

# CENTRAL STATES WATER

The Official Magazine of the Central States Water Environment Association, Inc.

## NEW MINNESOTA LAW

EXPANDS DISCHARGE NOTIFICATION  
OBLIGATIONS FOR POTWS



### PLUS:

2023 SJWP Winners

Member Spotlight

MSDC Winner

University of Costa Rica

GWS August Service Trip Itinerary

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# NEW MINNESOTA LAW

## EXPANDS DISCHARGE NOTIFICATION OBLIGATIONS FOR PUBLICLY OWNED TREATMENT WORKS

By Thomas Braun, Partner, Stael Rives LLP

The Minnesota Legislature ended the 2023 session having passed numerous bills impacting both private companies and public entities, including publicly owned treatment works (POTWs), and public or private owners of domestic sewer systems. HF 2310, the environmental, natural resources, climate and energy finance and policy bill that was signed by Governor Tim Walz on May 24, includes new notification requirements for POTWs, and expands notification obligations necessary for POTWs and public private owners of domestic sewer systems to remain in compliance.

Minnesota Statute Section 115.061 has long provided that it is the duty of every person to notify the Minnesota Pollution Control Agency (MPCA) immediately of a discharge, accidental or otherwise, of material under its control which, if not recovered, may pollute the waters of the state. These responsible persons must recover as rapidly and as thoroughly as possible the material and take immediately such other action as may be reasonably

possible to minimize or abate pollution of waters of the state caused thereby. Discharges of five gallons or less of petroleum do not require notification.

The provisions of Minnesota Statute Section 115.061 may be enforced by any one or any combination of the following: criminal prosecution; action to recover civil penalties; injunction; action to compel performance; or other appropriate action. With respect to criminal prosecution, Minnesota Statute Section 115.071 states that any person who willfully or negligently violates the duty to notify "shall upon conviction be guilty of a misdemeanor." Regarding penalties, any person who violates the duty to notify shall forfeit and pay to the state a civil penalty, in an amount to be determined by the court, of not more than \$10,000 per day of violation except that if the violation relates to hazardous waste the person shall forfeit and pay to the state a penalty, in an amount to be determined by the court, of not more than \$25,000

per day of violation. Alternatively, under Minnesota Statute Section 116.072, the MPCA commissioner may issue an order assessing a penalty of up to \$20,000 for violations identified during an inspection or other compliance review.

HF 2310 expands the requirements for POTWs and public or private owners of domestic sewer systems. Now, promptly after notifying MPCA of a discharge, a POTW or an owner of a public or private domestic sewer system also must provide notice to the potentially impacted public and to any downstream drinking water facility that may be impacted by the discharge. Notice to the public and to any drinking water facility must be made using the most efficient communications system available to the facility owner, such as in person or by telephone call, radio, social media, web page, or another expedited form. In addition, signage must be posted at all impacted public use areas within the same jurisdiction or notification must

“How the new requirements are interpreted by both the **MPCA** and the **courts** will go a long way in determining the scope of the impacts on **POTWs** and **public and private owners** of **domestic sewer systems**.”



be provided to the entity that has jurisdiction over any impacted public use areas. The date and time of the discharge, a description of the material released, a warning of the potential public health risk and the permittee's contact information must also be included in the notice.

HF 2310 directs MPCA to provide guidance that includes but is not limited to methods and protocols for providing timely notice of a discharge. The process by which MPCA prepares the guidance may include opportunities for the regulated community to participate, as MPCA often requests comments from the regulated community and other stakeholders. MPCA generally asks the regulated community for its opinion on the scope of the guidance, whether it provides sufficient clarification of the new requirements, and if the document should be supplemented with any additional information.

How the new requirements are interpreted by both the MPCA and the courts will go a long way in determining the scope of the impacts on POTWs and public and private owners of domestic sewer systems. Past court proceedings do indicate times whereby the Minnesota courts have applied Minnesota Statute Section 115.061 broadly, and violations of the statute can result in costly penalties and have far reaching consequences, up to and including personal liability for corporate officers in certain circumstances. As a result, POTWs may wish to consult legal counsel regarding how best to proceed given the new notification requirements.

Thomas Braun is a Partner at Stoel Rives LLP in Minneapolis, MN. His practice includes advising public and private entities across the country on environmental compliance and enforcement matters. He can be reached at [thomas.braun@stoel.com](mailto:thomas.braun@stoel.com). **CS**



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