

Larkin Hoffman ATTORNEYS

ENVIRONMENTAL LAW UPDATE

What Happened in Environmental Law While You Were at the Cabin

September 21, 2017

Larkin
Hoffman
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Topics:

- Freeway Landfill
- White Bear Lake Water Level
- Wild Rice Water Quality Standard
- EQB Env Rev Reform Committee
- MPCA Water Quality Fees
- VW Settlement

Freeway Landfill

- Estimated Cost -- \$89.8 million
 - Landfill -- \$69.8 million
 - Dump -- \$20 million
- Key Aspects of Legislation:
 - the MPCA assumes all obligations for environmental response actions under the federal Superfund Act and any state and federal cleanup orders.
 - The MPCA is prohibited from seeking recovery of costs from any person who is not the owner/operator
 - Covered facility includes both landfill and dump

Freeway Landfill

Key Aspects of Legislation:

- “owner operator of a qualified facility” includes an “owner of a controlling interest” in the facility AND one who “participates in decision making” regarding to compliance with environmental laws and one who “has authority to control or make decisions” regarding those laws.
- The state can recover civil penalties if up to \$20,000/day from the owner/owner operator if doesn't enter into voluntary agreement
- The owner or operator cannot obtain or renew a state or local solid waste permit
- The owner/operator is barred from bringing broad list of claims

White Bear Lake

- WBL Restoration Association and WBL Homeowners' Association v. DNR
- Claims – Violations of MERA and Public Trust Doctrine
- MERA Civil Action under MN Stat. 116B.03 (civil action on behalf of the state)
- MERA claim brought against DNR which issues permits

White Bear Lake

- Lake and lakebed are public trust assets
- DNR is state's agent with respect to that trust
- Public Trust Doctrine gives plaintiffs a common law cause of action to protect the public's use rights
- DNR's management of water appropriation permits and waters of WBL "violated its fiduciary duty to protect the public's use rights."
- DNR's conduct violated MERA
- "The judicial branch has independent authority and jurisdiction to protect public trust interests from legislative or executive branch neglect and damage."

White Bear Lake

- DNR is (subject to \$1000/day fine for noncompliance):
 - prohibited from issuing water appropriation permits within 5 miles of WBL until analyzes all existing permits for compliance with the law.
 - Required to implement a collective withdrawal limit for WBL and a trigger elevation for protection
 - Prepare, implement and enforce a residential irrigation ban based on trigger levels and enact it within 6 months
 - Include in all existing permits an enforceable plan to phase down per capita residential use to 70 gallons/day and total per capita use to 90 gpd.
 - Immediately amend all permits to add surface water contingency plans

Wild Rice WQ Standard

- Rulemaking process has begun
- 10 mg/L Sulfate std (1973)
- Six years of research and Advisory Committee meetings
- Proposal – 120 micrograms/L sulfide
- Equation – Iron and Organic matter in sediment establish “Protective Sulfate Level
- WLSSD Estimate -- \$500 million to comply
- Taconite Facility -- \$200 million one outfall

Wild Rice WQ Standard

- Most complex WQ standard ever
- Significant disagreement on research designs and field study results
- 15-20% Error rate in formula results
- 1300 WR waters. Impact 130 facilities or more
- Reverse Osmosis sole available technology

EQB Env Review Reform

- 45 member committee
- Meetings on:
 - Mandatory Categories
 - Climate Change in Env Rev
 - Human Health impacts in Env Rev
 - Meaningful Public Engagement
 - Relationship between Env Rev and other Reg Systems
 - Env Review Flexibility

VW Settlement

- \$47 million from NOx emissions cheating court settlement between 2017 and 2027
- 9300 vehicles in MN
- Money to be used to offset VW's excess pollution by reducing NOx emissions elsewhere in the transportation sector.
- MPCA submitting plan “Beneficiary Mitigation Plan” later this year describing intended uses of funds.

Water Quality Fees

MPCA:

- Fees cover 17 percent of cost of delivering WQ programs
- No comprehensive review of fee system in 25 years
- Want increase to cover actual costs of administering state and federal requirements associated with fee-based water quality programs
- Spring 2018 – Notice of Hearing to be published

Water Quality Fees

- Preliminary notice of rulemaking generated 29 comments posted on MPCA website
- Water Fee Advisory Group under MN Statutes 14.101 subd.2

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Thank You

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