



NPDES Permit Process — Know Your Rights

If your city or sanitary district's NPDES permit is nearing expiration, currently expired, or you receive any communication from the Minnesota Pollution Control Agency (MPCA) related to new limits or other requirements in your permit, we recommend that you engage in the permit process promptly. Early and informed participation with the MPCA is essential to protect your rights and to ensure scientifically sound and reasonable permit conditions. **As a MESERB member, you are eligible to receive a free initial permit review by our legal team and technical advisors — please take advantage of this membership benefit!** If and when you receive contact from the MPCA, you should undertake the necessary technical and legal analyses to verify that the permit requirements are valid.

The following is a brief outline of some of the legal issues and pitfalls you should recognize and understand as you proceed through the NPDES permitting process:

<ul style="list-style-type: none">• As permittee, you have the right to contest any unjustified limits or conditions imposed in your permit by petitioning for a contested case hearing before an Administrative Law Judge (ALJ). If environmental engineering analysis shows technical, legal, data or methodological issues or deficiencies with permit conditions and those issues are not corrected to your satisfaction, serious consideration should be given to challenging the draft NPDES permit through the filing of a petition for a contested case.
<ul style="list-style-type: none">• It is simple and relatively inexpensive to file the petition. Doing so maintains your bargaining strength with the MPCA in order to correct the deficiencies in the draft permit. If the MPCA corrects the deficiencies, you can always withdraw the petition. If you do not maintain your rights in this way, there is a risk that the MPCA will issue the permit without correcting it.
<ul style="list-style-type: none">• Prior to public notice of your NPDES permit, you may request that the MPCA issue a preliminary draft permit and fact sheet for you to review and analyze. We strongly recommend that all permittees request at least 90 days to perform preliminary review and analysis. If you are proactive in the permit process, you can more effectively negotiate reasonable permit conditions before the draft permit is put on the 30-day notice and public comment period.
<ul style="list-style-type: none">• You will lose your right to request a contested case hearing if you do not file the petition for a contested case during the 30-day notice and public comment period. Permittees must note that there is 30-day time limit to submit comments on a draft NPDES permit and/or file a petition for a contested case hearing once a draft NPDES permit is placed on public notice and comment.
<ul style="list-style-type: none">• If Do Flux or BOD5 are used by the MPCA to justify a phosphorus limit in your draft NPDES permit, we recommend that you take all necessary action to preserve your legal rights — including but not limited to the filing of a contested case hearing challenging the permit — because use of these variables to determine nutrient impairments is scientifically flawed.
<ul style="list-style-type: none">• Be wary of verbal promises of leniency from the MPCA, such as offers for possible variances or flexible compliance schedules in exchange for acceptance of unsupported permit conditions or limits. Once a limit is in your permit, it is extremely difficult to make changes in the future. Relying on such promises could have significant cost and regulatory ramifications for your community and could waste limited clean water resources that could be used more effectively.

If and when the MPCA contacts you about renewing your permit, please let us know so we can arrange for your free initial permit review and monitor the situation and actions of the MPCA to keep other MESERB members informed. We hope your NPDES permitting process will go smoothly, but you should know and exercise your rights as the process unfolds.

If you have any questions or want to schedule your free initial permit review, please get in touch with our legal consultant team at Flaherty & Hood P.A. by contacting Daniel Marx at 651-259-1907 or dmmarx@flaherty-hood.com.