UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
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CHICAGO, IL 60604-3590

AUG 2 1 2017

REPLY TO THE ATTENTION OF:

Rebecca Flood, Assistant Commissioner
Commissioner's Office
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Re: U.S. Environmental Protection Agency Review of the Pre-Public Notice NPDES Permits Implementing Minnesota's River Eutrophication Standards

Dear Rebecca:

As a follow-up to our conversation on Monday, August 14th, I wanted to summarize EPA's current perspective on the long-running discussions that EPA has had with MPCA regarding the manner in which the Minnesota Pollution Control Agency (MPCA) has been implementing Minnesota's federally-approved water quality standards for eutrophication ("RES") in NPDES permits. EPA was hopeful that we had found a path forward at our face-to-face meeting in St. Paul on March 14-15, 2017. However, it appears, based on conversations you and I have had as well as conversations between our respective staffs, that EPA and MPCA are unable to reach agreement on how several implementation issues raised by EPA should be addressed.

To summarize the key implementation issues we have been discussing:

1. EPA continues to have concerns regarding the manner in which MPCA is determining the need for and establishing WQBELs for implementing the Eutrophication Standards for discharges into waters that already violate those standards where a TMDL has not been approved. However, these concerns are diminished where, as explained in our June 8, 2017, letter regarding the Delano permit, MPCA develops nonpoint source fact sheets[1] accompanying public notice draft permits, which document the efforts underway to reduce nonpoint source loadings of phosphorus by utilizing funding from the Legacy Amendment, implementing Minnesota's 50-foot buffer strip law, and development and implementation of a WRAP for the relevant watershed. Further, EPA recommends that the MPCA continue to develop nonpoint fact sheets for those permits that discharge into waters violating RES and recommends that these facts sheets include more detail regarding specific implementation plans and anticipated results in order to allow the public to better understand the way in which MPCA plans to restore these impaired waters.

1 We have seen nonpoint fact sheets for the North Fork Crow River (Montrose), South Fork Crow River (Delano), and Sauk River (Cold Spring).

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2. MPCA uses a multi-year durational component when evaluating the need for and establishing WQBELs which does not assure attainment of the single summer-season RES. EPA urges MPCA to change its practice, to better align with the single-season durational component of the RES.

3. EPA believes that the federally-approved RES are clear that they are not attained when there are data showing that the phosphorus component and any one of the four response variable components are exceeded. However, MPCA may be concluding in some instances that WQBELs are not necessary even where there are data showing exceedances of the phosphorus component of the RES and at least one of the response variables. As we have repeatedly stated, we have concerns that MPCA's approach may not be consistent with federal law, and we urge MPCA to change its practice to include limits in these circumstances. To the extent that MPCA chooses to not include limits in these situations because MPCA believes that it needs more data before making a decision about imposing limits, we urge MPCA to include provisions in NPDES permits requiring permittees to generate any additional data that MPCA believes is necessary. We similarly recommend that MPCA include such monitoring requirements in situations where there are data showing that there are exceedances of the phosphorus component of the RES but there are no data as to whether or not any of the response variables have been exceeded. In either of these situations, MPCAs adjustment of its water quality monitoring plan to include sufficient monitoring within those waters during the first permit term would be an acceptable alternative to the permit requirement. Moreover, in either of these situations, we also believe that it would be useful for MPCA to include the same types of nonpoint source fact sheets with public notice draft permits as it included for the Delano permit. Such fact sheets would help the public to better understand what is being done to reduce phosphorus in a discharger's specific watershed.

We ask that MPCA consider these comments and recommendations as it continues to implement its NPDES program responsibilities.

As you know, after the RES was approved, EPA initiated an approach with MPCA that allowed EPA an opportunity to review all RES-related pre-public notice draft permits. At this point in time, given the substantial discussion and written communication that has occurred between EPA and MPCA, EPA believes it has made its perspective on these issues clear and that further discussion on these issues is unlikely to be productive. Consequently:

1. EPA will have no further comments on the specific permits which have been the subject of so much discussion; and

2. EPA is discontinuing its RES-related focused review of <u>all</u> MPCA pre-public notice draft permits which implement the RES.

EPA will continue to review MPCA's implementation of its RES through our regular permit oversight activities, i.e., through real-time reviews as outlined in our current and future permit review lists and through the Permit Quality Review framework.

Please note that nothing in this letter should be construed as waiving EPA's right under Section 402(d) of the Clean Water Act (CWA) and 40 C.F.R. § 123.44 in accordance with the NPDES Memorandum of Agreement between EPA and MPCA to review and object to the issuance of any proposed NPDES permit. To the extent that EPA continues to have concerns regarding whether the approaches used by MPCA are consistent with the requirements of the Clean Water Act and its implementing regulations and result in NPDES permits that protect human health and the environment, we will continue to work with MPCA to address those issues.

Sincerely,

Chris Korleski, Director
Water Division