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Ned Brooks (ned.brooks@state.mn.us)  
Minnesota Pollution Control Agency  
520 Lafayette Road N  
St. Paul, MN 55155-4194

RE: Minnesota Pollution Control Agency Environmental Justice Framework

Dear Mr. Brooks:

WaterLegacy appreciates the opportunity to comment on the Minnesota Pollution Control Agency (MPCA) Environmental Justice Framework 2015-2018 (EJ Framework).

WaterLegacy is a non-profit organization formed to protect Minnesota water resources and the communities that rely on them. In our work to prevent pollution of drinking water and surface water, we have learned that environmental justice communities (low-income communities, communities of color and tribal communities) often experience disparate impacts from mining and other industrial facilities due to the location of the facilities and the reliance of members of these communities on activities such as gathering wild rice and fishing for subsistence that depend on clean water and undegraded habitats. Children and the elderly are also more vulnerable to contamination of drinking water, plants and fish with toxic chemicals, such as arsenic, manganese, lead and mercury.

WaterLegacy supports many of the sentiments expressed in the MPCA EJ Framework. But, we are troubled by what we have seen in MPCA's practice the past several years. MPCA's actions in the context of regulation and control of mining pollution have consistently contradicted stated EJ Framework principles. Community participation, health risk assessment, compliance with numeric and narrative water quality standards, consultation with tribal governments, and ensuring that water quality standards protect designated uses have all been highly expendable.

We appreciate that there may be opportunities for environmental justice beyond permitting or enforcement action (EJ Framework, p. 5). However, the basic minimum that environmental justice communities and vulnerable populations, such as children and the elderly, must be able to rely on from the MPCA is rigorous permitting and enforcement. Without measureable reduction of pollutants through regulatory action, environmental justice will be no more than a theory, at best, if not a distraction from the difficult work of limiting pollution and enforcing those limits.

WaterLegacy doesn't question the sincerity of the writers of the MPCA EJ Framework. However, we question the efficacy of this Framework either to protect the environment or to prevent continued environmental injustice in Minnesota. WaterLegacy recommends that the

MPCA's EJ Framework include actionable and enforceable measures well within the discretion of the Agency, if not already required by applicable law, as follows:

1. Upon a request for a hearing by any interested person showing that any NPDES permit may have the potential to cause or contribute to disparate impacts on an environmental justice community or a showing of significant public interest through either 25 or more citizen comments or the expressed concern of a tribal government or non-governmental organization representing a low-income community or community of color, MPCA shall strictly comply with federal regulations requiring a public hearing for NPDES permits. 40 Code of Federal Regulations, §§ 124.11, 124.12 and 124.13 (2015).
2. Upon a request by either 25 or more medical or public health professionals, an association of medical or public health professionals serving potentially affected communities, or the request of a tribal government or a non-governmental organization representing a low-income community or community of color for a health risk assessment (HRA) or health impact assessment (HIA) for a proposed water, air, solid waste, hazardous waste permit or any project subject to environmental review that may have the potential to cause or contribute to environmental injustice or environmental health impacts on children or the elderly, MPCA shall engage the affected community in scoping and provide the requested HRA and/or HIA, in collaboration with the Minnesota Department of Health.
3. Upon a petition by 25 or more interested persons, or a request from a tribal government or a non-governmental organization representing a low-income community or community of color showing that the MPCA's failure to issue a current NPDES permit where the prior permit has expired may have the potential to cause or contribute to disparate impacts on an environmental justice community, the MPCA shall prepare a public notice for issuance of that NPDES permit within 90 days and directly involve the petitioners and the affected environmental justice community in determination of the conditions for the permit.
4. MPCA shall adopt no rule or rule amendment that has a reasonable potential to cause or contribute to disparate impacts on an environmental justice community.

WaterLegacy would be interested in meeting with the MPCA to discuss these proposals and other simple and actionable policies that would protect environmental justice and environmental health in Minnesota. Please feel free to contact me by phone (651-646-8890) or by email (pmaccabee@justchangelaw.com). We look forward to working with the MPCA to strengthen the proposed EJ Framework.

Sincerely yours,



Paula Goodman Maccabee  
Advocacy Director/Counsel for WaterLegacy