

Tony Kwilas

Attached are the Minnesota Chamber of Commerce comments



August 31, 2023

Assistant Commissioner Dana Vanderbosch
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155

Re: Minnesota Wild Rice Sulfate Water Quality Standard
NPDES/SDS Wastewater Permit Implementation Procedures and Site-Specific Sulfate Standards
Development Framework

Dear Assistant Commissioner Vanderbosch:

On behalf of the Minnesota Chamber of Commerce (Chamber), a statewide organization representing more than 6,300 businesses and more than a half a million employees throughout Minnesota, we appreciate the opportunity to comment on the Minnesota Pollution Control Agency (MPCA) Minnesota's Wild Rice Sulfate Water Quality Standard NPDES/SDS Wastewater Permit Implementation Procedures and Site-Specific Sulfate Standards Development Framework.

While the Chamber and its members have several concerns over the proposed language, ruling by guidance is most concerning. In 2017, the MPCA proposed a rule that included an equation-based approach to determining water body-specific sulfate standards as well as a list of wild rice waters (approximately 1,300) to which the wild rice sulfate standard would apply. In 2018, an Administrative Law Judge disapproved that proposed rule and stated that if the MPCA did not correct the defects associated with their proposal, the proposed rule would need to be submitted to the Legislative Coordinating Commission and the House of Representatives and Senate policy committees. Now, the MPCA has decided to apply and expand their previously ALJ-disapproved list of wild rice waters (to approximately 2,400) through guidance and is also issuing other requirements through guidance rather than following the appropriate rulemaking process – all without a rulemaking or any data to support such requirements. In addition MPCA is proposing that “stand-level documentation of wild rice presence” is sufficient to determine a waterbody is a wild rice water because “[m]inimal stands or sparse rice still constitutes a “production of wild rice.” Throughout the rulemaking process the MPCA was clear that a waterbody containing wild rice needs protection when it is a food source. Minimal stands do not constitute a food source.

Another concern includes the continuous modification of expectations related to sulfate compliance and options for demonstrating site-specific conditions. Requiring 10 years of data before applying for a site-specific sulfate standard is a burden to our businesses from an implementation and financial perspective. The annual cost to gather the necessary data is estimated to be between \$30,000 to \$60,000 per site, and is required over a 10-year period. This cost is not economically feasible for many facilities and municipalities. It is not clear how the gap will be covered while a discharger is gathering data. A facility may be pushed to install expensive, ultimately

unnecessary controls because of the excessive time frame to gather supporting data. Requiring businesses to expend extensive amounts of money to comply with this Framework would be directly contradictory to existing state legislation which prohibits MPCA from requiring permittees to expend money for design or implementation of sulfate treatment technologies or other forms of sulfate mitigation.

An overarching concern is the lack of equitable permitting when implementing the standard. Based on previous webinars there will be disparate treatment for some dischargers as compared to industrial dischargers, even to the same waterbody. The MPCA appears to be rushing the implementation without properly considering the implications to all dischargers since the vast majority of permittees within the state now will be considered as discharging to wild rice waters. Although the notice for meetings was sent out statewide many dischargers likely do not understand that the issue now applies to their facility.

The Chamber is requesting answers to the following questions:

- 1) How can MPCA create and enforce regulatory requirements without going through public rulemaking?
- 2) How can MPCA designate the wild rice beneficial use for waters without going through public rulemaking?
- 3) How can MPCA redefine the definition of “beneficial use” for wild rice without going through public rulemaking?
- 4) How is MPCA collecting data from the Mississippi River to be used for a site-specific standard? Can we please review the data and work plan used by MPCA to collect the data?
- 5) Has the MPCA conducted a review of the cumulative power requirements for facilities to install reverse osmosis systems? Is that additional loading available on the current grid and transport system or will new systems be needed to support the large power increase?
- 6) The Chamber has become aware of an RFP (see attachment) from the EPA looking for a consultant to sample and test up to 15 lakes in Minnesota for sulfate in 2024 and 2025 “to supplement the existing sulfate water quality data set for CWA 303(d) assessment”; what does the MPCA know about the EPA’s reasons for doing this directly?

Please do not hesitate to contact us for clarification on any of our comments or to discuss any of these issues. We look forward to an approach that properly protects rice and commerce within the state of Minnesota.

Respectfully submitted,



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