

MCEA filed a petition for corrective action in 2009 that alleged the Minnesota Pollution Control Agency had failed to correct tens of thousands of straight-pipe sewage discharges because it lacked an adequate surveillance system capable of identifying the discharges. These discharges of untreated sewage are illegal under the Clean Water Act and under state law. Federal regulations require that “State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance with applicable program requirements.” 40 C.F.R. § 123.26(b). The state program must be capable of “comprehensive surveys of all facilities” subject to regulation.<sup>1</sup>

In its initial findings responding to MCEA’s petition, EPA found that “[t]he State remains responsible for inventory, compliance evaluation, and enforcement for non permitted point sources.”<sup>2</sup> EPA also determined that “section 301 of the [Clean Water Act] and Minn. Adm. R. 7001.1030, Subp. 1 apply even if an inspection is not performed.”<sup>3</sup>

Minnesota law requires inspections for new, expanding, or replacement septic systems.<sup>4</sup> The law also defines minimum standards for groundwater separation in existing systems.<sup>5</sup> These systems were not the focus of MCEA’s petition. Inspections of these systems do not correct straight-pipe discharges.

Local governments inspected 11,568 septic systems in 2013.<sup>6</sup> The vast majority of these inspections (at least 8,920) were conducted pursuant to a permit for a new or replacement system.<sup>7</sup> Any system inspected and found to be a straight pipe discharge must, by law, be reported to MPCA.<sup>8</sup> This is the only method the state has to track correction of straight pipe systems. In the eight years since the mandatory reporting requirement was imposed, only 613 straight pipe systems have been reported. As shown on the chart below, the rate of straight pipe reporting has been consistent.<sup>9</sup>

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<sup>1</sup> 40 C.F.R § 123.26(b).

<sup>2</sup> *Initial Results of a Review of the National Pollutant Discharge Elimination System Program in the State of Minnesota*, EPA Region 5, May 2013 (“EPA Initial Results”), at 19.

<sup>3</sup> *EPA Initial Results* at 17.

<sup>4</sup> Minn. Stat. §115.55 subd. 5.

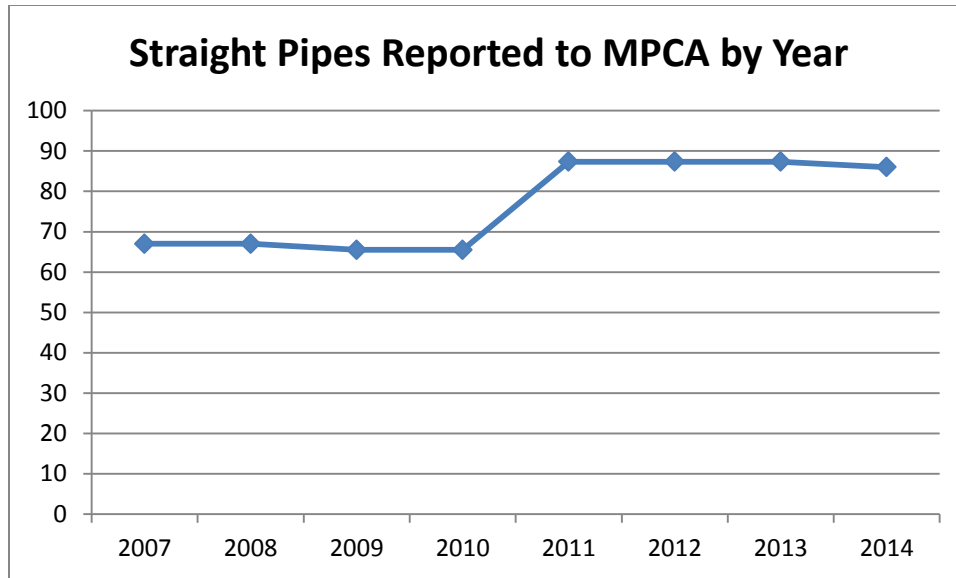
<sup>5</sup> *Id.* at subd. 5a.

<sup>6</sup> MPCA 2013 Annual Report data.

<sup>7</sup> State law requires inspection for all installation of new and replacement septic systems. Minn. Stat. § 115.55 subd. 5.

<sup>8</sup> “An inspector who discovers the existence of a straight-pipe system shall issue a noncompliance notice to the owner of the straight-pipe system **and forward a copy of the notice to the agency.**” Minn. Stat. §115.55 subd. 11 (emphasis added). “Agency,” as used in the chapter, refers to MPCA. Minn. Stat. § 115.01 subd. 2.

<sup>9</sup> Chart data are derived from updated totals contained in *SSTS Report*, MPCA, August 2008; *SSTS Report*, MPCA, June 2010; Letter from John Linc Stine to Susan Hedman, July 12, 2013 (response to *EPA Initial Results*); email from Ron Swenson to Michael Schmidt, June 12, 2014.



The straight pipes reported in 2013 are in line with the annual average since 2006 of approximately 78 per year. At the current rate of MPCA's reported corrections, it will take 385 years to correct the remaining 30,000 discharges and achieve full compliance.

MPCA has stated that it is seeking to increase the rate of local government estimates of noncompliance.<sup>10</sup> These estimates do not result in correction of straight-pipes, as EPA found in its review of the program: "estimates by local governments are not based on an inventory of noncompliant straight pipes that MPCA can address through an enforcement response."<sup>11</sup> Obtaining additional estimates does not constitute an inventory, does not trigger corrective or enforcement action, and does not comply with Section 301 of the Clean Water Act. The annual estimates do not meet the requirements of 40 C.F.R. § 123.26(b) for a "comprehensive survey."

In summary, there is no evidence that the local government reporting leads to compliance or that the correction of straight pipe septic systems has increased. The state's current approach is delivering a multi-century pace to eliminate straight-pipe discharges. A comprehensive inventory is needed to address the straight-pipe systems and achieve compliance on a reasonable timeframe.

<sup>10</sup> Letter from John Linc Stine to Susan Hedman, July 12, 2013 (response to *EPA Initial Results*), at 3.

<sup>11</sup> EPA Initial Findings at 22.