

No. A06-1371

STATE OF MINNESOTA
IN SUPREME COURT

In the Matter of the Alexandria Lake Area Sanitary District NPDES/SDS
Permit No. MN0040738, Reissuance for the Expanded Discharge of Treated
Wastewater, Douglas County, Alexandria, Minnesota

**APPELLANT MINNESOTA POLLUTION CONTROL AGENCY'S
SUPPLEMENTAL BRIEF AND SEPARATELY BOUND APPENDIX**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTRODUCTION AND LEGAL ISSUES.....	1
LEGAL ARGUMENT	1
I. THE LANGUAGE AND REGULATORY CONTEXT OF THE STATUTE DEMONSTRATE THAT IT IS SOLELY A PERMISSIVE OPTION FOR MPCA TO USE POLLUTION OFFSETS IN ISSUING CERTAIN PERMITS.	2
II. THE LEGISLATIVE HISTORY OF MINN. STAT. § 115.03, SUBD. 10 DEMONSTRATES THAT ITS SOLE PURPOSE WAS TO CONFIRM MPCA’S DISCRETIONARY AUTHORITY TO USE POLLUTION OFFSETS.	5
III. THE LEGISLATIVE HISTORY OF MINN. STAT. § 115.03, SUBD. 10 CONFIRMS THAT THE PROVISION HAS NO EFFECT ON THE PERMIT IN THIS CASE.	12
CONCLUSION	14

TABLE OF AUTHORITIES

	Page
STATE CASES	
<i>In re Cities of Annandale and Maple Lake NPDES/SDS Permit Issuance for the Discharge of Treated Wastewater</i> , 702 N.W.2d 768 (Minn. App. 2005), review granted October 26, 2005.....	4
<i>In re Cities of Annandale and Maple Lake NPDES/SDS Permit Issuance for the Discharge of Treated Wastewater</i> , 731 N.W.2d 502 (Minn. 2007) (“ <i>Annandale/Maple Lake</i> ”)	passim
FEDERAL STATUTES	
Clean Water Act, 33 U.S.C. § 1311	1
STATE STATUTES	
Minn. Stat. ch. 114D (2006), Clean Water Legacy Act (CWLA).....	5
Minn. Stat. § 115.03, subd. 10.....	passim
Minn. Stat. § 115.03, subd. 10(a)	passim
Minn. Stat. § 115.03, subd. 10(b).....	2, 5, 13, 15
FEDERAL REGULATIONS	
40 C.F.R. § 122.4(i).....	2, 3, 14
40 C.F.R. § 122.44(d).....	passim
STATE SESSION LAWS	
2006 Minn. Laws ch. 251	5

**STATE LEGISLATIVE MATERIALS -
MINN. LEGISLATURE - 84TH SESSION (2005-2006)**

S.F. No. 762.....	passim
H.F. No. 826.....	5
H.F. No. 2896.....	5, 6, 8
Hse. Jnl.....	10, 12
Sen. Jnl.....	12

INTRODUCTION AND LEGAL ISSUES

On April 22, 2008, this Court ordered the Parties in this case to file supplemental briefs to address the potential implications for this case, if any, of Minn. Stat. § 115.03, subd. 10(a) (2006).¹ The Court ordered the parties to address the following questions:

- I. How, if at all, did Minn. Stat. § 115.03, subd. 10(a) (2006) affect the authority of the Minnesota Pollution Control Agency to issue the permit here?
- II. If Minn. Stat. § 115.03, subd. 10(a) (2006) did affect the authority of the Minnesota Pollution Control Agency to issue the permit here, did the issuance of the permit comply with the statute.

LEGAL ARGUMENT

Issuance of the ALASD permit to the Alexandria Lake Area Sanitary District (ALASD) is governed by the Clean Water Act, 33 U.S.C. § 1311 *et seq.* and associated federal water quality regulations. Minn. Stat. § 115.03, subd. 10 does not alter or add to the requirements of these underlying regulations. Instead, it merely confirms the authority of the Minnesota Pollution Control Agency (MPCA) to use pollution offsets

¹ Minn. Stat. § 115.03, subd. 10(a) (2006) provides as follows:

Subd. 10. [NUTRIENT LOADING OFFSET.] (a) Prior to the completion of a total maximum daily load for an impaired water, the Pollution Control Agency may issue a permit for a new discharger or an expanding discharger if it results in decreased loading to an impaired water. Where a new discharger or an expanding existing discharger cannot effectively implement zero discharge options, the agency may issue a permit if the increased loading is offset by reductions from other sources of loading to the impaired water, so that there is a net decrease in the pollutant loading of concern. The term "new discharger" is as defined in Code of Federal Regulations, title 40, section 122.2.

when applying these regulations to discharges to impaired waters prior to Total Maximum Daily Loads or TMDLs, as MPCA asserted in the *Annandale/Maple Lake* case.²

For the reasons more fully explained below, Minn. Stat. § 115.03, subd. 10(a) does not affect the authority of the MPCA to issue the ALASD permit. Because the statute does not affect MPCA's authority to issue the permit, there is no need for the Court to consider the second question posed in its April 22, 2008 Order.

I. THE LANGUAGE AND REGULATORY CONTEXT OF THE STATUTE DEMONSTRATE THAT IT IS SOLELY A PERMISSIVE OPTION FOR MPCA TO USE POLLUTION OFFSETS IN ISSUING CERTAIN PERMITS.

MPCA issues permits for discharges to impaired waters in accordance with applicable federal water quality regulations. Permits for new facilities are governed by 40 C.F.R. § 122.4(i), and permits for existing and expanding facilities are governed by 40 C.F.R. § 122.44(d). Minn. Stat. § 115.03, subd. 10 expressly disclaims any intent to diminish or limit MPCA's authority to apply or interpret these regulations in issuing future permits. Paragraph (b) of Minn. Stat. § 115.03, subd. 10 makes this clear by providing that: "The legislature intends this subdivision to confirm and clarify the authority of the pollution control agency to issue the authorized permits under prior law." Minn. Stat. § 115.03, subd. 10(b).

² *In re Cities of Annandale and Maple Lake NPDES/SDS Permit Issuance for the Discharge of Treated Wastewater*, 731 N.W.2d 502 (Minn. 2007) ("*Annandale/Maple Lake*").

Both of the applicable federal regulations, 40 C.F.R. §§ 122.4(i) and 122.44(d), require MPCA as a threshold matter to determine if a new or expanding facility would “cause or contribute” to the impairment. If MPCA answers this question in the affirmative, the regulations either ban permitting altogether unless a TMDL has been completed (for new facilities), or require stricter effluent limits (for existing facilities). The only way that MPCA could apply Minn. Stat. § 115.03, subd. 10(a), to issue a permit under the applicable federal regulations would be to determine that the discharge does not cause or contribute to the impairment because of a decrease in pollution loading, thereby preventing the triggering of the regulation in the first place. Once either of the federal regulations is triggered, nothing in the regulation authorizes MPCA to issue a permit based on a finding that it “results in a reduction of loading to an impaired water” as provided in Minn. Stat. § 115.03, subd. 10(a). Rather, MPCA must then apply the substantive requirements of the regulation. In this case, MPCA was required to set more stringent effluent limits in order to reissue a permit for the ALASD facility. The effluent limits set by MPCA and how they comply with 40 C.F.R. § 122.44(d) are the matters at issue in this case.

Thus, when the language of Minn. Stat. § 115.03, subd. 10(a) is read in the regulatory context created by the applicable federal regulations, it is obvious that the statute was intended to address MPCA’s use of pollution offsets in the *Annandale/Maple Lake* case. In that case, MPCA interpreted 40 C.F.R. § 122.4(i) to determine, based on pollution offsets, that a new facility discharging to an impaired water would not cause or

contribute to the impairment. The court of appeals rejected MPCA's interpretation, and the court of appeals' decision was on appeal to this Court at the time Minn. Stat. § 115.03, subd. 10 was enacted.³ Read in the context of the applicable federal regulations and the ongoing *Annandale/Maple Lake* litigation, it is clear that the language of Minn. Stat. § 115.03, subd. 10, was simply intended to confirm MPCA's discretionary authority to use pollution offsets in issuing permits to new or expanding discharges to impaired waters prior to TMDL completion.

Since Minn. Stat. § 115.03, subd. 10(a) is simply about the discretionary use of offsets, it does not apply to the ALASD permit. Pollution offsets were never considered in this permit proceeding. Instead, MPCA conceded in this proceeding that the ALASD facility causes or contributes to the impairment of Lake Winona. The issue in this case is how MPCA interpreted 40 C.F.R. § 122.44(d) to set more stringent phosphorus effluent limits for the facility, not whether the application of that regulation could be avoided by the use of offsets. In addition, nothing in Minn. Stat. § 115.03, subd. 10(a) suggests that the statute was intended to add any additional requirements to the effluent-setting requirements of 40 C.F.R. § 122.44(d), or to limit the issuance of permits under that regulation only to cases where offsets may be appropriate.

In summary, the language of Minn. Stat. § 115.03, subd. 10 demonstrates that the statute is permissive, not restrictive. The statute does not say that permits may *not* be

³ *In re Cities of Annandale and Maple Lake NPDES/SDS Permit Issuance for the Discharge of Treated Wastewater*, 702 N.W.2d 768 (Minn. App. 2005), review granted October 26, 2005.

issued *unless* loading is reduced or *unless* offsets are applied. Such a restrictive reading would be contrary to paragraph (b) of Minn. Stat. § 115.03, subd. 10, which states that the statute merely confirms MPCA's authority under prior law. There is no basis to read the statute to require MPCA to impose new conditions in issuing permits for discharges to impaired waters that would be more restrictive than those already required by applicable federal regulations. This reading of the statute is confirmed by the legislative history.

II. THE LEGISLATIVE HISTORY OF MINN. STAT. § 115.03, SUBD. 10 DEMONSTRATES THAT ITS SOLE PURPOSE WAS TO CONFIRM MPCA'S DISCRETIONARY AUTHORITY TO USE POLLUTION OFFSETS.

The legislative history of Minn. Stat. § 115.03, subd. 10 demonstrates that the statute merely confirmed MPCA's discretionary use of offsets in permitting pre-TMDL discharges to impaired waters. Minn. Stat. § 115.03, subd. 10 was enacted as Section 10 of the bill that contained the Clean Water Legacy Act (CWLA), codified at Minn. Stat. ch. 114D (2006). 2006 Minn. Laws ch. 251.⁴ As introduced, the CWLA bill did not contain any language addressing MPCA's authority to issue permits for discharges to impaired waters. The provision ultimately codified as Minn. Stat. § 115.03, subd. 10(a) originated in H.F. No. 2896, introduced by Representative Knoblach on March 1, 2006. PCA Supp.App. 52, 53-56. H.F. No. 2896 included the following language:

⁴ The CWLA bill was introduced as S.F. No. 762 on February 7, 2005, by chief author Senator Dennis Fredrickson (PCA Supp.App. 1, 4-19) and as H.F. No. 826, by chief author Representative Dennis Ozment on February 7, 2005 (PCA Supp.App. 20, 22-37). All references to Minnesota legislative materials in this Supplemental Brief are to the 84th Session of the Minnesota Legislature (2005-2006).

Prior to completion of a TMDL for an impaired water, the Pollution Control Agency may issue a permit for a new or expanded wastewater treatment facility that would result in increased loading to an impaired water, if the increased loading is offset by reductions from other sources of loading to the impaired water.

H.F. No. 2896, Section 2, subdivision 1(d), lines 3.8-3.11, PCA Supp.App. 54. H.F. No. 2896 died in the House Environment and Natural Resources Committee on March 14, 2006, when a motion to re-refer to the Government Operations and Veterans Affairs Committee failed. *See* Minutes of House Environment and Natural Resources Policy Committee for March 14, 2006, PCA Supp.App. 59.

Language nearly identical to Section 2, subdivision 1(d) of H.F. No. 2896 was discussed when the House Agriculture, Environment and Natural Resources Finance Committee debated the CWLA legislation (S.F. No. 762) on March 21, 2006.⁵ *See* Minutes of House Agriculture, Environment and Natural Resources Finance Committee for March 21, 2006, PCA Supp.App. 60a. The language was drafted as Amendment S762A1 and read as follows:

“(d) Prior to completion of a TMDL for an impaired water, the Pollution Control Agency may issue a permit for a new or expanded surface water discharge that would result in increased loading to the impaired water, if the increased loading is offset by reductions from other sources of loading to the impaired water.”

Amendment S762A1; PCA Supp.App. 78.

⁵ S.F. No. 762 passed the Senate on May 23, 2005. *See* PCA Supp.App. 1. The bill in the form that it passed the Senate and was transmitted to the House is found in S.F. No. 762, 4th Engrossment. PCA App.Supp. 38. The 4th Engrossment did not address MPCA permitting of discharges to impaired waters.

Both the Minnesota Center for Environmental Advocacy (MCEA) and MPCA testified on Amendment S762A1. MCEA, speaking in opposition to the amendment, testified that “this is a matter of federal law . . . which prohibits issuance of a permit to a new or expanded discharger that will cause or contribute to an impairment in the absence of a total maximum daily load.” Excerpts from Agriculture, Environment and Natural Resources Finances [sic] Meeting, March 21, 2006 (March 21, 2006 Transcript), testimony of Kris Sigford, Water Quality Director, MCEA, PCA Supp.App. 72-73.⁶

MCEA further testified that

 this amendment is completely unnecessary because . . . this matter is pending before the Supreme Court. If the Court . . . upholds the Court of Appeals then this . . . legislation would be null and void because state law cannot trump federal law. If the . . . Supreme Court finds that such offsetting is okay, then you don’t need this legislation and its . . . just extraneous.

March 21, 2006 Transcript, PCA Supp.App. 73.

MPCA testified that the agency’s use of offsets was currently before this Court in the *Annandale/Maple Lake* case and that “we don’t believe legislative language would necessarily give us the authority to issue those permits using offsets because that’s what the -- that’s what the Court decision specifically precluded.” March 21, 2006 Transcript,

⁶ MPCA transcribed those portions of relevant committee or floor proceedings that discussed the language that eventually became Minn. Stat. § 115.03, subd. 10. Full audio or video archives of these meetings are available on the following legislative websites: 1) House Video Archives: http://www.house.leg.state.mn.us/hvt/archivesHFS.asp?ls_year=84; 2) House Audio Archives: http://www.house.leg.state.mn.us/audio/archivesall.asp?ls_year=84; and 3) Senate Audio Archives: <http://www.senate.leg.state.mn.us/media/>.

testimony of Deputy MPCA Commissioner Kristen Applegate, PCA Supp.App. 67. In addition, Representative Ozment cited a memorandum by House Research Analyst Mark Shepard on the offset language in H.F. No. 2896, in which Mr. Shepard advised that “it is unlikely that a state law would be effective in influencing the application of a federal regulation,” and that such legislation was “unlikely to affect a court’s judgment about proper interpretation of a federal regulation.” Hearing Transcript, PCA Supp.App. 76; and House Research Memorandum dated March 13, 2006; PCA Supp.App. 82. The Committee took no action on S.F. No. 762 or Amendment SF762A1 at its March 21, 2006 meeting. On March 23, 2006, the Committee recommended S.F. No. 762 to pass and re-referred it to the Ways and Means Committee without addressing Amendment S.F. 762A1. Minutes of March 23, 2006, PCA Supp.App. 60c-60d.

On May 10, 2006, S.F. No. 762 was heard in the House Ways and Means Committee. Minutes of House Ways and Means Committee for May 10, 2006, PCA Supp.App. 137, 142. Representative Knoblach offered Amendment S762A3 to add a new Subdivision 10 to Minn. Stat. § 115.03 to read as follows:

Subd. 10. [Nutrient loading offset.] Prior to the completion of a total maximum daily load for an impaired water, the Pollution Control Agency may issue a permit for a new discharger or an expanding discharger if it results in decreased loading to an impaired water. Where a new discharger or an expanding existing discharger cannot effectively implement zero discharge options, the agency may issue a permit if the increased loading is offset by reductions from other sources of loading to the impaired water, so that there is a net decrease in the pollutant loading of concern. The term "new discharger" is as defined in Code of Federal Regulations, title 40, section 122.2.

Amendment S762A3, PCA Supp.App. 144; *see* Committee Minutes for May 10, 2006, PCA Supp.App. 142. Representative Knoblach stated that Amendment S762A3 “would say that when you have an offset situation like this where within a watershed you have a load decrease that is greater than the load increase that you can go forward with those permits.” Excerpts From Ways & Means Committee Meeting, May 10, 2006 (May 10, 2006 Transcript), PCA Supp.App. 85. Representative Knoblach further explained the purpose of his amendment by stating that “where we've got a situation where an offset can take place we don't want to freeze economic development, we want to have some flexibility.” May 10, 2006 Transcript, PCA Supp.App. 86.

The Coalition of Greater Minnesota Cities, represented by attorney Tim Flaherty, testified in favor of Amendment S762A3, stating that “we think we should have a clear statement of intent that the legislature is authorizing the PCA, it's not requiring them, it's authorizing them to do an offset, the same way they did in the *Annandale/Maple Lake* case.” May 10, 2006 Transcript, PCA Supp.App. 91. Mr. Flaherty further explained the purpose of including existing and expanding facilities in the amendment by stating that “[w]e are expecting if you do nothing that there will be another lawsuit on -- on existing wastewater treatment facilities and that's why we think it's important that the legislature make it clear that we approve of the offset, we approve of the MPCA using an offset.” May 10, 2006 Transcript, PCA Supp.App. 92.

Representative Ozment opposed Amendment S762A3 stating that “[t]his amendment tries to establish in statute something that the Minnesota Pollution Control

Agency has assumed they already have. They have assumed they have the power to make an offset, it's not like we need to tell them to make the offset, they already did.” May 10, 2006 Transcript, PCA Supp.App. 111. Noting that MPCA’s offset decision was being challenged in Court on whether it is consistent with federal law, Representative Ozment stated that “I just know that it needs to be done in such a way that we're complying with federal law as we accomplish that.” May 10, 2006 Transcript, PCA Supp.App. 112. In addition, Representative Ozment expressed concern that MPCA’s legal position in the *Annandale/Maple Lake* case could be undermined if the amendment were construed to mean that MPCA did not have legal authority to use offsets prior to enactment of the amendment when it issued the Annandale-Maple Lake permit. May 10, 2006 Transcript, PCA Supp.App. 114. Representative Ozment moved to amend Amendment S762A3 by striking the offset provision and directing MPCA to study nutrient trading. Amendment S762A4; PCA Supp.App. 146; *see* Committee Minutes of May 10, 2006, PCA Supp.App. 142. The Committee adopted Representative Ozment’s amendment and Representative Knoblach then withdrew Amendment S762A3. May 10, 2006 Transcript, PCA Supp.App. 130-131; Committee Minutes of May 10, 2006, PCA Supp.App. 142.

On May 15, 2006, S.F. No. 762 was debated on the House floor. Representative Knoblach offered the amendment that ultimately became Minn. Stat. § 115.03, subd. 10. Hse. Jnl. for May 15, 2006, 7701, PCA Supp.App. 172. Representative Knoblach’s amendment included a new paragraph (b) to address the concern raised by Representative

Ozment that the amendment could undermine MPCA's legal position in the *Annandale/Maple Lake* case. Representative Knoblach explained that "this amendment deals with offsets." Excerpts From House Floor Session, May 15, 2006 (May 15, 2006 Transcript), PCA Supp.App. 149. When asked to express his views on the amendment, Representative Ozment stated that

"as I look at the amendment I see that the -- this is actually giving permissive language to the Agency, it doesn't mandate that they have to do anything. And I think that we already have the understanding that they have this permission of authority. That's exactly the case or activity that they attempted and is being questioned with regard to the Supreme Court concern with the Maple Lake, Annandale issue. And so I'm -- I believe that this language just establishes what we all along thought was current law and is being permissive."

May 15, 2006 Transcript, PCA Supp.App. 155-156. Representative Ozment added that the amendment "just says that if there -- if offsets can be used and the Agency wants to do that, this gives them, the Agency, the ability to take that into account." May 15, 2006 Transcript, PCA Supp.App. 159. The Knoblach amendment was adopted on a roll call vote. May 15, 2006 Transcript, PCA Supp.App. 170.

After House passage of S.F. No. 762 the bill was re-referred to a conference committee to resolve differences between the Senate and House versions. The Conference Committee Report on S.F. No. 762 included the Knoblach floor amendment as Section 10 of the report. PCA Supp.App. 179. In explaining the Conference Committee Report, the Senate chief author Senator Fredrickson explained Section 10 as a discretionary provision allowing MPCA to use offsets in permitting. Excerpt From Senate Floor Proceedings, May 20, 2006 (May 20, 2006 Transcript), PCA Supp.App. 198.

The House and Senate approved the conference committee report and re-passed S.F. No. 762, including Section 10 which was codified as Minn. Stat. § 115.03, subd. 10. Sen. Jnl. for May 20, 2006, 5778-79; Hse. Jnl. for May 20, 2006, 8130; *see* PCA Supp.App. 2-3.

III. THE LEGISLATIVE HISTORY OF MINN. STAT. § 115.03, SUBD. 10 CONFIRMS THAT THE PROVISION HAS NO EFFECT ON THE PERMIT IN THIS CASE.

The legislative history of Minn. Stat. § 115.03, subd. 10 demonstrates that the statute was intended merely to facilitate pre-TMDL permitting of discharges to impaired waters by endorsing MPCA's discretion to use offsets as an option in such situations. The legislative history thus reinforces the conclusion that this statute simply does not apply to the ALASD permit proceeding.

First, it is clear from the legislative history that the only subject the legislature intended to address in Minn. Stat. § 115.03, subd. 10 (a) was MPCA's discretion to use pollution offsets. The provision was clearly intended to bolster the authority already asserted by MPCA in the Annandale-Maple Lake permit proceeding to consider offsets in determining whether a facility would cause or contribute to an identified impairment. Because no offsets were ever proposed in the ALASD permit proceeding, Section 115.03, subd. 10(a) did not apply to that proceeding.

Second, it is clear that the purpose of Minn. Stat. § 115.03, subd. 10(a) was to facilitate MPCA's issuance of permits for new and expanding facilities, not to impose new legislative requirements on such permitting. There are repeated statements in the legislative history that the provision is "permissive" or "discretionary" and is not intended

to impose any requirements on MPCA.⁷ Indeed, the opponents of the Knoblach amendment appear to have viewed the broad discretion provided to MPCA in the amendment as a prime reason to oppose the provision, arguing that its terms were undefined and that rule-making would be required to implement it.⁸

Third, it would be contrary to the legislative history of Minn. Stat. § 115.03, subd. 10(a) to read that provision as a limitation on MPCA's authority to issue permits for discharges to impaired waters or as imposing an additional requirement above and beyond the requirements of applicable federal regulations. Paragraph (b) of subdivision 10 makes this clear by expressly stating that "[t]he legislature intends this subdivision to confirm and clarify the authority of the pollution control agency to issue the authorized permits under prior law." Thus, Minn. Stat. § 115.03, subd. 10 does not alter the authority MPCA

⁷ Testimony of Mr. Timothy Flaherty on Amendment S762A3 in House Ways and Means, Committee ("And it's . . . at the discretion of the Agency, so they don't really have to use it, but I think there will probably be cases where they would want to use it."), May 10, 2006 Transcript, PCA Supp.App. 103; Statement of Representative Knoblach on House Floor amendment to S.F. No. 762 ("I'm willing to trust the PMCA [sic] with the permissive language that's in here. Remember we're not mandating it, it's merely permissive language."), May 15, 2006 Transcript, PCA Supp.App. 167; Statement of Senator Fredrickson in Senate Floor debate on Conference Committee Report on S.F. No. 762 ("But what this says is that the PCA may, it's discretionary, they may do something called an offset."), May 20, 2006 Transcript, PCA Supp.App. 209.

⁸ Statement of Representative Wagenius in House Floor debate on the Knoblach amendment to S.F. No. 762 ("Representative Ozment, I think you've made the arguments or two arguments why this does need to go to rule making. One, the language offset is not in state statute, it is not in federal water law. . . . So we would have to go through rule making if indeed offsets are legal. Secondly, Representative Ozment should say they may issue and it is permissive, that is another reason that we'll have to go to rule making, because if somebody wants to use somebody else's offset and the Agency doesn't give it to them, they're going to sue.") May 15, 2006 Transcript, PCA Supp.App. 160-161.

already had to issue permits for new or expanding discharges to impaired waters under 40 C.F.R. §§ 122.4(i) and 122.44(d). MPCA continued to have authority to issue the ALASD permit in this case if it met the requirements of 40 C.F.R. § 122.44(d). MPCA's interpretation and application of 40 C.F.R. § 122.44(d) is the subject of the appeal in this case, and has been fully briefed and argued by the parties. There is no reason for this Court to consider Section 115.03, subd. 10(a) in deciding this case.

Finally, the legislative history shows that the legislature was advised by both MPCA and MCEA, and by its own professional legislative analyst, that adding language such as that in Minn. Stat. § 115.03, subd. 10(a) would have little or no effect on future MPCA permitting decisions pending a decision in the *Annandale/Maple Lake* case. It is therefore not surprising that Minn. Stat. § 115.03, subd. 10 (a) appears to have had no discernable effect on MPCA's subsequent water quality permitting policies or practices. As far as can be determined, MPCA has not invoked Minn. Stat. § 115.03, subd. 10(a) in any subsequent water quality permit. Rather, MPCA has continued to administer applicable federal and state water quality regulations in accordance with the terms and conditions of those regulations and consistent with the ruling of this Court in the *Annandale/Maple Lake* case.

CONCLUSION

The language, regulatory context and legislative history of Minn. Stat. § 115.03, subd. 10(a) confirm that this statute was intended solely to facilitate issuance of permits for discharges to impaired waters where offsets provide a net overall reduction of

pollution loading. Because this appeal of the ALASD permit concerns the setting of effluent limits and does not involve any use of offsets, Minn. Stat. § 115.03, subd. 10(a) simply does not apply here. Nothing in the text of Minn. Stat. § 115.03, subd. 10(a) or in its legislative history indicates that the provision was intended to impose requirements on the issuance of a permit that go beyond the requirements of federal regulations such as 40 C.F.R. § 122.44(d). Indeed, paragraph (b) of subdivision 10 mandates the opposite conclusion.

For all of the reasons stated above, Minn. Stat. § 115.03, subd. 10(a) has no effect on the authority of MPCA to issue the ALASD permit, and should not be considered by the Court in deciding this case. Because the statute does not affect MPCA's authority to issue the ALASD permit in this case, there is no need for the Court to consider the second question posed in its April 22, 2008 Order.⁹

⁹ Although Minn. Stat. § 115.03, subd. 10(a) does not affect the ALASD permit proceeding, the ALASD permit record shows that a decrease in actual phosphorus loading is expected to result from compliance with the 0.3 mg/L phosphorus limit in the 2006 permit. The record indicates that the only other municipal facilities in Minnesota currently subject to a 0.3 mg/L phosphorus concentration limit (Bemidji and Ely) have consistently operated at a rate of 0.12 to 0.17 mg/L. *See* Minnesota Pollution Control Agency Memorandum of James Robin, June 20, 2006. R.1876-1878, PCA Supp.App. 215. At an expected actual rate of phosphorus discharge of 0.12 to 0.17 mg/L, the phosphorus loading from the expanded ALASD facility will be reduced well below the loading allowed under the previous permit, which had an effective phosphorus concentration limit of 0.8 mg/L. The load reduction under the 2006 permit would be significant even compared to ALASD's actual performance in removing phosphorus in recent years under its former permit, which on an annual average basis was approximately 0.3 mg/L.

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