



Please note the meeting date has changed from Wednesday to Monday and the meeting will be held at the Scott County Law Enforcement Center, 301 Fuller Street South, Shakopee

LOWER MINNESOTA RIVER WATERSHED DISTRICT

Executive Summary for Action

Lower Minnesota River Watershed District Board of Managers Meeting

Monday, September 17, 2018

Agenda Item

Item 6. D. - Support for commercial salt applicator liability legislation

Prepared By

Linda Loomis, Administrator

Summary

In 2017, a resolution was adopted by the MAWD Board to support legislation providing limited liability for commercial salt applicators. The resolution adopted by MAWD was introduced by the Nine Mile Creek Watershed District. However it was not one of the resolutions that MAWD chose to emphasize.

This issue came up recently at a meeting of Watershed Management Organizations in Hennepin County to discuss the county-wide chloride project. At the meeting, those in attendance felt limited liability legislation was important to the outcome of the project and that the message this project promoted would be different depending on the whether or not commercial salt applicators were provided limited liability by the State.

I have spoken with Emily Javens about what it would take for MAWD to place more emphasis on this topic at the legislature and she offered several suggestions.

1. Pass a LMRWD resolution in support of the legislation and forward to Sue Nissen (n.sue4408@gmail.com). She has posted them on the *Stop Over Salting* [website](#). She said it is incredibly helpful every time an organization officially shows support for the legislation. Other WDs and cities have done the same.

Note: Ramsey Washington Watershed District did not adopt a formal resolution, however they did vote to join the coalition.

2. Communicate with MAWD leadership on your views. Send a letter to the MAWD board, network with your area reps (Mary Texer, Sherry Davis White, Craig Leiser), contact the MAWD legislative committee when they get rolling (Gene Tiedemann will likely be the chair), etc.
3. Consider asking other organizations and cities to take official actions to show similar support.
4. The only reason you would submit a resolution to MAWD is if you want a revision to the existing resolution.

MAWDS position statement is attached, along with a list of supporters of the coalition supporting limited liability legislation. I have also attached Background and Summary information along with the Resolution, submitted by NMCWD, which went before the MAWD membership in 2017. An MPCA fact sheet is also attached.

While the Minnesota River is not impaired for Chloride, several creeks that are tributary to the River are impaired or are at high risk of impairment. And while there is no current impairment the level of Chloride in the Mississippi River at Hastings is rising.

Item 6.D. - Support for commercial salt applicator liability legislation

Executive Summary

September 17, 2018

Page 2

Attachments

MAWD Chloride legislation position

Coalition for Applicator Liability Reform statement

Background and Summary

MPCA Fact Sheet

Resolution 18-13 - Support for Legislation that Provides Limited Liability to Commercial Salt Applicators and Property Owners

Recommended Action

Support the commercial salt applicator liability legislation by adopting Resolution 18-13, join the Coalition for Applicator Liability Reform and add LMRWD logo to its statement, writing a letter of support and engaging in other strategic support as needed

APPROVED MAWD RESOLUTION 2017-04

Limited Liability for Certified Commercial Salt Applicators

WHEREAS chloride contamination of water resources has been found in urban areas around the state;

WHEREAS the Minnesota Pollution Control Agency has listed 39 waterbodies in the Twin Cities metro area as impaired for chloride and has completed Total Maximum Daily Load studies on Nine Mile Creek and Shingle Creek and is currently developing TMDLs for the remaining impaired waterbodies through a metro-wide TMDL study; and

WHEREAS the TMDL studies have indicated that the largest chloride source to our lakes and streams is through the application of chloride compounds on roads, parking lots, sidewalks and other hard surfaces for winter maintenance practices; and

WHEREAS liability for property damage or personal injury as a result of snow or ice is one of the main reasons over-salting occurs and many private commercial contractors and property owners are reluctant to implement salt-reduction practices for fear of increased liability; and

WHEREAS the MPCA currently oversees a voluntary Smart Salting Certification Program that provides training to public and commercial salt applicators, private property owners and managers and others on how to maintain safe surfaces using salt efficiently;

THEREFORE, BE IT RESOLVED the Minnesota Association of Watershed Districts supports passage and enactment of state law that provides a limited liability exemption to commercial salt applicators and property owners using salt applicators who are certified through the established salt applicator certification program who follow best management practices.

Support Liability Relief for Certified Salt Applicators & Small Businesses while protecting Minnesota's water resources

Currently landscape professionals and others perform snow and ice removal during winter months using anti-slip/ de-icing products to protect the public from injury.

Over-application of chloride-based products is detrimental to our waterways, but applicators are often pressured to apply more product than necessary or ideal to meet demands from their clients to minimize slips & falls on the owners' property. These demands and concerns about potential litigation lead to applicators having few options other than over-application of product which results in water pollution. Even when these applicators follow best practices, they may still face litigation threats.

The Minnesota Pollution Control Agency currently provides training for salt applicators to learn best practices to significantly reduce the use of chlorides while maintaining safety. This proposed legislation connects anti-slip/anti-ice application best management practices to liability protections for salt professionals and their clients—the small business owners across the State of Minnesota—to avoid uncontrollable circumstances and unexpected litigation costs while protecting the public's safety and the health of Minnesota's waterways.

This common-sense legislation provides liability exemption for salt applicators who have completed certified training available through the PCA as well as to their clients, the property owner, occupant or lessee of the land maintained by these salt applicators.

The organizations, businesses and associations shown below join together to urge the Minnesota Legislature to take quick action in 2018 to pass this common-sense legislation which benefits not only struggling small business owners, but our 10,000 lakes, rivers and streams by preventing unnecessary chloride runoff and further irreparable damage to our vital Minnesota waterways.



For more information, please contact Larry Johnson at (651) 633-4987 or larry@mnla.biz

**Support Liability Relief for Certified Salt Applicators & Small
Businesses while protecting Minnesota's water resources**



BACKGROUND AND SUMMARY

Proposed Legislation

To address the growing levels of chloride pollution in our water resources, legislation was proposed at the 2018 Minnesota Legislature to encourage commercial salt applicators to adopt winter maintenance best management practices. The House bill (HF3577) authored by Representative Dario Anselmo (R) of Edina and the Senate bill (SF 3199) authored by Senator Carrie Ruud of Breezy Point, provides limited liability for commercial applicators who complete the Minnesota Pollution Control Agency's Smart Salting Certification Program. The measure has received support from the Minnesota Association of Watershed Districts, the Minnesota Pollution Control Agency, the Clean Water Council, the City of Edina and several other organizations.

It is likely that legislation will be introduced again in 2019. MAWD should be a key player to ensure that legislation is introduced. The LMRWD should urge the MAWD Board to make this a priority.] of its 2019 legislative agenda.

Policy Support:

A citizen organization, Stop-Over-Salting (SOS), has actively supported commercial salt applicator liability legislation. The Coalition of Applicator Liability Reform has issued a statement of support. Watershed districts and other organizations have joined the Coalition to add their support for reform. At the grassroots level, SOS has been very active with raising awareness of the proposed legislation as well as general chloride education. SOS is primarily made up of Master Water Stewards from MCWD.

Regional Technical Issue Overview:

Water pollution from chloride is widespread in the Twin Cities metro area. According to the Minnesota Pollution Control Agency (MPCA) the primary source of chloride pollution, particularly in urban areas, is salt applied in the winter months to roads, parking lots and sidewalks. Commercial sources of chloride are estimated to contribute 10-20% of the total salt applied in the Twin Cities metro area according to a 2009 Wenck study. A secondary source of chloride, particularly in more rural areas, is water softeners. Chloride does not break down over time and, according to the MPCA, the majority of applied chloride (70-78%) remains in metro area waters.

MPCA data shows chloride levels are continuing to increase in both surface and groundwater across the state. There is no economically feasible method for removing chloride once it is in water. This means chloride will continue to accumulate in the environment over time. Chloride impacts on surface water include toxicity to aquatic life and interruption of the turnover process.

Regional Policy- Programming Approach to Chloride Impairments:

Metro Area Chloride Management Plan:

The MPCA metro area chloride management plan is the guiding plan for agencies, local government, watershed districts and other stakeholders on chloride reduction strategies in the region. The Chloride

Management Plan (CMP) incorporates water quality assessment, source identification, implementation strategies, monitoring recommendations and measurement and tracking of results.

As part of the CMP, waters not meeting state standards for chloride are listed as impaired and Total Maximum Daily Loads (TMDLs) are developed, which allocates a chloride waste load. This regulation creates load reduction goals for municipal separate storm sewer systems (MS4's) to reduce chloride pollution.

The CMP outlines the region's six prong strategic approach to achieving chloride reductions. One of these approaches is a reduction in the amount of chloride entering areas waters as a result of winter maintenance activities. A key challenge to reducing salt usage is balancing the need for public safety with high public expectations for clear roads, sidewalks and other surfaces during winter.

An important strategy identified by the CMP to address this challenge is the adoption of winter maintenance best management practices (BMPs). MPCA has funded BMP trainings and outreach efforts for winter maintenance professionals as part of this strategy.

Road Salt Symposium:

The symposium, hosted by the Freshwater Society and Fortin Consulting, brings together government agencies, academic experts, water resource professionals and others to learn about state-of-the art winter maintenance practices that protect water. This year's event had a record attendance of over 300 participants who learned about innovations in road salt application and technology and emerging challenges.

Smart Salting Trainings:

The MPCA has launched a series of smart salting certification trainings for staff from local units of government, property managers, and private contractors. The trainings educate the attendees on the environmental impacts of salt, application rates, equipment calibration and best practices for reducing chloride application. Individuals who complete the training and pass the exam administered after the training receive a certification. Due to the trainings' success in the pilot communities, the MPCA is looking to expand this pilot program statewide and is creating a Smart Salting Advisory Committee.

A two-season study by the MPCA and the University of Minnesota's Water Resources Center on the effectiveness of the smart salting certification trainings determined there were measurable changes in winter maintenance professionals' behavior and knowledge. While these efforts are beginning to produce results among public sector winter maintenance professionals, the private sector remains a challenge due to commercial applicator liability concerns. To address this barrier, another of the CMP's strategic approaches is the limitation of liability for commercial applicators.

The Twin Cities Metro Area is also currently working toward regionally coordinated programming with BWSR funding to better integrate chloride pollution prevention efforts.

LMRWD Approach to Chloride Impairments:

Monitoring Program - Collects data to diagnose issues and inform targeted programming. The LMRWD began monitoring Ike's Creek in Bloomington in 2017 to establish a base line for Chloride in the Creek. Ike's Creek is located in the Minnesota Valley National Wildlife Refuge and the US Fish & Wildlife Service was a partner, collecting the samples. USFWS will collect samples again this winter.

The LMRWD will begin to monitor chloride levels in Eagle Creek

Policy-Planning Program – Uses data to engage in regional planning.

While current law largely protects public operations from liability, in order to receive this protection, cities and counties must have a policy and best management practices in place. As a result of the committee's work, Smith Partners drafted a model policy which was disseminated for use statewide. The LMRWD participated financially in this effort.

More recently there have been discussions on the proposed changes to BWSR funding distribution in the Twin Cities metro area, including the potential of funding a regional approach to reducing chloride pollution. The LMRWD is participating in county-wide projects in Hennepin and Scoot County and Minnesota River Basin project in Hennepin County with Riley Purgatory Bluff Creek Watershed District , Nine Mile Creek Watershed District, and Richfield/Bloomington Water Management Organization.

Education Program- The LMRWD has promoted MPCA level I & II Smart Salting Trailing. Recently the District has partnered with other LGUs to host trainings. IN 2018 we co-hosted two level II trainings.

In 2018, the LMRWD promoted and sponsored the annual Road Salt Symposium.

Commercial Applicator Liability Bill

Commercial applicators' concern about increased liability has been identified as a barrier to their adoption of salt reduction practices. To address those concerns, a bill was introduced in the 2018 Minnesota Legislature that would have provided liability protections for commercial applicators who complete the Minnesota Pollution Control Agency's Smart Salting Certification Program.

This legislation is also one of the policy recommendations outlined in the Metro Area Chloride Management Plan and addresses a key driver of salt overuse by private applicators identified in the plan. Limited liability policy protects applicators from being sued if they are certified in smart salting BMPs and keep records of their application practices.

The Commercial Salt Applicator Liability Bill is supported by the MPCA, MAWD, the Clean Water Council, City of Edina, Minnesota Nursery & Landscape Association, and seventeen other watershed districts, non-profit organizations, businesses and civic/professional associations.

Momentum is building to again introduce legislation in 2019

LMRWD staff is recommending the Board of Managers support this legislation for the following reasons:

- It targets commercial salt use, which is estimated to contribute 10-20% of the total salt applied in the Twin Cities metro area.
- It removes the primary barrier to commercial applicators' adoption of salt application best management practices (concern about increased liability) and has checks in place to ensure best management practices are followed in order to receive liability protections and applicators are periodically re-certified.
- It complements the policy and programming work the LMRWD and other watershed district is doing to address the chloride pollution issue.
- Chloride pollution is a significant water quality threat in the Twin Cities and the state.



Twin Cities Metropolitan Area Chloride Management Plan

What is the Twin Cities Metropolitan Area Chloride Management Plan?

The Minnesota Pollution Control Agency (MPCA) has partnered with local and state experts in the 7-County Twin Cities Metropolitan Area (TCMA) to create a plan for effectively managing salt use to protect our water resources in a responsible and strategic approach. Solutions were developed collaboratively to find a balance between clean water and safe winter travel conditions. As part of this effort the MPCA and partners collaborated to monitor, evaluate and better understand the level of chloride in lakes, streams, wetlands and groundwater. The Chloride Management Plan incorporates water quality conditions, sources of chloride, salt reduction strategies, protection strategies, monitoring recommendations as well as measurement and tracking of results. The goal of this plan is to provide strategies to assist local partners in reducing salt use while providing safe and desirable conditions for the public.

How does salt get into the water?

The primary source of chloride, particularly in urban areas, is salt applied in the winter months to roads, parking lots and sidewalks. A secondary source of chloride, particularly in more rural areas, is water softeners.

The Twin Cities has thousands of miles of roads to maintain and managing ice and snow is necessary to the safety of residents. The use of salt, primarily sodium chloride, is currently the common method for ice control during the winter. However, when snow and ice melt, the salt goes with it, washing into our lakes, streams, wetlands and groundwater.

Salt from local water softeners used to remove hardness (minerals) from water supplies travels to municipal wastewater treatment facility or septic systems where it is discharged to shallow groundwater or local streams.

Why does it matter?

High levels of salt can be harmful to fish and other freshwater aquatic life and can also negatively affect infrastructure, vehicles, plants, soil, pets, wildlife as well as groundwater and drinking water supplies.

Roughly 75% of Minnesotans rely on groundwater for their drinking water. MPCA has found 30% of the shallow monitoring wells, often in urban areas, have exceeded the state standard for salt levels. As water moves from shallow to deeper aquifers, the salt contamination could penetrate our sources of drinking water.

Once in the water, chloride becomes a permanent pollutant and continues to accumulate in the environment over time. It is estimated that roughly 78 percent of the salt applied in the TCMA stays within the region's watershed. The only known method of removing chloride in groundwater and wastewater is through reverse osmosis, which can be a costly and challenging large scale treatment process.

What is happening with salt in the water?

There are currently 39 waterbodies that tested above the water quality standard for chloride in the TCMA. An additional 38 surface waters are near the chloride standard and many others are unknown. The data show that salt concentrations are continuing to increase in both surface waters and groundwater across the state.

How can you make a difference?

How can we protect our waters, maintain safe roads in the winter and have desirable water in our homes? Currently, there are not environmentally safe, effective and inexpensive alternatives to salt. However, we can reduce salt at the source through application strategies. Smarter application of salt will also save money on labor and products as well as reduce damage to infrastructure, vehicles, plants and water supplies.

Each person contributes to the attitudes and practices that have created a high and steadily growing volume of salt to be used each year. Shifting public attitude toward more sustainable salt application is required to meet demands. Citizens form public policy, set the expectations that winter maintenance crews must meet and use salt on personal property such as water softening and sidewalks in the winter. Below are a few simple steps the public can take to protect water resources.

Winter Safety – a few ideas to reduce salt use

- Support local and state winter maintenance crews in their efforts to reduce their salt use.
- Work together with local government, businesses, schools, churches and non-profits to find ways to reduce salt use in your community.
- Shovel. The more snow and ice you remove manually, the less salt you will have to use and the more effective it can be.
- Slow down. Drive for the conditions and make sure to give plow drivers plenty of space to do their work. Consider purchasing winter (snow) tires.
- More salt does not mean more melting. Use less than 4 pounds of salt per 1,000 square feet. One pound of salt is approximately a heaping 12-ounce coffee mug. Consider purchasing a hand-held spreader to help you apply a consistent amount.
- Watch a video. This video, produced by the Mississippi Watershed Management Organization, provides tips to homeowners about more environmentally friendly snow and ice removal: [Improved Winter Maintenance: Good Choices for Clean Water](#)

Water Softeners – a few ideas to reduce salt use

- Consider whether a water softener is even needed. Get a water test for hardness as typically only water with hardness greater than 120 mg/L CaCO₃ needs to be softened. See the University of Kentucky's Guidance: [Hard Water- To Soften or Not to Soften](#) for more information.
- Change from a timer-based to a demand-based softener that recharges only when needed, based on how much water is used.
- Install a bypass so landscape irrigation water is not softened.

Your actions matter

Get involved. The public has a critical role in helping solve this challenge of providing safe winter travel conditions and protecting our valuable water resources.

_____ introduced the following resolution and moved its adoption;

RESOLUTION 18-13

LOWER MINNESOTA RIVER WATERSHED DISTRICT
BOARD OF MANAGERS

SUPPORT FOR LEGISLATION THAT PROVIDES LIMITED LIABILITY TO
COMMERCIAL SALT APPLICATORS AND PROPERTY OWNERS

WHEREAS, chloride contamination of water resources has been found in urban areas around the state of Minnesota; and

WHEREAS, the Minnesota Pollution Control Agency (MPCA) has listed 50 waterbodies in the State as impaired for chloride and has completed a metro-wide Total Maximum Daily Load (TMDL) study and individual TMDLs on Nine Mile Creek and Shingle Creek; and

WHEREAS, the TMDL studies have indicated that the primary source of Chloride pollution to our lakes and streams, particularly in urban areas, is through the application of salt in the winter months to roads, parking lots, sidewalks and other hard surfaces; and

WHEREAS, the MPCA metro area chloride management plan is the guiding plan for agencies, local government, watershed district and other stakeholders on chloride reduction strategies; and

WHEREAS, a key strategy identified within the Chloride management plan is to encourage the adoption of winter maintenance best management practices through training and outreach; and

WHEREAS, commercial salt applicators' concerns about increase liability has been identified as a barrier to their adoption of winter maintenance best practices; and

WHEREAS, the MPCA currently oversees a voluntary Smart Salting Certification Program that provides training to public and commercial salt applicators, private property owners and managers and others on how to maintain safe surfaces using salt efficiently; and

WHEREAS, the Commercial Salt Applicator Liability Bill would provide liability protections for commercial applicators who complete the Smart Salting Certification Program.

NOW, THEREFORE BE IT RESOLVED, the Lower Minnesota River Watershed District Board of Managers supports commercial salt applicator liability legislation that provides a limited liability exemption to commercial salt applicators and property owners using salt applicators who are certified through the established salt applicator certification program who follow best management practices.

BE IT FURTHER RESOLVED, that the Board directs LMRWD staff share this resolution with Stop Over Salting and the Coalition for Applicator Liability Reform, join the Coalition for Applicator Liability Reform and add logo to its statement, write a letter to the MAWD Board, urging MAWD to focus on passage of legislation in 2019 and engage in other strategic support as needed.

The Motion was seconded by Manager _____ and adopted by a unanimous vote by the Board of Managers of the LMRWD this 17th day of September, 2018.

Jesse Hartmann, President

Attested:

David Raby, Secretary