



## Background on Proposed Lawsuit against MPCA's New Phosphorus Rule

- The state's previous Phosphorus Rule placed a 1 mg/L limit on discharges directly to or affecting a lake. The rule did not apply to rivers and streams and required the Minnesota Pollution Control Agency (MPCA) to conduct a thorough case-by-case analysis of each discharger to determine the appropriate phosphorus limit.
- The MPCA has adopted a new Phosphorus Rule that will eliminate this case-by-case approach by capping phosphorus discharges at 1 mg/L for all new or expanding wastewater treatment facilities. The new rule will apply even when there is no affect to a lake and will be implemented after May 1, 2008.
- According to the MPCA, the new rule will cost approximately 35 communities up to \$134 million over the next five years.
- MPCA's new rule will have no additional water quality benefit. According to MPCA's 2007 *Phosphorus Rule: Report to the Legislature*, the effect of the rule "will be largely intangible, and the expected improvements in water quality are likely to go unnoticed by most Minnesotans."
- CGMC testified and submitted extensive written and oral comments on the new rule. However, the MPCA ignored CGMC's concerns and the rule was adopted in January of 2008. By state law, the new rule cannot be implemented until after May 1, 2008.
- In order to stop the implementation of the rule, CGMC will be filing a lawsuit in the spring of 2008 asserting that the MPCA's new Phosphorus Rule violates: Minnesota's Environmental Rights Act (MERA), Minnesota's Environmental Policy Act (MEPA), and Minnesota's Administrative Procedure Act (APA).

## Why is CGMC Suing the MPCA?

1. Cities building new or expanding wastewater treatment facilities will be forced to spend millions of dollars in upfront capital infrastructure costs and hundreds of thousands of dollars in yearly operational and maintenance costs for no environmental benefit.
2. The new statewide 1 mg/L rule shifts the burden of establishing the correct phosphorus limit onto cities. The new exceptions to the rule will also force cities to petition the MPCA to get the appropriate limit. This could cost cities hundreds of thousands of dollars in scientific and technical analysis. Furthermore, even when a city proves the 1 mg/L limit is not necessary, the MPCA does not have to approve the request.
3. The new rule violates the Minnesota Environmental Rights Act (MERA) and the Minnesota Environmental Policy Act (MEPA) because it will be environmentally detrimental. The new rule will waste significant amounts of energy and generate unnecessary chemical sludge for no increase in water quality.
4. The new rule also violates Minnesota's Administrative Procedure Act (APA) because it will be overly prescriptive and inflexible. In particular, the MPCA's public statements in the rulemaking record directly contradict the plain language of the new Phosphorus Rule.

If you are interested in contributing to or participating in the lawsuit, please contact Joe Sullivan at [jksullivan@flaherty-hood.com](mailto:jksullivan@flaherty-hood.com) or 651.259.1908.