

WILD RICE BILL

SUMMARY:

This bill attempts to remove the Minnesota Pollution Control Agency's authority to protect wild rice from sulfate pollution by ending the current rulemaking and abrogating the wild rice standard in state law. But because legislation cannot abrogate the federally-approved sulfate standard, this bill will not create any regulatory certainty and will only create confusion and litigation. Current legislation already protects industry from the cost of compliance until the rulemaking is done, making this bill unnecessary.

THE SCENE:

**1973:** PCA proposed-- and the EPA approved-- a standard of 10 mg/L sulfate to protect wild rice.

**2011:** Convinced that the existing water quality standard was scientifically unsupported, the Minnesota Legislature:

- **appropriated \$1.5 million to research the impacts of sulfate on wild rice; and**
- **prohibited PCA from enforcing the existing standard until the existing standard is revised.**

**2017:** PCA proposed a new sulfate standard protective of wild rice based on the scientific studies, but the Office of Administrative Hearings recommended that PCA not approve the rule although the proposal for how to calculate the standard was approved.

**2018:** PCA intends to move forward with the rulemaking as provided by law.

Under the Clean Water Act, the existing sulfate standard must be enforced until, following proper procedures, EPA approves a substitute standard. In 2016, in response to a Petition to decertify MPCA's authority to implement the Clean Water Act in Minnesota prompted by the legislation prohibiting MPCA from enforcing the current wild rice standard, the Minnesota Attorney General certified that the MPCA still had the authority to implement the Clean Water Act in view of the ongoing rulemaking because, once the standard is revised and approved by EPA, MPCA "will have full and unrestricted authority to enforce the Standard."

## THE ISSUES:

### This bill would:

- Stop the existing wild rice sulfate rulemaking process and instead effectively repeal all water quality standards that protect naturally-growing wild rice.
- Prevent MPCA from establishing any science-based numeric limits on the amount of sulfate in wastewater to protect any wild rice in any water body in the state of Minnesota, including waters designated for the protection of wild rice (the “WR” waters).
- Limit the application of the existing EPA-approved sulfate standard (10 mg/L) to protection of commercially-grown paddy rice (which does not need protection) and even then prohibit MPCA from applying the existing standard to protect a water body until *after* the water is actually appropriated for commercial use, which means that the water can be allowed to exceed the standard until a commercial grower wants to use the water.
- Force MPCA to go through two rulemakings (one to establish the criteria for listing and one to list) in order to protect any additional waters as exceptional quality “WR” protected waters.
- Provide that no regulated party is required to take any action or bear any burden arising from the nullified water quality standard for sulfate (unless requested by the permittee), while preserving existing legislation that provides the same protection for discharges until after the wild rice rulemaking is complete.

## THE OUTCOME:

**If this bill is passed, the existing sulfate standard to protect wild rice will remain in place under federal law. EPA cannot approve removal of this standard except in compliance with the Clean Water Act.**



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