



OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA

Water Quality: Permitting and Compliance Monitoring

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Major Findings:

- In mid-2001, 54 percent of Minnesota's "major" facilities with water quality permits (and 41 percent of all water quality permittees) operated with expired permits. This permit "backlog" exceeded federal and state targets, and it was larger than the backlogs of most other states.
- Some factors contributing to the growing permit backlog have been within the direct control of the Minnesota Pollution Control Agency (MPCA), and some have not.
- Permitting delays can adversely affect environmental quality, business decisions, local development, and MPCA's credibility as a regulator, although the impact of delays in individual cases varies.
- A statewide task force recommended in 1995 that MPCA issue more permits per staff person and conduct more inspections per staff person. Since that time, however, MPCA has collected limited information regarding staff productivity.
- The number of water quality "point source" facility inspections declined in recent years, contrary to the recommendations of a 1995 statewide task force.

MPCA should take additional steps to improve the timeliness of its water quality permitting process.



Key Recommendations:

- The Legislature should require MPCA to prepare a progress report for the 2003 Legislature that addresses (1) the status of the water quality point source permit backlog, and (2) the implementation of improvements in the permitting process.
- MPCA should (1) consider ways to increase its number of point source inspections per inspection staff, (2) update the agency's policy on appropriate enforcement responses and ensure its consistent use by staff, and (3) consider options for improving permittee compliance. MPCA should also track the productivity of its permit and inspection staff.

Report Summary

The Minnesota Pollution Control Agency (MPCA) has been Minnesota's main environmental protection agency since its creation in 1967. It monitors and regulates air, water, and land pollution, works with citizens and businesses to prevent pollution, and helps to clean up polluted sites. The agency has a nine-member citizens board and more than 700 staff.

In fiscal year 2001, about 66 full-time-equivalent MPCA staff worked on activities related to the water quality "point source" program. Point sources are municipal and industrial facilities that discharge wastewater to surface or ground water through discrete discharge points. About three-fourths of staff in the water quality point source program issue permits, monitor compliance with permits, or enforce the conditions of permits.¹

MPCA Should Address Problems with the Timeliness of its Permitting Process

The federal government has delegated authority to MPCA and 43 other states to issue National Pollutant Discharge Elimination System (NPDES) permits, and MPCA also issues some "state-only" permits. Permits last for five years, and facilities are required to apply for renewals at least 180 days before the existing permit expires. If the application has been made in a timely manner, the terms of the existing permit remain in effect until MPCA issues a new permit.

In July 2001, 1,424 facilities had NPDES or state-only permits, and 41 percent of these facilities operated under permits that were beyond their

expiration dates. This was 7 percentage points higher than the backlog in 1995, and 13 points higher than a target adopted by a Governor-appointed "Blue Ribbon Task Force" in 1995. In addition, 54 percent of "major" NPDES facilities operated under expired permits, well above the national rate of 25 percent and the U.S. Environmental Protection Agency's target of a 10 percent backlog by the end of 2001.

MPCA issued, reissued, or modified an average of 215 permits annually in fiscal years 1997 to 2001—down from the 236 actions reported by the Blue Ribbon Task Force on Water Quality Funding for fiscal year 1994. In addition, it took an average of 134 weeks in fiscal year 2001 for MPCA to issue a permit after receiving an application, compared with 47 weeks in 1994.

In some cases, delays in the permitting process probably have no adverse effects. In other cases, they may delay implementation of new environmental standards, impede local development plans, or prevent transfers of business ownership. More generally, the inability of MPCA to issue timely permits weakens the agency's credibility as a regulator.

Various factors have likely contributed to growth in the permit backlog, although it is not possible to quantify the impact of each. These include:

(1) changes in regulatory policy that have increased the complexity of some permits; (2) more challenges to draft permits by environmental groups, local government groups, and permittees, combined with MPCA's practice of negotiating disputed matters on a case-by-case basis; (3) confusion and slowdowns caused by MPCA's 1998 staff reorganization; (4) a temporary transfer of staff to MPCA's feedlot

Several factors have contributed to MPCA's large permit backlog.

¹ MPCA has two other water-related regulatory programs (feedlots and stormwater) that this evaluation did not review.

Key permitting and inspection goals established by a Blue Ribbon Task Force in 1995 have not been met.

program in 1998, (5) problems with MPCA's new permit information system; (6) fiscal year 1999-2001 budget reductions in the point source program; and (7) a 4 percent increase since 1995 in the number of point source facilities with permits.

MPCA has implemented several changes in the permitting process recommended by the 1995 Blue Ribbon Task Force, but it should take further steps. For example, options might include staff "forums" to address unresolved permit issues, internal time limits on MPCA actions, adoption of more "general" permits (that can apply to multiple facilities), development of a manual for permit staff, and consideration of rule development for phosphorus and mercury issues that have prolonged many permit actions. MPCA should report to the 2003 Legislature about the status of the permit backlog and improvements in the permit process.

The 1995 Blue Ribbon Task Force recommended that MPCA increase its number of permits issued per permit-related staff. MPCA measured staff productivity for a two-year period, but it has not done so since 1999.

MPCA's Number of Facility Inspections Has Declined

One of the ways that MPCA monitors compliance with permit conditions is through facility inspections. The 1995 Blue Ribbon Task Force set a goal of increasing the percentage of facilities inspected annually—from 32 percent that were inspected at that time to 39 percent. However, MPCA inspected only 17 percent of Minnesota's 1,400 point source facilities in fiscal year 2000 and 12 percent in 2001.

Federal regulations require that states "have procedures and ability" to inspect all *major* NPDES facilities at least

annually. The U.S. Environmental Protection Agency has negotiated less ambitious targets with many states—in MPCA's case, setting a goal of having at least 70 percent of Minnesota's 84 major NPDES facilities inspected over a two-year period, supplemented by additional inspections of non-major NPDES facilities. MPCA records indicate that the agency inspected 68 percent of Minnesota's major facilities over the most recent two-year period—just slightly below EPA expectations. In recent years, MPCA has reduced the proportion of inspections that occur at major facilities, reflecting its belief that smaller facilities sometimes pose greater compliance risks than major facilities.

The Blue Ribbon Task Force set a goal of increasing the number of inspections per full-time-equivalent (FTE) staff. MPCA has not regularly measured this, and it appears that the number of inspections per FTE has not increased.

Facility Compliance Levels Have Room for Improvement

Water quality permittees are required to report information periodically to MPCA on the quantity and content of their discharges, and these reports are the basis for much of MPCA's compliance monitoring.

During 2000, 41 percent of Minnesota's major NPDES facilities, 45 percent of "regular" NPDES facilities, and 16 percent of facilities with "general" or "state-only" permits exceeded their effluent limits at least once. In addition, facilities did not submit 6 percent of the monitoring reports they were required to submit in 2000, and some of the reports that *were* submitted did not have information on all facility discharges.

The federal government focuses on large or multiple violations, recognizing that it is not always realistic for facilities to

achieve 100 percent compliance with effluent limits. In 2000, 18 percent of Minnesota's major facilities were in "significant noncompliance" by federal definitions, and Minnesota's proportion of major facilities in significant noncompliance has been near or below the national rate in recent years.

MPCA has considerable discretion about how to respond to facility violations. Over the past decade, MPCA averaged about 40 formal

enforcement actions against point source facilities per year.² A recent report by MPCA staff acknowledged a need for more timely enforcement and improved compliance monitoring.

The full evaluation report, *Water Quality: Permitting and Compliance Monitoring* (#pe02-03), includes the agency's response and is available at 651/296-4708 or:

www.auditor.leg.state.mn.us/ped/2002/pe0203.htm

Summary of Agency Response:

In a letter dated January 14, 2002, Commissioner Karen A. Studders of the Minnesota Pollution Control Agency said that "this report is an accurate analysis of our water quality point source regulatory program." The commissioner said that "MPCA has been very aware of the backlog in the water quality point source permit program, and the organizational changes we made in November 2001 were designed in part to help us reduce the backlog."

In addition, the commissioner said that MPCA has: (1) identified possible "process improvements" in water quality permitting, compliance determination, and enforcement, (2) obtained legislative authorization for reallocation of six positions to the point source program, (3) started measuring agency performance on a monthly basis, (4) implemented a new employee time tracking system, and (5) assigned staff to prepare a February 2002 plan addressing recommendations in the legislative auditor's report and previous Blue Ribbon Task Force reports.

The commissioner acknowledged that MPCA has not implemented all of the recommendations that grew out of the 1995 Blue Ribbon Task Force report. She said, "There are many factors for this including diversion of agency staff and attention in water from point source issues to controversial nonpoint source issues such as feedlot, Total Maximum Daily Load and stormwater issues."

"Finally," the commissioner said, "the MPCA believes that it is important to re-emphasize to the Legislature and Minnesota public that protecting the quality of Minnesota's waters involves more than controlling industry and municipalities through permits and enforcement." She said that point sources represent about 14 percent of the state's water pollution.

² Enforcement actions include notices of violation, administrative penalty orders, stipulation agreements, and consent orders.