

Clarify MPCA's enforcement authorities



Minnesotans expect effective and timely enforcement of environmental laws.

Challenge

Minnesotans expect the MPCA to hold regulated parties accountable for complying with environmental law and rules. However, unclear language or processes in some existing laws have led to protracted legal challenges or prevented the agency from quickly putting a stop to serious pollution violations that endanger human health and the environment. Furthermore, under existing law, taxpayers, not polluters, pay the agency's costs for enforcing and litigating cases of pollution violation.

Why it's important

MPCA has heard from legislators and members of the public that the existing tools for enforcing environmental law are not adequate. The agency has certain emergency powers that become available if there is a finding of "imminent and substantial danger" to the public, but this has a very high bar, and in some cases does not allow for nimble and decisive action to respond to serious pollution violations.

Proposal

Clarify the MPCA commissioner's authorities to enforce against polluters, including the conditions under which the commissioner may temporarily shut down a facility to protect human health and the environment. Allow the MPCA to recover costs associated with enforcement from polluters when those costs exceed \$50,000.



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Chair Becker-Finn and Members of the Committee:

Minnesota Center for Environmental Advocacy (MCEA) is a statewide nonprofit advocacy organization celebrating its 50th year of protecting Minnesota's environment and the health of its people. MCEA supports HF 4410 (Hansen) / SF4433 (Hawj), which strengthens the Minnesota Pollution Control Agency's (MPCA's) authority to address violations of environmental laws and permits, and allows the MPCA to recover oversight costs of a negotiated settlement.

There are several important provisions in this bill. The ability of MPCA to immediately stop pollution from continuing when a permit is being violated is critical for the MPCA's credibility with communities affected by pollution. Section 3 of [HF 4410 / SF 4433](#) adds clarity and detail to the injunctive relief that a court can grant when MPCA finds violations of permits. Specifically, this section makes clear that when the MPCA finds a violation, the Attorney General can seek injunctive relief that includes "immediately ceas[ing] operation or activities" until the MPCA Commissioner can be assured that operations will not violate state pollution requirements or threaten human health. It's common sense that in cases where a violation creates a threat to human health that the MPCA should have the explicit authority to ask a court for this relief. This is consistent with existing statutory authority. The statute this bill amends (Minn. Stat. 116.11) gives the MPCA Commissioner authority to "direct the immediate discontinuance or abatement of the pollution without notice" when there is "imminent and substantial danger ..."

MCEA strongly supports the addition of citizen enforcement in permits that was added by amendment to HF 4410. Minnesota is a big state; there are thousands of facilities with permits to emit pollution to our waters and air. Yet there is only one MPCA, one Attorney General's office. Those offices are limited in resources and cannot prioritize every citizen concern about potential violations. Citizen enforcement allows your constituents to seek relief when they are harmed by a permittee who is violating the law. This amendment brings the state law in line with federal law, which has always provided for "citizen suits" in addition to enforcement by the federal Environmental Protection Agency and Department of Justice.

Citizen enforcement does not affect the rights of companies that hold permits. Permittees have the same right to due process from a privately initiated enforcement action as they would for one initiated by the Minnesota Attorney General. This change simply would allow a Minnesota resident affected by pollution to ask a court to review whether a violation of the law occurred and if a remedy is appropriate. These sections only apply to enforcement – that means this section applies only *after a permit has been issued* and only *if the permittee violates its permit*. The permitting process and what provisions MPCA decides to put as requirements in a permit are separate from enforcement of existing permits and are not implicated by this bill.

HF 4410 provides useful and helpful clarity for the MPCA, the courts, and the people of Minnesota, about the scope of the emergency authority available to the agency when they encounter serious or chronic permit violations. In addition, this legislation would ensure that citizens have the same rights under state law as they do under federal environmental laws to bring an enforcement action when Minnesota's environmental laws are violated. MCEA thanks Chair Hansen for authoring the bill and committee members for their thoughtful consideration.

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DEDICATED TO A STRONG GREATER MINNESOTA

March 19, 2024

Re: HF 4410 – Enforcement Authority Modified and Money Appropriated

Dear Rep. Jamie Becker-Finn and members of the House Judiciary Finance and Civil Law Committee,

On behalf of the Coalition of Greater Minnesota Cities (CGMC), I am writing to express our concern with H.F. 4410. The CGMC is an organization of more than 100 municipalities located outside the metropolitan area. Our cities play an essential role in protecting Minnesota's environment through their wastewater, stormwater, drinking water, and related systems, which means they are subject to a multitude of permits, rules standards, variances, schedules of compliance, and other regulatory requirements. We are concerned that this new language is overly broad and may lead to costly and unnecessary litigation against municipalities.

We are specifically concerned about Sec. 4 at lines 7.19 - 7.23, which would allow private individuals the right to sue for any violation of regulatory mechanisms, such as permits, variances, or schedules of compliance. We fear the language is too broad and could be subject to abuse by unscrupulous attorneys.

Our cities work hard to ensure that they are in compliance with all of their regulatory obligations, but at times, there may be minor violations that are beyond their control. For example, extreme weather may cause exceedances at a wastewater facility. This new language does not recognize any distinctions regarding the cause of a violation, the severity, or other mitigating factors. We are very concerned that this new form of relief could be used against cities for minor violations and/or circumstances beyond their control.

Our concerns are grounded in our experiences over the last several years with nuisance suits brought by file-and-settle attorneys, who use A.I. tools to scan federal databases to identify potential violations. They then file suits for injunctive relief and other damages, seeking to force a monetary settlement from cities because they recognize that it is often cheaper to settle than to litigate against an unjustified lawsuit. We worry that this new language will only embolden these lawyers and encourage more lawsuits.

We appreciate that the goal of this new language is to allow citizens to step forward in the face of significant environmental harms and sue to stop those incidents. We believe that this new power should be limited to the narrowest of circumstances so as not to lead to frivolous litigation that is not aimed at protecting the environment. We hope to work with the authors and others to tailor the legislation to its intended purpose.

Thank you for allowing us to comment on this legislation.

Sincerely,

Elizabeth Wefel
Coalition of Greater Minnesota Cities