

Testimony of Betsy Lawton on HF1003

Good morning, Mr. Chair, members of the committee. My name is Betsy Lawton, and I am the Water Quality Associate at the Minnesota Center for Environmental Advocacy. Thank you for the opportunity to testify on HF1003.

The Minnesota Center for Environmental Advocacy is a 43-year-old environmental organization that specializes in law and policy. We employ lawyers and experts and our lawyers practice in environmental and administrative law, many of whom have specialties in the area of the Clean Water Act and the state laws and rules that govern Minnesota's implementation of the Clean Water Act.

I am here today to express MCEA's opposition to HF1003. MCEA opposes the bill for three reasons:

1. it gives a free pass to those who discharge pollution into our lakes, rivers, and streams, in violation of the Clean Water Act;
2. it increases uncertainty about the validity of permits, because permits that violate the Clean Water Act could be challenged,
3. it will result in a delay in making needed changes to clean up our waters, and increases the cost of the eventual clean-up.

I will expand a bit on each of these points. First, the free pass for pollution. As you have heard, this legislation exempts sewage plants and industrial facilities that construct a wastewater treatment plant from meeting new limits that are needed to protect water quality and human health but that require the facility to make some additional capital investment. Without these limits, facilities could discharge more pollution than is safe for Minnesota waters. This exemption lasts 16 years – a time period which is not based on costs of compliance, time needed to upgrade, or the impact of the facility's pollution.

Second, because this law conflicts with federal law, it actually increases uncertainty about the validity of permits, rather than decreasing it. To understand this, we need to understand how the PCA sets water quality standards under the Clean Water Act. First, states like Minnesota set levels of pollutants necessary to keep Minnesota waters clean enough for fish to live in and humans to swim in, boat on, and drink – these levels are called water quality standards. New and updated standards are adopted as PCA identifies pollutants that are causing problems in Minnesota waters – for example PCA fairly recently adopted standards to protect waters from excess algae, and PCA has noted the need for water quality standards to protect fish from excess nitrate.

Under the Clean Water Act, Minnesota also must issue permits for pollution discharged from sewage plants and industrial facilities to rivers and lakes – these permits must limit the amount of pollution entering our waters – this is to keep our waters from becoming too polluted. The state must reissue these permits every five years. This five year time frame is important because it is meant to ensure continual progress in cleaning up pollution. When these permits are reissued, the Clean Water Act requires the new permit to include limits that reflect the latest data on pollution levels in our water and limits that

meet the water quality standards Minnesota has set to protect fishing and swimming and other recreational activities. It is these limits – the limits to meet the standards we need to protect fish, recreation, and drinking water, that facilities would be exempt from.

If a permit doesn't contain limits to meet new water quality standards, or a facility doesn't comply with existing standards, that permit violates the Clean Water Act. So here, where state law says the facility doesn't have to comply with water quality standards, and federal law says it does, that permit can be challenged in state court and does not provide the kind of certainty that a facility might be looking for.

Third and finally, this bill could ultimately increase costs for some facilities. Water quality standards are designed to keep waters from becoming too polluted. A sewage plant operator may choose to delay upgrades to its facilities because it knows it would have to comply with water quality standards when it did that. But preventing pollution from these sewage treatment plants is far cheaper than cleaning-up waters after they become polluted. Thus, in the long-term, municipalities have to deal with higher clean-up costs instead of the up-front cost of preventing pollution before it happens. In the meantime, water pollution will harm public health, fish populations and tourism.

Ignoring the problem of dirty water doesn't make it go away. It just makes it more and more expensive to clean up in the future.

Thank you for your time and attention today, and I'm happy to take any questions you might have.

Examples if needed:

1) Sometimes, especially right after it adopts a new standard like the river eutrophication standards, MPCA doesn't have as much data as it wants to be sure it is setting pollution limits that are protective for sensitive local streams. When that is the case PCA sets permit limits to protect water quality downstream and recommends more data be collected in local streams.

To meet these limits for downstream waters, a facility may have to upgrade, or construct, treatment technology. But these upgrades might not be strict enough to protect the local streams that can't handle as much pollution. If that's the case, the sewage treatment plant would have to reduce its pollution even more the next time its permit is reissued.

MCEA does not agree with this approach because PCA may be requiring sewage treatment plants to build new technology to meet new limits, and then requiring a facility to do more in five years when it collects the data on the local streams. This doesn't make sense. But this bill doesn't fix that problem. The solution to that problem is to require PCA to get the data about the local streams before requiring a capital investment. This bill just puts off costs the facility will have to incur until some future time, when the pollution has gotten worse and is harder and more expensive to clean-up.

That's not a wise approach for Minnesota water quality or sewage treatment plants that could be subject to permit challenges because their permits don't limit pollution enough to protect water quality, or future increased costs to deal with massive pollution problems.

2) Often a sewage treatment plant must rebuild or upgrade simply because the facility is several decades old. It doesn't make sense to delay making upgrades to these new facilities when new water quality standards are adopted - it costs a whole lot more to clean up pollution than to prevent it, and this delay just creates increased costs for municipalities down the road. In the meantime, the water isn't getting any cleaner, fish and humans are harmed, and the costs the municipality will still have to make the changes.