

October 27, 2025

Leigh Currie, Chief Legal Officer  
Minnesota Center for Environmental Advocacy  
1919 University Ave. W; Ste. 515  
St. Paul, MN 55104

RE: Minnesota Statute Section 14.09 And Minnesota Rule 1400.2500 Petition For Rulemaking To The  
Minnesota Pollution Control Agency

Dear Leigh Currie:

The Minnesota Pollution Control Agency (MPCA) is in receipt of the Minnesota Center for Environmental Advocacy (MCEA) Petition for Rulemaking dated August 28, 2025, which MCEA filed on behalf of several petitioners. In its petition, MCEA requests that the MPCA, through rule, adopt a regulatory permitting program under Minn. Stat. § 115 (Minnesota's Water Pollution Control Act) that would require the MPCA to review and approve drainage projects established under Minn. Stat. § 103E (Minnesota's Drainage Law).

After careful consideration of MCEA's request, the petition is **denied**.

In the petition, MCEA argues that the MPCA must adopt a rule requiring a permit for new drainage projects and improvements and that such a process is statutorily required for ditches and drainage systems. MCEA's claim is that drainage systems constitute disposal systems under Minnesota law, and that "MPCA must prohibit the construction or operation of any 'disposal system' without its written permission" pursuant to Minnesota Statutes 115.07, Subdivision 1(c).

There are several concerns with MCEA's position. First, drainage ditches have been used in Minnesota since at least the 1880s without the Legislature ever having mandated that a permit from MPCA is required to establish such drainage systems. MCEA's claim that such systems are statutorily required to obtain a permit from the MPCA before being constructed or operated thus runs counter to over 135 years of their operation and regulation.

Second, as a foundational principle, a state agency cannot adopt rules unless it has a grant of authority from the Legislature to do so. *See* Minn. § 14.05. The Legislature has provided no clear indication that it vested MPCA with authority to establish an entirely new permitting program for drainage systems as proposed by MCEA. To the contrary, the Legislature enacted extensive regulations for drainage systems and dedicated an entire chapter of Minnesota Statutes, Chapter 103E, to drainage requirements, none of which state that a permit from the MPCA is required. In fact, the state agency which the Legislature appointed with authority over drainage is the Minnesota Department of Natural Resource. *See* Minn. § 103E.005, Subd. 5; Minn. Stat. 103E.011, Subd. 3.

Rather than ground its argument in any specific drainage statute, Minn. Stat. § 103E, MCEA claims that the MPCA's general authority, Minn. Stat. § 115, compels the MPCA to issue permits to all drainage projects from drainage authorities. MCEA does not point to any one particular provision in Minn. Stat. § 115 where the Legislature conveyed this purported permitting authority over drainage projects to MPCA. Rather, MCEA attempts to cobble together multiple definitions to make its claim. MCEA asserts

that a drainage system is a disposal system which includes “sewer systems and treatment works” (Minn. Stat. § 115.01, Subd. 5) and that “treatment works” includes drainage ditches installed for the purpose of disposing of sewage, industrial waste, or other wastes (Minn. Stat. § 115.01, Subd. 21) and that “other wastes” include all other substances that may pollute waters of the state (Minn. Stat. § 115.01, Subp. 9). Based on its broad reading of these general definitions, MCEA concludes that public drainage systems are “constructed drainage ditch[es] or surface water intercepting ditch[es]” installed for the purpose of disposing of excess water, which is polluted, i.e., “other waste.” As a result, public drainage systems meet the definition of a “disposal system” and are prohibited from being constructed or operated by state statute absent a permit from MPCA. Minn. Stat. § 115.07, subd. 1(a).” The MPCA respectfully disagrees and finds MCEA’s interpretation of the MPCA’s general authority too strained and contradicted by the more specific drainage statutes. Before the MPCA would engage in the extensive time and effort to draft rules to establish a new permitting program, the Legislature would need to provide clear authority and more explicit direction.

Third, in addition to not providing clear statutory authority, the Legislature has not dedicated any funds to establish and run this proposed permitting program. Given that there are estimated to be thousands of miles of drainage ditches throughout Minnesota, the cost to develop and operate such a program would be substantial. Significantly, this request comes at a time when funds from the federal government to state agencies like the MPCA have been delayed or denied for already existing programs. Attempting to set up an unfunded new program like the one MCEA proposes at this time would strain MPCA’s limited resources and result in reduced work in other core areas, such as permitting and compliance.

While the MPCA appreciates MCEA’s concern regarding the potential impacts of drainage projects on water quality and natural resources, the MPCA declines to initiate rulemaking at this time. Instead, the MPCA believes its efforts and resources are best spent continuing to focus on the initiatives the MPCA already has underway to protect Minnesota’s waterways, including implementing new changes in the reissued animal feedlot general permits, completing its ongoing rulemaking related to animal feedlots, and implementing the Wastewater Nitrogen Reduction Strategy, among others. Doing so will also allow the Clean Water Fund to continue to support many diverse projects throughout the state, which range from wetland and habitat restoration to water storage, that are vital to keeping our water healthy.

While the Minnesota State Legislature could certainly enact a statute that would require the MPCA to review and permit drainage projects and provide necessary funding to establish this program, the Legislature has not yet done so. To the extent MCEA wishes to further pursue this permitting program, the MPCA encourages MCEA to work with elected representatives and a broad base of stakeholders that would be impacted by such a program to develop such legislation in the future. Notably, several diverse organizations submitted letters both supporting and opposing MCEA’s petition, which highlights the diversity of opinion on this topic and the need for additional refinement that is best achieved through the legislative process. For the reasons stated above, the MPCA respectfully declines MCEA’s petition.

Sincerely,



Katrina Kessler, P.E.  
Commissioner

Leigh Currie  
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cc:

Amanda Bilek, Minnesota Corn Growers Association  
Colleen Werdien, League of Women Voters Upper Mississippi River Region Interleague Organization  
Jan Voit, Minnesota Watersheds  
Karuna Ojanen, Minnesota Well Owners Organization  
Patrick Belmont  
Randy Neprash  
Rob Sipp, Red River Watershed Management Board  
Sarah Mooradian, CURE  
Scott Sparlin, Coalition for a Clean Minnesota River  
Steve Morse, Minnesota Environmental Partnership  
Ted Suss, Izaak Walton League of America, Minnesota Valley Chapter  
Trevor Russell, Friends of the Mississippi River  
Anne Conway, Izaak Walton League  
Carrie Jennings, Fresh Water  
Daniel Engstrom  
Colleen Werdien, League of Women Voters  
Margaret Levin, Sierra Club  
Jamie Beyer, Bois de Sioux Watershed District  
Peg Furshong, CURE  
Keegan Kult, Agricultural Drainage Management Coalition