Municipal wastewater variances⁸

Variance applications for municipal wastewater NPDES/SDS permits currently cost a flat \$10,850. We propose adjusting the variance fee with a structure based on the flow of facilities as a proxy for the populations they serve. The chloride variance fee waiver will end, and the structure below will go into effect immediately following rule adoption.

Initial variance costs

Flow (Gallons/Day)	Points (\$310 per point)	Current Fee	New Fee Scenario
0-99,999	2	\$10,850	\$620
100K-999,999	6	\$10,850	\$1,860
1-4.99M	10	\$10,850	\$3,100
5-19.99M	20	\$10,850	\$6,200
20+M	35	\$10,850	\$10,850

Ongoing variance costs

Variances require ongoing work, including evaluations every five years. We have considered two options for funding variances lasting more than five years.

1. Add an additional 2 points up front for every five years beyond the initial five years of a variance.
2. Include a variance as a category for calculating points in a permit renewal fee.

As part of this RFC, we are looking for feedback on which of these options would be preferable and more practicable for permittees.

More information

More information about this rulemaking is available on the MPCA's Water Quality Fee Rulemaking webpage at <https://www.pca.state.mn.us/water/amendments-water-quality-fee-rules>

⁸View 2020 variance proposal here: <https://www.pca.state.mn.us/sites/default/files/wq-rule4-19f.pdf#page=10&zoom=auto,-265,763>