



Minnesota Center for Environmental Advocacy

The legal and scientific voice protecting and defending Minnesota's environment

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May 4, 2011

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USEPA REGION 5

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Re: October 5, 2009 Petition to USEPA from the Minnesota Center for
Environmental Advocacy for De-Delegation or Corrective Action; Straight-Pipe
Septic Systems

Dear Ms. Beese and Ms. Davison,

This letter is written as a follow up to our April 19th conference call regarding
EPA's review of MCEA's petition related to illegal, point source onsite
wastewater treatment systems ("straight-pipe" systems). We thank you for the
opportunity to present options for corrective action that we believe would
comport with EPA's program criteria at reasonable cost.

Statewide Inventory of Straight-Pipe Systems

As EPA is aware, straight-pipe systems are illegal under the federal Clean Water
Act and Minnesota law. Further, Minnesota law requires upgrade of these
imminent public health threat systems within 10 months of their identification and
notice to the property owner. As MCEA detailed in its petition, however, the
Minnesota Pollution Control Agency (MPCA) lacks a program capable of
comprehensive inspection and surveillance. As a result, straight-pipe systems are
only being identified and addressed at the rate of 72 per year (*Recommendations
and Planning for Statewide Inventories, Inspections of Subsurface Sewage
Treatment Systems*, MPCA, Jan. 2011), meaning that these illicit discharges will

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not be fully addressed for another 555 to 674 years, depending on which of MPCA's highly variable estimates of the number of imminent threat systems is used. Clearly, the key to resolution of the problem lies in identification of straight-pipe systems via a comprehensive status inventory of sub-surface treatment systems (SSTS), instead of continued reliance on "incidental observations" and sporadic state-funded voluntary inventories by local governmental units. Following are two options for systematic inventories with varying costs to the public.

1. Require property owners with SSTS to validate system function.

The option posing the lowest public cost entails amending state rules to include a requirement in county ordinances that owners of improved properties not served by publicly owned treatment works (POTWs) provide proof of compliance of their SSTS. Property owners with a valid Certificate of Compliance for their system would be exempt. Public costs would be limited to initial homeowner notification costs and follow up work on parcels for which proof of a proper system was not provided. Legislation introduced (but not enacted) in 2003 contained this option, with county costs funded by a nominal one-time registration fee paid by the property owner. A variant or adjunct to this approach would be to require property owners or licensed professionals to supply proof of system pumping. As straight-pipe systems do not need to be pumped, this method would serve to separate properly maintained systems from straight-pipes.

2. County conducts a "paper inventory" followed by targeted field inspections.

A variant of the above, the counties can be required (and funded) to conduct an initial "paper inventory" of SSTS in their jurisdiction by comparing records of improved properties not served by a POTW with county records of SSTS status filed since January 1996. Once this process has narrowed the number of properties of concern, notice may be sent to homeowners requiring proof of compliance, with subsequent field inspections to identify imminent threat systems.

MCEA understands from our April 19th conference call that the MPCA has cited a lack of resources to EPA as a rationale for not taking the corrective actions set forth in MCEA's petition. MCEA notes the following in response to MPCA's claim.

- Option 1 above imposes little public cost, instead placing the burden of proof on owners of improved properties not served by a POTW.
- Although option 2 poses greater public costs, such costs are not extraordinary, and are well within the range of resources available to the state through the Clean Water Land and Legacy Amendment (constitutionally dedicated funds). In its *10-Year Plan to Upgrade and Maintain Minnesota's On-site (ISTS) Treatment Systems, Report to the Legislature*, MPCA estimated that the support needed for competent county programs that include full inventories of compliance and maintenance status would be around \$2.3

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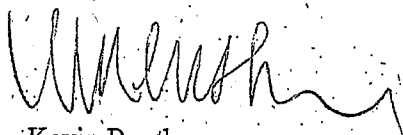
million per year. Of course, since straight-pipe systems are a legacy issue, they only need to be identified once, so even this amount would not be an ongoing cost. By contrast, the Clean Water Land and Legacy's Clean Water Fund is currently providing about \$170 million per biennium.

- To the extent that MPCA has claimed to EPA that straight-pipe systems are unimportant relative to other water quality programs competing for resources, MCEA again notes that Minnesota has over 200 water bodies on its inventory of impaired waters that are impaired by fecal coliform/e. coli bacteria. Each among the dozen or so approved TMDLs for bacterial impairments cites straight-pipe septic systems as a leading cause. These systems are uniformly assigned a zero wasteload allocation in these TMDLs, because they are illegal. However, implementation of this WLA through identification and system upgrade remains spotty and subject to the political will of the local unit of government.

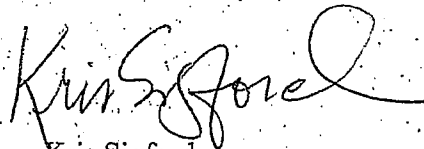
The existing local jurisdiction reporting system MPCA relies on and discusses in its January report is not effective (as demonstrated by the reported upgrade rate of 72 systems per year), nor does it serve as an accurate metric. MCEA provides as an attachment to this letter an update to our petition submittals that responds to the MPCA's January report that erroneously cites a recent positive trend in this metric. Please make this letter and the attachment part of the public record in this matter.

Thank you again for the opportunity to provide options for corrective actions to this aspect of Minnesota's NPDES program. We look forward to receiving EPA's protocol for investigating this portion of MCEA's petition, and to working with EPA and MPCA to identify and eliminate these point source discharges in an expeditious fashion.

Sincerely,



Kevin Reuther
Legal Director



Kris Sigford
Water Quality Director

cc: George Azevedo
Rebecca Flood

Attachment