

May 3, 2021

The Honorable Rick Hansen
Co-Chair, Environment and Natural Resources Conference Committee
407 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Senator Bill Ingebrigtsen
Co-Chair, Environment and Natural Resources Conference Committee
3207 Minnesota Senate Building
95 University Avenue W.
St. Paul, MN 55155

Re: SF959 Environment and Natural Resources Conference Committee

Dear Senator Ingebrigtsen and Representative Hansen,

As we enter final negotiations on the FY22-23 budget for the Minnesota Pollution Control Agency (MPCA), I write to provide input on the language before your conference committee. There are a few areas of agreement between House and Senate language related to MPCA. Thank you for recognizing the important work of the St. Louis River Total Maximum Daily Load (TMDL), providing the necessary Air Appropriations inflationary increase (per federal and state law), funding PFAS source evaluation to fill a critical data gap, and expanding eligibility for Rural Recycling & Composting Grants to include Minnesota's Tribal Nations. We are grateful for agreement on these items.

Minnesota faces daunting environmental challenges right now. Climate change threatens the very things that make Minnesota a great place to live, from our magnificent 10,000-plus lakes to our farmable land and clean air. PFAS, the 'forever chemicals,' seem to permeate land and water and will require a long-term focus on cleanup. And global attention to our state has emphasized the need to address the long-standing environmental justice issues in Minnesota. It is our responsibility to rise to these challenges in the most effective and efficient ways possible, recognizing that each of them will take continued effort if we are to protect our environment, health and economy.

Climate: Preparing Minnesotans for extreme weather

Mayors across the state are stepping forward to support Climate Resiliency Grants, partially funded in the House language, because their cities need to right-size stormwater infrastructure to meet changing weather patterns. More frequent extreme rainfalls will put public health and the environment at risk due to the resulting community flooding, and cause damages and costs to businesses, private citizens and municipalities.

The Insurance Federation of Minnesota has said extreme weather is costing homeowners more than \$1,000 annually in higher insurance costs. Extreme wet weather results in 150 wastewater overflows annually conveying partially treated or untreated wastewater into Minnesota's lakes, streams and rivers. Climate resiliency grants will help cities pay for stormwater system vulnerabilities risk assessments, planning, and pre-design needed to garner construction loans and grants. We urge you to fully fund the Governor's recommendation of \$2.9 million for these grants.

Keeping PFAS out of drinking water and the environment

In March, MPCA shared that it has found PFAS contamination in groundwater surrounding 98 closed landfills statewide. That's almost every closed landfill the agency has tested. At 59 closed landfills in more than 40 counties, PFAS concentrations exceed health guidance. And at 15 of these sites, the PFAS concentration leaking into groundwater is more than ten times higher than health levels. Gofer Landfill outside of Fairmont had PFAS exceedances 1,300 times MDH's health guidance. PFAS are a growing and concerning problem for every community and family in Minnesota.

MPCA proposed and the Governor recommends three funding projects needed to fill critical data gaps around PFAS, as outlined in the Minnesota PFAS Blueprint released in February. Both the House and Senate fund the PFAS source evaluation project to look at possible upstream sources of PFAS heading into wastewater treatment plants and to landfill and solid waste sites. But only the House funds our

PFAS inventory and monitoring projects. These two projects will:

- Monitor fish and surface waters for PFAS in order identify the extent of PFAS contamination in our lakes and develop safe fish consumption advice.
- Accelerate and expand an MPCA pilot project to inventory PFAS contamination from likely industrial sources, in order to protect families and communities from potential risk sites.

These three budget requests, along with policy items including authority for MPCA to seek chemical information from companies, for labeling of compostable products, and for a ban on PFAS in food containers, are included in the House language. MPCA supports these policies. If funded, these policy and budget needs will set a path forward for government, academia, stakeholders and the public to work together to address PFAS contamination in our state.

Clean air for all Minnesotans

Our data shows that Black, Indigenous, people of color, and low-income Minnesotans are more likely to live near sources of air pollution from facilities, as well as from transportation and neighborhood sources. These communities are also more likely to be impacted by air pollution. The House language includes funding for MPCA requests for new field compliance and enforcement staff and portable monitoring equipment, so we can find problems early and prevent the type of years-long enforcements like we've seen at Water Gremlin and Northern Metals. Finding noncompliance early protects communities and can save both the MPCA and the regulated facility time and money. If a serious violation occurs, it takes considerable resources and time to rebuild community trust and bring the facility back into compliance. The policy language in this bill around environmental justice reflects work we have done in partnership with legislators and stakeholders, as well as the MPCA's Environmental Justice Advisory Group.

Maintaining Current Services

Operations support and other fiscal provisions are necessary for the agency to continue current service levels to the regulated community and the public. These are urgent needs which if not met will result in negative impacts.

- **Water operations** funding of \$3 million is needed to maintain current service levels into the FY 22-23 biennium. The House includes these funds but the Senate does not. The loss of these funds will mean longer waits for industrial and municipal permitting, decreased industrial enforcement, and decreased technical assistance to cities on water infrastructure issues and to counties on septic system issues. Without this funding, the agency will not be able to provide the critical support that local governments expect and experience today, especially in times of crisis such as wastewater treatment plant overflows and bypasses.
- The Remediation Fund is pushed into deficit in the FY22-23 biennium under Senate language. To maintain a positive balance in the Remediation Fund, a **transfer of \$4 million** is needed from the Environmental Fund. The House provides \$3 million and the Senate provides nothing. The agency faces significant short-term pressure on this fund due to continued discoveries of PFAS-contaminated drinking water in the East Metro. A negative balance in the Remediation Fund may result in delays in other remediation work such as in the Superfund program to ensure these short-term, urgent needs are met.
- The agency's ability to implement necessary upkeep and respond to emergencies at 110 closed landfills statewide is hampered by either House or Senate language, in different ways. The Senate provides only one-time direct appropriations from the **Closed Landfill Investment Fund** and caps emergency response dollars, a scenario that lacks flexibility and permanence. Emergency situations at landfills can involve fires and groundwater contamination, response to which can easily top the Senate's limited funding. The House includes an open appropriation and limits spending to interest earned on the fund corpus, as determined by the state Board of Investment. While an improvement over the Senate, this approach lacks consistency in the event of economic downturns as we have recently experienced during COVID. MPCA requested statutory appropriations, like the 3M Settlement Fund and the Natural Resources Damages Fund, to provide the flexibility needed to address emergencies and the stability of funding to ensure long-term care for these 110 closed landfill sites. The recent findings that PFAS is leaking into groundwater from 98 of these closed landfills demands we act quickly and flexibly.
- In order to pay for **ongoing major litigation** that the agency operating budget cannot absorb, MPCA needs \$2 million general fund pass through from DNR for legal costs. As MMB data indicate the MPCA is one of the most-frequently sued state agencies, this support is a fundamental need. The House provides \$1 million, but the Senate omits this funding. Without the \$2 million, the agency will be forced to make reductions in legal services provided internally, resulting in less preparation for other legal suits and potentially higher taxpayer costs if the agency loses lawsuits as a result.
- The **Senate's \$868,000 unidentified General Fund reduction** will force MPCA to cut funding to enterprise IT costs that will mean a loss of 7 IT professionals (FTEs). This reduction will delay the retirement of antiquated systems and postpone the implementation of more secure, efficient IT platforms including: upgrades to our training and certification systems so external parties can track training hours online and fully pay online for their training; upgrades to our citizen complaint tracker to centralize this data and make it more user-friendly for citizens – and

stronger cybersecurity for nonpublic data in both of these systems; and a new outward-facing portal to so citizens and regulated parties can obtain documents by searching on the web and no longer have to make requests of MPCA for this information. Without these upgrades, we lose efficiencies that would benefit permitted entities, citizens and the agency itself.

- The Senate's **30% reduction in Rural Recycling Grants** program means local recycling projects in Greater Minnesota will go unfunded each year.
- Both the House and Senate fail to include \$600,000 new funding requested to **accelerate the digitization** of 400 data sets and services at MPCA, funding that is vital to providing the online capacity that Minnesotans and regulated parties expect.
- An internal move of funds is necessary to address the **three-fold increase in Superfund sites** in Minnesota in recent years. Only the House includes this internal movement of dollars.

Policy initiatives to improve efficiency and reduce risk

The Governor recommended multiple policy proposals to update, improve and streamline statutes and bring efficiencies to our work. Further, these policies reduce future risk of higher costs due to contamination that can be prevented today. The House includes these provisions but the Senate does not. These include:

- The **Landfill Responsibility Act**, which slows the increase of waste going to landfills and boosts our reuse-and-repair economy.
- The **MPCA 2020 and 2021 Policy bill** provisions to:
 - Close loopholes that leave taxpayer dollars vulnerable when there are cleanups of Priority Qualified Facility closed landfill sites.
 - Provide windfall liens as a tool to protect public investment during the years-long cleanup process at Priority Qualified Facility closed landfill sites.
 - Clarify the enforcement options open to the commissioner in response to major enforcement actions like those at Water Gremlin in White Bear Township and Northern Metals in Minneapolis, to provide a clear future deterrent for permitted entities.
 - Prevent contamination from at least 150 older landfills statewide by allowing environmental covenants signed by all parties attesting to location and conditions needed for the upkeep of these sites, identical to agreements currently allowed for Superfund and Petrofund sites.
 - Conform state statute to align with the most recent federal changes to hazard ranking criteria that states are required to use in addressing Superfund sites.

- Allow the agency the ability to seek and obtain information on the use of a contaminant, whether in a contaminated site situation or for pollution prevention purposes, while ensuring that trade secrets would be protected as 'not public' data.
- Enhance efficiency by repealing a duplicative report, freeing up our municipal team to provide more technical assistance to cities statewide.
- Continue, via transfer from the Rail and Pipeline Safety Account, the agency's oversight of railroads' emergency preparedness and response efforts to prevent and prepare for spills and avoid resulting contamination.
- Update technical language in electronic waste statutes, now 10 years old, to conform to current implementation.

Senate policy moves backwards on clean water, clean air

The MPCA opposes several Senate policy provisions that take Minnesota backwards on clean air, clean water and productive lands. We testified extensively against these provisions in committee:

- **Motor Vehicle Emissions:** On-road motor vehicles are a significant contributor to Minnesota's air pollution, which negatively impacts human health, and the transportation sector is the number one emitter of greenhouse gases in Minnesota. The Senate language eliminates the agency's ability to regulate motor vehicle emissions as part of our federally-delegated air quality work – and has implications beyond a single rulemaking. The unintended consequence of this language is that meeting any future new, more stringent air quality standards from the federal or state government would be shouldered solely by facilities with air emissions permits from the MPCA. Stripping the agency of its ability to regulate air pollution from motor vehicles removes a tool in the MPCA's toolbox to meet air quality standards. As the Biden Administration reviews the National Ambient Air Quality Standards, it is critical that the MPCA has all of the tools to address air quality to ensure that the agency has the ability to address all sources of air pollution, instead of solely focusing on permitted sources.
- **Feedlot Permit Rewrite:** This Senate language voids language in the MPCA feedlot general permit. Renewed every five years per federal requirements, the newest feedlot general permit is based on updated science from the University of Minnesota and Discovery Farms and includes new manure application requirements and options designed to address growing nitrate contamination of groundwater across the agricultural areas of the state. This is a concern because nitrate in groundwater can negatively impact Minnesotans who depend on groundwater for their drinking water source and livestock, which are negatively impacted by nitrates. Through a robust, year-long engagement process with agricultural stakeholders, we took suggestions and made changes as we developed this permit. The Senate language removes long-standing and federally-delegated authority. If the Senate language were to become law it could jeopardize the MPCA's Clean Water Act delegation and the state's ability to issue feedlot and other Clean Water Act-required permits. If the MPCA was not able to issue permits for these types of activities then Minnesota entities would have to obtain permits from the U.S. Environmental Protection Agency, a change that would inject uncertainty and delays into the permitting process.

- **Effluent Toxicity:** This Senate language would allow four wastewater facilities in Minnesota's sugar beet industry to discharge more toxics into surface waters. Instead of measuring toxicity at the end of the discharge pipe, the standard measurement for 'point sources' under state and federal law, this bill would move the toxicity compliance monitoring point downstream to the end of a new 'mixing zone.' We oppose this language because it increases toxicity in receiving waters and thus could harm or kill fish and aquatic life. In addition, this language unilaterally exempts the sugar beet industry from 'anti-backsliding' requirements of the federal Clean Water Act, therefore violating federal law.
- **Unadopted rules:** This Senate language requires the agency to put all policies, guidance, best management practices, etc., into rules – a long and costly process – and in the meantime prohibits the agency from utilizing any of these in permitting. Guidance, policy and BMPs allow flexibility and save both permittees and the agency time and money. For example, guidance on constructing wastewater treatment ponds allows cities the option of using pre-approved specifications. Without this guidance, multiple consultations on each specification will make the process longer and more expensive. In another example, MPCA implements an EPA policy that allows certain seasonal grain handling facilities to calculate potential to emit (PTE) based on seasonal operations rather than the standard used by year-round facilities. Without this policy, we would rely solely on the year-round standard and many more agricultural facilities would be required to get an air emissions permit in result. Unadopted rules language like this has been rejected by previous Legislatures, and we urge conferees to reject this language again this year.
- **State Implementation Plan Revisions:** This provision is in conflict with the Clean Air Act. Under this Senate language, only air permittees who are expanding their facilities would need to comply with any new national or state clean air requirements. Thus, the vast majority of air permittees would be exempt from meeting any new air quality standards. The MPCA is required to enforce the Clean Air Act and this language could jeopardize the agency's status as the delegated authority.
- **Restricting public input:** Senate provisions restrict petitioners for an environmental assessment worksheet to only those Minnesotans residing in the county or bordering county of where a proposed facility will be built/expanded. Under current law, any Minnesota resident may petition for an EAW for a new or expanded facility such as a feedlot. Thus Senate language severely restricts public input. Further, it ignores the fact that air and water do not follow county boundaries. We oppose this because we know from experience we get better permits when more perspectives are considered.

LCCMR funding for MPCA projects is appreciated

Finally, we appreciate the inclusion of both 2021 and 2022 LCCMR language in both House and Senate to fund two MPCA projects. Our 2020 project, for research with the University of Minnesota's Rosemount Experiment Station and others on PFAS and land applied biosolids, fills a critical data gap identified in the [Minnesota PFAS Blueprint](#) and is fully funded by the House but only partially funded by the Senate. We urge full funding to better understand the looming impact of PFAS. The agency's 2021 LCCMR project included in both House and Senate is the second phase to complete the statewide groundwater contamination mapping project – to produce data that will be widely used to protect drinking water.

In the coming weeks, I look forward to working together in the conference committee process to forge a bill that will protect public health and the environment now and into the future.

Sincerely,



Laura Bishop
Commissioner

Cc: Alexis Donath, Policy Advisor to Gov. Tim Walz and Lt. Gov. Peggy Flanagan
Members of the 2021 Environment & Natural Resources Conference Committee
Senate Majority Leader Paul Gazelka
Senate Minority Leader Susan Kent
House Speaker Melissa Hortman
House Minority Leader Kurt Daudt

Members of the Environment and Natural Resources Conference Committee
Senator Justin Eichorn
Senator Carrie Ruud
Senator David Tomassoni
Senator Torrey Westrom
Representative Peter Fischer
Representative Josh Heintzeman
Representative Kelly Morrison
Representative Ami Wazlawik