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To: Representative Hansen, Chair, House Environment and Natural Resources Finance Division  
and Members of the House Environment and Natural Resources Finance Division

From: Minnesota Chapter, National Waste and Recycling Association (NWRA)

Thru: Douglas, Carnival, McGrann Shea Carnival Straughn and Lamb Law Firm

RE: HF 4554, Article 2., Section 60, Real Property Interests, lines 41.8 through 41.17

NWRA continues to oppose Article 2, Section 60, “Real Property Interests”, (formerly HF 4145, Section 5). After several discussions with MPCA yielded more information about how they might implement an Environmental Covenant, NWRA has even greater concern with this language. Given the lack of success in working to date with MPCA to revise the language, the lack of understanding of this legislation amongst the affected parties, we have reached out to and need to bring this discussion to a more diverse group of affected parties. Therefore, NWRA respectfully requests that this section of the bill be deleted. This issue has not been fully vetted, nor has it gone through a public process such as a stakeholder group or rulemaking, and we suggest either of these processes as an alternative.

Importantly, Section 60, “Real Property Interests”, is unnecessary for implementing, and has no relationship to Section 59 of the bill, which involves the Freeway Landfill Cleanup. Section 60 should be considered separately and acted on only after a more thorough analysis of the intent and consequence of implementing the language is held amongst affected stakeholders.

The MPCA stated in the 2019 Solid Waste Policy Report that “[t]he solid waste program should develop standardized language to include in *landfill closure documents* that *requires* the placement of an environmental covenant on the landfill property” (emphasis added).

In prior hearings, the MPCA has represented that the environmental covenant language is necessary to allow the MPCA to put prospective buyers on notice that a closed facility was used for disposal purposes and there may be restrictions on the use of the property to protect the integrity of the cover used to close a facility. The MPCA also has said that the covenant would occur only by mutual agreement of the parties.

However, the purpose of the Article 2., Section 60, as stated by MPCA, appears to already be addressed under Minnesota Rules 7035.2625 “Closure Procedures” which provides:

“... [t]he landowner must record a notation on the deed to the property or on some other

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instrument normally examined during a title search, that will in perpetuity notify any potential purchaser of the property of any special conditions or limitations for use of the site, as set out in the closure plan and closure document.” Subp.2(B)(3).

The rule provides future owners with this information already.

Notwithstanding discussions to date with the MPCA to find agreeable language, there still seems to be questions regarding the application of covenants only to closed landfills, the terms and conditions of environmental covenants, the timing of the filing of the covenants, and the use of covenants only by voluntary agreement unrelated to and outside of any regulatory requirements. As such, the most prudent course seems to be to delete section 60 and continue discussions before next year’s session. The C&D Rule Advisory Panel is one possible forum for this discussion, but NWRA is open to other approaches for considering this issue.

Thank you for your consideration.