

**They Want Us To Do
WHAT???**

**Water Quality Standards and
NPDES Permitting**

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**Water Quality
Standards
and
Proposed Changes**

Clean Water Act

Requires states to develop water quality standards; otherwise EPA will do it

States must review and revise these standards where necessary every 3 years

States must identify and list waters that do not meet standards – the 303(d) list

Minimum WQS Elements

1. Designated beneficial uses (swimming, fishing, aquatic habitat, etc.)
2. Methods and analyses (scientific support)
3. Measurement criteria "sufficient to support designated uses"
4. Anti-degradation policy

Beneficial Use Designation

“Attainable” if they can be achieved with effluent limits and/or cost-effective and reasonable best mgmt. practices

States may adopt seasonal uses so long as the more protective use can still be attained

Any changes to standards require notice and opportunity for hearing!

MN Water Pollution Control Act

- ✓ Key definitions: “Pollution of water,” “pollutant,” “sewage,” “industrial wastes,” “other wastes”
- ✓ Assigns MPCA as permitting authority
- ✓ Identifies enforcement tools
 - Permitting
 - Criminal and civil penalties
 - Administrative penalty orders

Designated Use Classes

1. Domestic consumption
2. Aquatic life and recreation
3. Industrial consumption
4. Agriculture and wildlife
5. Aesthetic enjoyment and recreation
6. Other uses
7. Limited resource value waters

Types of Standards

Narrative: "Free froms"

"No material increase," "no significant increase" – 2003-05 legislation to clarify

Numeric: Numbers

Chronic Standard; Final Acute Value;
Maximum Standard

Minimum secondary treatment standards

Antibacksliding

If operating with effluent limits more strict than necessary to achieve standard, can't "slide back" to the standard

Permitting authority can approve relaxed effluent limitations *if*:

- ✓ Reflects treatment capabilities
- ✓ No less stringent than past performance or anticipated future performance
- ✓ Maintain standards in receiving water

Nondegradation

For all waters: *New or expanding* discharges must comply with effluent limits and maintain WQ standards

For Outstanding Resource Value Waters (ORVW's): No new or expanding discharges unless there are *no prudent or feasible alternatives*

Proposed WQS Revisions

Current triennial review cycle began in 2003
... and is continuing ...

Water quality assessment rule changes on
verge of final adoption (10/06 deadline)

Other changes: MPCA hopes to have draft
and SONAR available by the end of 2006,
public hearings early 2007

Summary of Major Changes

- Clarification of nondegradation policy
- Numeric lake nutrient standards
- Changes to phosphorus effluent rule
- Mercury fish tissue standard
- Replacing fecal coliform with *E. coli*
- Human health-based standards
- New standards for pesticides/herbicides

Lake Nutrient Standards

Ecoregion-based numeric standards for:

- ✓ Total Phosphorus
- ✓ Algae (chlorophyll-a)
- ✓ Turbidity (Secchi disk depth)

Separate standards for deep lakes, shallow lakes, trout lakes

Problem:

MPCA does not have flexibility to develop site-specific standards based on local conditions!

Phosphorus Rule Changes

Current Rule: 1 mg/L P effluent limit if discharge is directly to or affects lake or reservoir

Good Changes

- ✓ Specific definitions of "lake," "shallow lake" and "reservoir"
- ✓ Specific definition of "affects"
- ✓ Allows alternative limit or no limit for new or expanding discharges under certain conditions

Phosphorus Rule Changes


Bad Changes

- ✓ Automatic 1 mg/L limit on *all* new or expanding discharges, regardless of effects and regardless of receiving water – HUGE treatment cost
- ✓ Forces dischargers to prove they qualify for an alternative limit rather than MPCA proving that 1 mg/L limit is warranted
- ✓ Ignores temperature and detention time effects on algal growth in riverine systems

Use Attainability Assessments

New language clarifies UAA petition process

- Petitioner must identify uses that do not exist or are not attainable, why designated uses is causing a problem, and provide supporting evidence
- MPCA must respond within 60 days
- If lake will be re-classified, MPCA must use public rulemaking process



**National Pollutant
Discharge Elimination
System (NPDES)
Permitting**

NPDES Authority

Clean Water Act designates EPA as ultimate NPDES permitting authority

EPA can in turn delegate NPDES permitting responsibilities to states

Basic prohibitions 40 C.F.R. 122.4

Minimum requirements 40 C.F.R. 122.44

NPDES Permitting Process

1. Application filed at least 180 days prior
2. MPCA makes *preliminary determination* whether to issue permit
3. Draft permit and fact sheet issued for 30 days of public review and comment
4. MPCA responds to comments and makes any final changes
5. MPCA makes *final determination*

Avenues for Input

- ✓ Negotiate with MPCA on *pre-notice draft*
- ✓ File formal written comments
- ✓ Request public informational meeting
- ✓ Request meeting with MPCA Commissioner
- ✓ Request a contested case hearing

Contested Case Hearing

1. Must request during public comment period
2. MPCA Board decides whether to grant hearing based on three criteria
 - *Material issue of fact* in dispute
 - MPCA has jurisdiction over the matter
 - Hearing would allow introduction of information to help Board make a final decision

Contested Case Hearing

3. If MPCA Board grants hearing, case assigned to Administrative Law Judge (ALJ)
4. Hearing conducted much like a court trial, with evidence, witness testimony, motions, objections, etc.
5. ALJ develops report with recommended findings of fact, conclusions of law, and order

Contested Case Hearing

6. MPCA Board may not act on report for 10 days; parties may file comments or exceptions
7. MPCA Board then considers ALJ's report and accepts, rejects, or modifies
8. MPCA Board's final decision may be appealed, or party may request rehearing

Issues in NPDES Permits

MESERB reviews draft NPDES permits upon request for its members

1. Pretreatment Issues

- ✓ Program required for non-delegated POTWs
- ✓ Expanded definitions of SIUs
- ✓ Pass-through and interference

Issues in NPDES Permits

2. Bypass Structures

- ✓ Removing identification in NPDES permits
- ✓ Could raise liability issues for permittees

3. Mercury Issues

- ✓ POTWs less than 0.5% of impairment
- ✓ Monitoring requirements and TSS limits

Issues in NPDES Permits

4. “Boilerplate” Language Issues

- ✓ Inspection and Entry
- ✓ Duty to Control Users
- ✓ Operations and Maintenance
- ✓ In-Plant Control Testing
- ✓ Construction Limitations
- ✓ Chemical Additives

Conclusions

- Standards relating to nutrients will change dramatically
- Do not rely on MPCA claims of flexibility
- If you want to make changes to a permit, you must act early and assertively

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