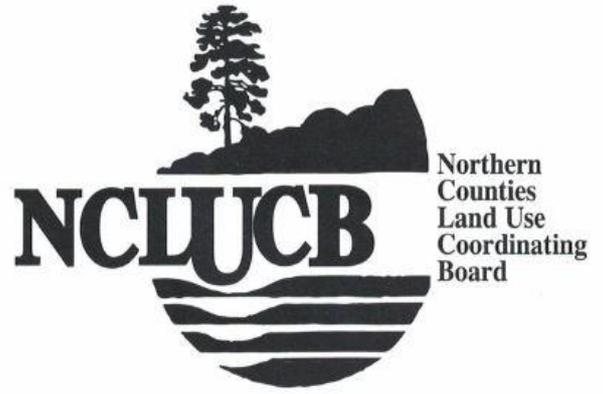


November 22, 2017

Judge LauraSue Schlatter  
Administrative Law Judge  
Office of Administrative Hearings  
P.O. Box 64620  
St. Paul, Minnesota 55164-0620



DOCKET 80-90030-34519

Dear Judge Schlatter:

The Northern Counties Land Use Coordinating Board (NCLUCB) is a joint powers board consisting of appointed county commissioners from nine counties in Northern Minnesota: **Aitkin, Cook, Itasca, Koochiching, Lake, Lake of the Woods, Pennington, Roseau and St. Louis.** NCLUCB's purpose is to exchange information and discuss policies and programs affecting the natural resources of our region. For over thirty years NCLUCB has respectfully promoted communication and coordination among federal, state and local environmental and natural resource agencies. NCLUCB counties encompass over 50% of Minnesota's regulated water and wetland resources, including the majority of the Minnesota Pollution Control Agency (MPCA) listed wild rice waters. As elected officials within a region that will, therefore, incur a disproportionate share of the economic consequences of the proposed rule, we do not believe the new regulatory scheme has achieved a level of technical confidence to justify its adoption, implementation and enforcement at this time.

While we do not presume to technically critique the scientific research, protocols, findings or conclusions regarding the MPCA's proposed sulfate standard for wild rice waters, we are obligated to represent the questions, concerns and underlying public policy assumptions that have characterized discussions among elected local officials and our constituencies on this issue for your consideration. Based on our discussions with MPCA officials, affected municipal and industrial permittees, research and engineering professionals and our review of the documents and analyses submitted, we have the following comments:

**Documented Decline in Wild Rice Resources.** NCLUCB formally requested that the Statement of Need and Reasonableness (SONAR) provide a background narrative that documented the geographic and temporal decline in wild rice waters and to generally provide a hierarchy of natural and anthropogenic factors leading to that decline. A MPCA representative indicated to our board verbally that such evidence was only anecdotal and would not be reflected in the SONAR.

**Effectiveness of the New Standard and Protocol.** NCLUCB anticipated an MPCA assessment of the effectiveness of the new standard in addressing the goal for preserving and enhancing wild rice ecosystems generally and wild rice specifically. There does not appear to be any assurance in the SONAR or appended documentation that the standard will achieve its stated purpose. The SONAR acknowledges many other factors besides sulfate/sulfide affect the presence or absence of wild rice: soil characteristics, sediment type, land use practices, hydrology, and invasive species. The SONAR simply states that these other factors are outside the scope of this regulatory proposal. Presenters to the NCLUCB board have indicated that the formula proposed

Member Counties:

- Aitkin County
- Cook County
- Itasca County
- Koochiching County
- Lake County
- Lake of the Woods
- Pennington County
- Roseau County
- St. Louis County

for establishing discharges based on anticipated sulfate/sulfide conversion ratios are under or over predicting sulfide concentrations 20% of the time. Field observations presented to the NCLUCB board indicate that wild rice stands are present in waters where ambient sulfide concentrations in the host sediments are from three to ten times greater than the targeted sulfide level. This field level observation suggests that the MPCA's rulemaking is not "reasonable" given the millions of dollars projected to achieve compliance with a sulfate discharge standard that is not assured to achieve the environmental benefits envisioned.

**Reliance on a Variance Process to Assuage Concerns.** The MPCA suggests that municipalities and manufacturers that cannot comply with the discharge standard due to unreasonable costs of treatment or technologically unachievable compliance may apply for a variance from the calculated discharge level. In our discussions with municipalities and industry representatives, the variance alternative does not inspire confidence. Their comments reflected the following:

- the variance process may accommodate discriminatory enforcement against specific industrial sectors or regions,
- will promote third-party intervention in variance applications,
- cannot assume Environmental Protection Agency harmonization, and
- a deep concern regarding the discretionary nature and unpredictability of the variance process.

**The Costs and Benefits of the Rule.** Simply put, while the costs of compliance can be generally established, the MPCA acknowledges that the benefits are not or cannot be established at this time. We conclude that until further research on the relationship between sulfate discharges and wild rice health and abundance is undertaken, the proposed rule should be suspended. Our citizens, communities, businesses and employers should have the opportunity to clearly assess the benefits and costs of this protocol and any reasonable alternatives prior to implementation.

The Northern Counties Land Use Coordinating Board respectfully requests that you to encourage the MPCA to hold this regulatory framework in abeyance until:

- a. We have a clearer understanding of the wide variation in sulfide concentrations among natural wild rice stands within Wild Rice Waters;
- b. We have field demonstrations of the effectiveness of the proposed formula in establishing a sulfate discharge standard that stabilizes and/or reestablishes wild rice populations;
- c. We can assert, as public policy, that sulfate discharges and their subsequent interplay with water and sediment chemistry are the primary factor in maintaining the wild rice resource; and,
- d. We can assert, as public policy, that the effectiveness of the new standard does achieve sufficient benefits to justify the treatment costs to our citizens, communities, and industries.

Thank you for your consideration.

Rich Sve, Chairman, Northern Counties Land Use Coordinating Board, Lake County Commissioner