



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGIONAL ADMINISTRATOR
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 05 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 2015, 1st Spec. Sess. Chapter 4, Article 4, Section 136

Dear Ms. Flood:

The U.S. Environmental Protection Agency received in July 2015 a petition from Water Legacy 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 136.¹ Such an action by a State legislature striking down or limiting a State's authorities could constitute a criteria for withdrawal of a State program under 40 C.F.R. § 123.63(a)(1)(ii). MPCA staff and management have stated in discussions with EPA as well as with outside groups that they believe the statute prevents them from including necessary water quality based limits in permits where MPCA believes the wild rice criteria apply.² Further, MPCA representatives have stated that they will not reissue permits where the sulfate standard may apply in light of their Agency's apparently circumscribed authority under this law.

This law appears to modify and/or revise the authority of the State to administer its NPDES program and implement its federally approved water quality standards. Under 40 C.F.R. § 123.62, any revision to an approved state NPDES program must be reviewed and approved by EPA before it becomes effective. As EPA moves forward with its response to the Water Legacy petition, and pursuant to 40 C.F.R. § 123.62(d), we ask that you provide an updated Attorney General's statement to explain whether the current scope of MPCA's authority remains adequate

¹ This legislation also appears to restrict MPCA's ability to make listing determinations until at least 2018 for wild rice waters which may be impaired for sulfate. Laws of Minnesota 2015, 1st Spec. Sess. Chapter 4, Article 4, Section 136(2). EPA is discussing this matter with MPCA via separate communication.

² MPCA made these statements to EPA staff and management during a conference calls on January 7 and 20, 2016 and in a face to face meeting on March 30, 2016; and to Tribal environmental staff at a meeting on January 21, 2016. MPCA also provided draft fact sheet and permit language to EPA indicating that it lacked the authority to put water quality based effluent limitations for sulfate in permits for discharges to waters used for the production of wild rice even though the state had determined such limits to be necessary to protect the water quality standard.

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).

We ask that you provide this Attorney General statement by May 4, 2016.

EPA will review the statement as part of its consideration of the allegations raised in the petition to withdraw the State's NPDES program authority, and in its consideration of what actions may be necessary to take to ensure implementation of Minnesota's 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,

A handwritten signature in blue ink that reads "Tinka G. Hyde". The signature is written in a cursive style.

Tinka G. Hyde
Director, Water Division

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