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MPCA seeks to ease exemptions from sulfate discharge rule

ENVIRONMENT

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Marshall Helmberger

REGIONAL— Officials with the Minnesota Pollution Control Agency are facing skepticism over a proposal to make it easier to issue companies variances for sulfate discharges, which are known to negatively impact wild rice.

The state has the nation's stiffest sulfate limit, enacted in the 1970s to protect the nutritious wild grain, which grows more abundantly in Minnesota than anywhere else in the world. But the standard was never enforced until the past decade, when the agency came under pressure from tribes and the federal Environmental Protection Agency to do so.

"The MPCA is committed to enforcing the 10 milligram per liter standard," said Paul Pestano, one of several MPCA officials who spoke during a webinar last week on the agency's plan to use a "multiple discharger variance" to more easily allow companies to exceed that standard. About 180 people attended the virtual meeting and many offered skeptical comments and questions following a presentation of the proposal by MPCA staff.

According to the MPCA, about 600 dischargers in the state are located upstream of wild rice waters, which means they could be subject to the standard. "There will be a large number of [water discharge] permit holders upstream of wild rice waters that likely will have limits," Pestano said. "We've had variance requests already and we expect more."

Pestano noted that variances aren't permanent. They're issued for a limit of five years, although they can be renewed. The standards set in the variances would vary by discharger and would be based primarily on the ability of the discharger, either technically or financially, to reduce its pollution.

The MPCA's Kaity Taylor said such a variance is a regulatory tool typically used when "there is no clear path to meeting a permit limit." As part of the variance request, companies need to agree to accept a discharge limit that reflects the highest attainable pollution reduction with the current technology, essentially "locking in" an agreed-upon number. Currently, the available technology for reducing sulfate is reverse osmosis, a highly expensive process that comes with its own environmental issues.

What remains unclear is how the MPCA's proposal would impact ongoing efforts to bring the state's taconite industry—among the state's largest dischargers of sulfate into wild rice waters—into compliance. During a question-and-answer period following the web presentation, the MPCA declined to address questions related to the taconite industry.

Sulfate discharges from taconite processing operations on the Iron Range have raised sulfate levels in water bodies like Lake Vermilion and Birch Lake, both of which are located downstream of discharges from taconite mines.

Public wastewater treatment plants can be another significant generator of sulfate, although that is often more dependent on sulfate levels in the source water being treated by such facilities.

Sulfate not only contributes to the decline of wild rice, it is known to facilitate the methylation of mercury, allowing it to accumulate within the aquatic food chain.

Members of the public attending the webinar expressed doubts that the agency can better enforce a standard by simplifying the process for exceeding it. "Why create legal loopholes?" asked one participant. "Won't this make it harder to enforce wild rice standard?"

Others questioned the MPCA's commitment to addressing the sulfate issue. "Isn't it true that MPCA has never brought an enforcement action against a violation of this standard?" asked another participant, although MPCA officials opted not to answer.

"Would mining companies be allowed to apply for this variance?" asked another participant.

"Any facility can request coverage," said Taylor, "but they have to qualify based on criteria."

Others questioned whether the proposal wasn't simply about kicking the can down the road. "This could take years to set up," said Paula Maccabee, who noted that Minnesota has never done a

multiple discharger variance. "Meanwhile, it would waste tribal, community, and staff time that could have been better used developing individual variances. Or better yet, said Maccabee, "we'd like to see, plain and simple, enforcement of the standard."

Public process

While the MPCA is pursuing the multiple discharger variance, it is also seeking input from the public, and last week's webinar was an initial part of that outreach. "There will be a public notice and comment period," noted Pestano. MPCA officials offered no timeline on when the new process would actually be established and how long it might take to determine which facilities might qualify for a variance and what the parameters on any variance might be.

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