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EPA nixes legislative efforts to halt sulfate enforcement

Letter says state laws passed in 2015 and 2016 violate Clean Water Act

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Marshall Helmberger

REGIONAL— The federal Environmental Protection Agency has informed Minnesota pollution regulators that they are required to enforce sulfate limits designed to protect wild rice, despite a series of legislative efforts to prohibit enforcement of the pollution standard. The letter could have significant repercussions for Minnesota's taconite industry, which has been discharging high levels of sulfate for decades.

The Minnesota Legislature, in an effort led by Iron Range lawmakers, passed laws in 2015 and 2016, both signed by then-Gov. Mark Dayton, that effectively prohibited the Minnesota Pollution Control Agency from enforcing the state's strict sulfate limit of 10 milligrams per liter for wild rice waters. The laws prompted the MPCA to leave sulfate limits out of a new permit, still in litigation, that it issued for U.S. Steel's Minntac tailings basin north of Virginia. It also suspended enforcement of a schedule of compliance contained in the permit for U.S. Steel's Keetac plant near Keewatin, which was supposed to bring that facility into compliance with the wild rice sulfate limit as of 2019. Minnesota Indian tribes and environmental groups have been pushing for more than a decade to get the MPCA to enforce the 1970s-era sulfate standard for wild rice waters. Those efforts have had limited success, at least until now.

In a Feb. 16 letter, the EPA's regional administrator and Great Lakes national program coordinator, Debra Shore, states that the 2015 and 2016 laws suspending enforcement of the wild rice standard "are inconsistent with the Clean Water Act." The EPA letter states that the agency is disallowing the MPCA's efforts to comply with the state laws enacted in 2015 and 2016 as "an improper modification" to its water discharge, or NPDES, permitting program.

According to the EPA letter, the federal agency has authority under federal law to review statutory or regulatory changes made by states if they impact permitting under the Clean Water Act.

"Our review found that the 2015 Sulfate Law and 2016 Sulfate Law: 1) limited MPCA's ability to include sulfate water quality-based effluent limits in NPDES permits that are required to comply with Minnesota's federally-approved sulfate water quality standard, and 2) invalidated sulfate effluent limits in any existing state permits."

The EPA's position puts the MPCA on notice that it is expected to abide by the federal laws pertaining to industrial permitting, rather than state laws, if the state laws contradict federal regulations.

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MPCA spokesperson Darin Broten said the state agency is abiding with the federal law. "The agency will continue to follow the EPA's guidance as long as the Clean Water Act requires us to act or as the result of future litigation," he said.

Impact on mining industry

U.S. Steel's Keetac plant is the facility most immediately affected by the EPA's letter. The MPCA had issued a new Keetac permit in 2011 that required the company to meet the wild rice standard for the first time and established a schedule of compliance that gave the company until 2019 to do so. That requirement was quickly suspended by legislative action. However, the EPA letter states that the schedule of compliance is now enforceable, either by the MPCA, the EPA, or a citizens lawsuit.

The effect on Minntac is less clear given court rulings last year under which that operation will likely need to begin a clean-up of its tailings basin water, which discharges high sulfate wastewater into both ground and surface water through seepage under its tailings basin dike.

A new NPDES permit for the tailings basin, issued in 2018 by the MPCA, has been in litigation for the past four years.

The Minnesota Supreme Court, last year, had sided with the MPCA in its decision to enforce a federal sulfate standard of 250 mg/l on contaminated groundwater under the Minntac operation. The high court also remanded the question of whether the contaminated seepage under the tailings basin dike constitutes a discharge to surface water under the Clean Water Act. The MPCA had originally determined that it did not, but a recent U.S. Supreme Court ruling in the case of County of Maui v. Hawaii Wildlife Fund, found that contaminated discharge through groundwater is regulated under the Clean Water Act if it is the "functional equivalent" of a direct discharge. The Minnesota Supreme Court subsequently concluded that the Maui case was applicable to Minntac's seepage and that the MPCA must reevaluate its decision based on the standards applied in the Maui case.

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