UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 28 2016

REPLY TO THE ATTENTION OF

WN-16J

Rebecca Flood, Assistant Commissioner
Water Policy
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

Re: MPCA's Legal Authority to Implement its Authorized NPDES Program While Working Under Laws of Minnesota 2016, Chapter 165, Section 1

Dear Ms. Flood:

The U.S. Environmental Protection Agency received in July 2015 a petition from WaterLegacy that alleges that Minnesota lacks the authority to implement its authorized National Pollutant Discharge Elimination System (NPDES) program under the Clean Water Act (CWA). The petition asserts, among other things, that legislation signed into law in 2015 appears to remove the Minnesota Pollution Control Agency's (MPCA) authority to include controls in NPDES permits relating to sulfate at least through 2018. See "Wild Rice Water Quality Standards," Laws of Minnesota 2015, 1st Spec. Sess. Chapter 4, Article 4, Section 136. On April 5, 2016, EPA requested that, in light of the 2015 legislation, you provide an updated Attorney General's statement to explain whether the current scope of MPCA's authority remains adequate to issue permits in compliance with all applicable CWA requirements, including whether MPCA continues to have adequate authority to implement all of its federally approved water quality standards consistent with CWA Section 301(b)(1)(C). On May 9, 2016, we granted your request for an extension of time to submit the Attorney General's statement no later than July 1, 2016.

On May 31, 2016 the Governor of Minnesota signed a measure entitled, "Sulfate Effluent Compliance," Laws of Minnesota 2016, Chapter 165, Section 1 (see enclosure). This legislation appears to invalidate water quality based effluent limits and compliance schedules for sulfate that were included in certain NPDES permits issued by the MPCA. Thus, this legislation appears to be a legislative action that strikes down or limits MPCA's authority under its approved NPDES program. Pursuant to 40 C.F.R. 123.63 (a)(ii), such an action may constitute grounds for EPA's determination that the MPCA's legal authority no longer meets the requirements of a federally approved program. Additionally, this legislative action could be construed as a de facto major modification to affected permits, which would necessitate the process, including public review, specified in 40 C.F.R. §122.62.

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on 100% Recycled Paper (100% Post-Consumer)

Accordingly, we ask that MPCA provide an additional updated Attorney General's statement to explain whether the current scope of MPCA's authority remains adequate to enforce all conditions in those NPDES permits to which the law is expected to apply. In addition, if the law is viewed as modifying the NPDES permits that are subject to it, we ask that you confirm that MPCA intends to follow the process for major permit modification found at 40 C.F.R. § 122.62.

We ask that you provide this additional Attorney General statement by August 12, 2016, along with a list of permits to which the 2016 law applies. This is a separate request from our earlier request of April 5, 2016 for an Attorney General statement, by this letter we are extending the deadline for response to the April 5 2016 request to August 12, 2016 to coincide with the deadline for the additional Attorney General statement.

EPA anticipates that it will review both Attorney General statements as part of our consideration of the allegations raised in the petition to withdraw the State's NPDES program authority, and in our consideration of what actions may be necessary to take to ensure implementation of Minnesota's federally approved NPDES permitting program is consistent with the CWA.

If you have any questions, please contact me, or Krista McKim, Environmental Engineer, of my staff, at mckim.krista@epa.gov or 312.353.8270. Legal questions should be directed to Barbara L. Wester, Associate Regional Counsel, at wester.barbara@epa.gov or 312.353.8514.

Sincerely,

Tinka G. Hyde
Director, Water Division

Enclosure

Cc: Jeff Stollenwerk, MPCA – Duluth
Ann Foss, MPCA – St. Paul

2016 Minnesota Session Laws

Key: (1) ~~language to be deleted~~ (2) new language

CHAPTER 165--S.F.No. 3376

An act relating to environment; providing for sulfate effluent permit compliance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **SULFATE EFFLUENT COMPLIANCE.**

(a) This section applies to any permit issued after January 1, 2010, and before May 1, 2016, that contains final sulfate effluent limits resulting from implementation of the wild rice water quality standard in Minnesota Rules, part 7050.0224, subpart 2. If, as of May 1, 2016, the permittee is in substantial compliance with any compliance schedule permit conditions related to those final limits or has executed a schedule of compliance to resolve any noncompliance that existed before May 1, 2016:

(1) the final sulfate limits resulting from implementation of the wild rice water quality standard in Minnesota Rules, part 7050.0224, subpart 2, are no longer valid; and

(2) any compliance schedule permit conditions related to those final limits are no longer valid.

(b) Nothing in this section shall relieve the permittee from its obligation to satisfy requirements contained in any schedule of compliance that is in effect as of May 1, 2016.

Presented to the governor May 24, 2016

Signed by the governor May 31, 2016, 10:11 a.m.

Copyright © 2016 by the Revisor of Statutes, State of Minnesota. All rights reserved.

ED_005586A_00006079-00003