



**MESERB**

Minnesota Environmental Science  
and Economic Review Board

# **Know Your Permit: The Wastewater Permitting Process**

**Gretel Lee**

**Environmental Attorney**

**Flaherty & Hood, P.A.**

# Key Takeaways

- **Be proactive** during effluent limit notification process—respond to “**ASAP letter**” in an informed manner
- Review and comment on the pre-public notice draft permit
- If MPCA does not resolve serious and legitimate concerns, preserve your rights in the public notice and comment period
- Early engagement = better outcomes for less cost/headache



# Summary of the Permitting Process

- Five-year permit cycle
- Effluent limit notification process - **“ASAP” Letter**
- **Advanced review of draft permit and fact sheet**
- **Notice and public comment period (60 days)**



# What are Effluent Limits?

- Effluent limits are based on water quality standards
  - Standard = Rule or regulation being applied
  - Effluent Limit = Application of that standard in your permit
- Under law, MPCA has to set effluent limits to comply with water quality standard (WQS)
  - When you submit permit reapplication, MPCA is required to perform a “**reasonable potential**” analysis to assess compliance with WQS
  - New limits **required** if discharge has the “**reasonable potential**” (RP) to cause or contribute to a violation of WQS.



# Permit Marriage

- Once a limit is in your permit, you are “married” to it
- Very difficult to remove a limit once it is in your permit (anti-backsliding)
- Limits can have lasting impacts on growth, development and infrastructure needs



**MESERB**

Minnesota Environmental Science  
and Economic Review Board

# Mistakes Happen!

- Technical errors in permits can cost millions of dollars
- Acceptance of questionable terms can lead to burdensome conditions and unreasonable results
- Fixing problems after the fact can be expensive and difficult



# Keys to Successful Permit Process

- **Be proactive** engage with MPCA to raise questions and concerns early in the effluent limit notification process (“ASAP letter”)
- **Be informed**—request supporting documentation/analysis, verify information given to you and answer key questions
- **Evaluate alternatives** that make environmental improvements, are cost-effective and comply with law



# Keys to Successful Permit Process

- **Pick your battles**—pursue legitimate concerns—supported by sound technical and legal analysis
- If MPCA does not address your **significant and legitimate** concerns, preserve your rights in public comment process
  - Participate in public comment process
  - Request a formal informational meeting
  - Petition for contested case hearing





# The “ASAP” Letter

- The “ASAP” letter will identify new permit limits
- Information requested from MPCA:
  - Evaluation of facility ability to comply
  - Steps/Action that need to be taken to achieve compliance ASAP
  - Proposed compliance schedule
  - Pursuit of variance or other compliance alternatives
- Answer the following questions before you respond:



# High-Level Questions to Answer:

- ✓ Are the permit conditions accurate and justified?
- ✓ What is the benefit to water quality?
- ✓ Does my facility need upgrades to comply?
- ✓ What is the cost of compliance—impact on rate-payers?
- ✓ Is compliance feasible? If so, how and when?
- ✓ Are there other alternatives (i.e. plant optimization, offsets, variances etc.)?
- ✓ Availability and probability of obtain funds (i.e. PSIG and WIF)



# Responding to the ASAP Letter

- Content of your response is critical
- Request additional time to respond if needed
- Request supporting information and analysis from MPCA
- Identify technical, environmental, and legal questions and concerns
- Provide informed answers to MPCA's Qs



# Responding to the ASAP Letter

- Evaluate compliance alternatives
- Request and establish basis for extended compliance schedule, if justified
  - Current debt on infrastructure
  - Economic impact on residents, business, and future growth
  - Other environmental priorities
  - Time needed to perform upgrades, if necessary



# Pre-Public Comment Process

- MPCA provides 30 day pre-public comment draft permit
- Review draft permit and provide comments
- Has MPCA addressed the concerns identified in the effluent limit notification process?
- Are there any minor issues that need to be fixed?



# 60-Day Public Comment Period

Any member of the public (including you) can:

- Submit comments
- Request Public information meeting
- Petition for contested case hearing



**MESERB**

Minnesota Environmental Science  
and Economic Review Board

# 60-Day Public Comment Period

If MPCA has not addressed **significant and supportable** concerns you may preserve your rights by:

- Filing comments
- Requesting contested case/public meeting



**MESERB**

Minnesota Environmental Science  
and Economic Review Board

# Final Permit

- If no contested petition is filed, MPCA will respond to comments (if any) and issue final permit
- Right to appeal w/n 30 days to MN Court of Appeals



**MESERB**

Minnesota Environmental Science  
and Economic Review Board



# Individual Proactive Approach Summary

- Five-year permit cycle
- Effluent limit notification process - **“ASAP” Letter**
  - Answer necessary questions before response
- Advanced review of draft permit and fact sheet
- Notice and public comment period (60 days)
  - Participate
  - If necessary, preserve your permit rights!
- Final permit – other options



**MESERB**

Minnesota Environmental Science  
and Economic Review Board

# Questions?

## **Gretel Lee**

Environmental Attorney  
Flaherty & Hood, P.A.  
glee@flaherty-hood.com  
(651) 259-1903

## **Daniel Marx**

Environmental Attorney  
Flaherty & Hood, P.A.  
dmmarx@flaherty-hood.com  
(651) 259-1907

[www.meserb.org](http://www.meserb.org)



**MESERB**

Minnesota Environmental Science  
and Economic Review Board