

Protection of Water Quality Investment Act

In 2018, the Minnesota Legislature enacted Minnesota Statutes, chapter 115, sec. 455:

115.455 EFFLUENT LIMITATIONS; COMPLIANCE.

To the extent allowable under federal law, for a municipality that constructs a publicly owned treatment works to comply with a new or modified effluent limitation, compliance with any new or modified effluent limitation adopted after construction begins that would require additional capital investment is required no sooner than 16 years after the date the facility begins operating.

Effective date. This section is effective retroactively from August 1, 2017.

Who qualifies?

The statute only applies to municipal publicly-owned treatment works (POTW) that:

- Constructed a POTW after August 1, 2017, to comply with a new or modified effluent limitation; and
- After that construction began, the POTW was assigned another new or modified effluent limit that would require additional capital investment in order to comply

Who doesn't qualify?

- Facilities not owned by a municipality
- A POTW facility that constructed a POTW to comply with a new or modified effluent limitation prior to August 1, 2017

No application required

There is no need to apply. When a new or modified limit is proposed, the MPCA will check back to when the last new or modified limit was required and determine if there was construction necessary to comply with that limit.

Information you will need to provide to the MPCA

If the municipality qualifies under the legislation, the MPCA will then request some basic information about the municipality's current debt load, POTW facility operation and maintenance costs (O&M), user fees, median household income (MHI) and capacity for additional debt. A form will be provided to a qualifying municipality by the MPCA.

How will it be implemented in a permit?

New limits are usually proposed during the permit reissuance process. When a new limit is proposed the MPCA will notify the permittee and request the specific information described in the previous section.

When a new or modified effluent limitation is assigned, it must be included in the permit. A schedule of compliance may be used if compliance cannot be achieved immediately. The permittee will be asked to propose and justify a schedule that includes the earliest possible date ("as soon as possible") the permittee can achieve compliance, as required by federal law (at 40 C.F.R. pt. 122.47). The MPCA will review the information provided by the permittee in evaluating the length of a schedule.

When determining if a 16-year schedule is allowable under the federal 'as soon as possible' criteria, the current debt service on existing wastewater infrastructure will be considered as required by Minn. Stat. 115.456. Other unique factors specific to actions that need to be taken by the municipality to comply with the new limit can also be considered in the justification of the schedule term.

The date to achieve compliance with the new limit may be less than, equal to, or greater than 16 years based on the information provided to the MPCA regarding the municipality's current debt service and any additional justification provided on a case-by-case basis.

Schedules that extend beyond the 5-year term of the reissued permit may include a condition to provide an update with the next application for reissuance on debt service load, an updated facility evaluation, and summary of performance with respect to the new limit.

Scenarios

Following are three example scenarios:

1. **Facility can meet limit without need for additional capital investment.** The existing POTW facility can comply with a new or modified effluent limit at current conditions, and at design flow and loading, without the need for additional capital investment.
 - The new limit will be included in the permit and compliance is required immediately.
 - The Protection of Water Quality Investment Act does not apply because compliance can be achieved immediately and there is no need for additional capital investment.
2. **Facility constructed a POTW after August 1, 2017, to comply with a new or modified limit; and in a future permit receives another new or modified limit that will require construction.** The existing POTW constructed a project after August 1, 2017, to comply with a new or modified effluent limit. Following that construction during a future permit reissuance, the facility receives another new or modified effluent limit. The facility cannot comply with this new limit under current conditions or design flow and loading so additional capital investment is required.
 - The permittee must evaluate the facility's ability to comply and what additional capital investments may be necessary.
 - Applying the Protection of Water Quality Investment Act, the permittee must evaluate current debt load, O&M, user fees, MHI and capacity for additional debt for wastewater infrastructure. If there are multiple debt loads for wastewater infrastructure with different payback schedules, details for each must be provided.
 - The permittee must propose a schedule of the steps and actions needed to comply with the new limit. Compliance must be achieved by the earliest date possible. Examples of steps and actions include, but are not limited to:
 - Submission of a facility plan
 - Submission of plans and specifications
 - Construction start date
 - Date of initiation of operation of the upgraded facility
 - The new limit will be included in the permit and a schedule of compliance will specify action items and a final date when compliance must be achieved.
3. **Facility constructed a POTW after August 1, 2017, to comply with a new or modified limit; and in a future permit receives another new or modified limit that may require construction.** The existing POTW constructed a project after August 1, 2017, to comply with a new or modified effluent limit. Following that construction during a future permit reissuance, the facility receives another new or modified effluent limit. The facility can comply with this new limit under current conditions, but will not be able to comply at design flow and loading. The permittee must determine what additional capital investment is required.

- The new limit will be included in the permit and special conditions will require the permittee to evaluate the POTWs' capability of maintaining compliance with the new limit during the following 5-year permit term and at design flow.
- The permittee must estimate increases in flow and loading over the next 5-year permit term.
- The permittee must project operating conditions that when reached would likely result in noncompliance with the limit.
- The permittee must describe the steps and milestone events that will trigger the need to take action to assure that the Facility will remain in compliance. Examples of milestone events:
 - When a specific percentage of design capacity is reached
 - When a certain population is reached
 - When other facility upgrades are expected
- The permittee must evaluate current debt load, O&M, user fees, MHI and capacity for additional debt for wastewater infrastructure. If there are multiple debt loads for wastewater infrastructure with different payback schedules, details for each must be provided.
- Depending on the timing of projected milestone events, a compliance schedule may be included in the permit, or a special condition will require a reevaluation of the information listed above to be included with the next application for reissuance.