Coalition of Greater Minnesota Cities
Environmental Regulation Reform Priorities in SF 723/HF 888

1. Permit and Comment Period Extension (SF 672 Ruud/HF 766 Swedzinski)

- Provision provides city leaders, especially in smaller cities where city councils meet less frequently, the time they need to analyze and make decisions about MPCA requirements that could have multi-million dollar effects on their communities.
- City leaders raised this issue during fall 2016 listening sessions. After no changes were proposed, a letter was sent to the MPCA commissioner in December 2016. After no response was received, this legislation was drafted and introduced. It was amended to address initial concerns raised by the MPCA.
- Requires that the MPCA provide cities draft permits 30 days before public comment period begins and extends comment period by an additional 30 days. (*Identical language R70: House 90.26/Senate 83.6)*
- Extends comment period for impaired waters from 30 days to 60 days. (*Identical language R66: H87.5/S82.30)*
- Allows a contested case petition challenging the inclusion of a water body on the impaired waters list. (*Identical language R66: H87.7/S83.1)*

Objections and Response

- MPCA argues additional days for commenting on permits impede its 150-day permitting goal.
  - *Cities, especially small ones, need more time for comment so that city leaders can get involved and make important decisions.*
  - *Many cities have waited 1-2 years or more for expired permits to be re-issued. If government agencies are allowed lengthy time periods, it's only fair to allow cities this small request.*
- MPCA claims that allowing contested case challenges delays the public's ability to know what's on the impaired waters list.
  - *The public can see what is on the draft impaired waters list so their knowledge is not impeded. If there is a scientific basis for challenging something on the list, it is in the public's best interest to consider that challenge.*

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2. Strengthening the Prohibition against Unadopted Rules (SF 695 Newman/HF 702 O'Driscoll)

- The MPCA is using interpretative statements and similar documents to impose restrictions that are far more stringent than adopted during the water-quality rulemaking process.
- Requires that if the MPCA is going to enforce a policy or similar document as if it was a rule (under the statutory definition of rules), the MPCA must follow rulemaking procedures. (*Similar language. Senate preferred. R83: S117.18)*
- If a policy or similar document meets the statutory definition of a rule and is challenged, the commissioner must overcome a presumption against unadopted rules. (*Similar language. Senate preferred. R83: S117.18)*
- If the MPCA incorporates a policy by reference into a rule or statute, it needs to go through rulemaking if it makes changes to that policy. (*Similar language. Senate preferred. R83: S117.26)*

Objections and Response

- The MPCA argues that this change would not allow it to issue guidance documents that help permittees understand the rules and to respond to emerging technologies.

- *This claim is not true. The MPCA could still issue guidance documents. This change would mean the MPCA could no longer get around the due process protections provided in the rulemaking process by mislabeling a rule as something else, such as a "guidance document."*
- *Without the protections of the rulemaking process, cities, counties and others could face costly environmental regulations that have not been properly vetted.*

- The MPCA claims it does not rely on unadopted rules.
  - *42 cities in the Minnesota River Basin have raised concerns because MPCA is using a policy document to impose regulations that are potentially six times more restrictive than the law allows.*

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3. Independent Review of Scientific Basis for Agency Decisions (SF 695 Newman /HF 702 O'Driscoll)

- There is no cost-effective way for cities to have an independent review of the development and implementation of MPCA's science. When hundreds of millions of dollars will be spent on public infrastructure, it is reasonable to allow an outside review to provide a second opinion.
- Allows local governments units (LGU) to request the Office of Administrative Hearings (OAH) to convene an independent expert peer review of MPCA rules or the implementation of those rules via water-related permits. (*Similar language. Senate preferred. R109.32).*
- Ensures that the review panel is independent of MPCA and petitioning LGU. (*Similar language. Senate preferred. R83: S110.14)*
- Requires OAH to independently examine the MPCA's administrative record to ensure that it demonstrates that MPCA's water quality science is sound and based on peer-reviewed science. (*Similar language. Senate preferred. R67: S109.6)*

Objections and Response

- MPCA claims the petition and independent scientific review process will increase its budget.
  - *Because only LGUs, who also have limited resources, can bring a petition, there will not be an explosion of challenges. Moreover, the MPCA could prevent these challenges by responding earlier in the process when challenges are raised.*
- MPCA argues that the review process is duplicative and will increase litigation.
  - *The independent scientific process is not duplicative. Currently, there are no procedures allowing for an independent, outside look at whether the MPCA's water quality regulations are scientifically sound in design and implementation. Because the review happens on the front-end prior to litigation, it will incentivize settlement of disputes.*
- MPCA argues that the independent examination overturns long-standing deference to agency decision making.
  - *When agency regulations can lead to expensive upgrades that may hamper economic growth and may fail to address the claimed environmental harms, cities deserve a second opinion. This change simply requires OAH to independently examine the administrative record and the findings of the independent review panel to ensure that MPCA's proposed action in a water-related permit is reasonable and scientifically sound.*