

May 7, 2019

The Honorable Bill Ingebrigtsen
Chair, Senate Environment & Natural Resources
Finance Committee
Minnesota Senate
3207 Minnesota Senate Building
St. Paul, MN 55155

The Honorable Rick Hansen
Chair, House Environment & Natural Resources
Finance Division
Minnesota House of Representatives
407 State Office Building
St. Paul, MN 55155

Dear Senator Ingebrigtsen and Representative Hansen,

As the conference committee on SF 2314 begins to meet, you have stark choices in front of you.

Minnesotans are united in our desire for clean water, air, and land, a strong economy, and healthy communities. I know you share these values too, but the budget proposals before us today lay out very different paths. The Walz-Flanagan budget recognizes the commitments and investments that are necessary for the MPCA to achieve its critical mission of protecting and improving the environment and human health.

Communities are prosperous when businesses thrive and the environment is protected. In their budget Governor Walz and Lieutenant Governor Flanagan have put forward requests that will ensure the MPCA's permitting process provides the timely services businesses demand, damaged natural resources are restored, and local communities receive the assistance they need to protect their residents' health. These items are not simply spending requests, they are proposals that will make all of us, and our state, better off.

Critically, the Walz-Flanagan budget and the House position ensure the MPCA continues to receive strong support from the General Fund. Funding our work in this way illustrates that a healthy environment and a healthy population benefit everyone, and require our collective investment. The General Fund is a reliable source of funding that represents an ongoing commitment by the Legislature to our mission. Shifting to other funding sources is a short-sighted fix that jeopardizes the agency's ability to accomplish the goals we all share.

I am writing to share the MPCA's support for some of the provisions that are before you today, and our opposition to other items. I will discuss budget provisions first, and then move to policy.

Budget:

Each body's version of SF 2314 includes some positive items that the agency and the Governor support. Thank you for including the following items in both bills:

- \$774,000 (Environmental Fund), as required under state and federal law, to cover inflationary costs for MPCA's **air program** (Senate and House)

- An extension of a \$373,000 appropriation (Environmental Fund) for **technical assistance to municipalities** seeking PFA funding for projects at wastewater treatment facilities (Senate and House)

Several items from the Governor's budget request were omitted from the Senate version of the bill, but were funded or partially funded in the House. We appreciate the House's interest in prioritizing this work and urge you to fund these items in your final bill:

- \$484,000 (Environmental Fund) in FY 2021 for existing staff to continue coordinating cleanup work at the **St. Louis River Area of Concern**. This project uses \$25.4 million in state bond funding to leverage a \$47.2 million federal match. Without staff to do the work, we risk the federal government reassigning the money to projects in other states that are prepared to use it, and lose the opportunity to improve water quality, enhance recreational opportunities and spur economic growth. (fully funded in House; partially funded with no tails in Senate)
- An extension of a \$1.622 million appropriation (CLIF) for design and engineering work to prepare for **cleanup of Freeway Landfill and Dump**, the state's largest closed landfill. (funded in House; omitted in Senate)
- \$1.21 million (Remediation Fund) to accelerate work on addressing **vapor intrusion** into private homes and potential risk to private drinking water wells at sites statewide. At our current level of funding, this work to protect human health will not be completed until the year 2062. It will also provide staff to address contaminants of emerging concern at the state's 110 closed landfills. (funded in House; omitted in Senate)
- \$1.5 million (Environmental Fund) to address **food waste** through food rescue, waste prevention, and removing regulatory barriers to organics processing. (funded in House; omitted in Senate)
- \$250,000 (General Fund) for **climate outreach & engagement** to involve all Minnesotans in problem-solving and decision making around this critical issue (funded in House; omitted in Senate)
- Funding (Environmental Fund) to help transition 70+ **industrial users of trichloroethylene (TCE)** to less-toxic alternatives. (full funding of \$786,000 provided in the House; partial funding of \$393,000 provided in the Senate)
- Funding (Environmental Fund) for our **Business-Friendly Data Services** initiative, which increases efficiency for regulated parties and for our staff by moving paper-based processes online. (House funds the Governor's request in the second year only, causing the work to stall for one year; Senate bill fails to fund acceleration of this work and discontinues existing funding and staff for this work)
- Funds (Environmental Fund) for a grant program to spur innovation and market development in Minnesota's **recycling** industry. (partially funded at half of the Governor's \$800,000 request in House; omitted in Senate)
- \$875,000 (General Fund), via DNR, to pay for the **legal costs** associated with defending the state's work on permitting the Polymet NorthMet project. We fully expect that we will need the full \$1.638 million in the Governor's budget recommendations over the biennium. This is a

hidden cut to environmental program work, because not defending the agency's permitting decisions in court is not an option. (partial funding at about half of the Governor's request in the House; omitted in Senate)

- Language in other omnibus bills would fund **electric vehicle infrastructure** initiatives to reduce greenhouse gases from our transportation sector. This important work is a priority for Minnesotans and for the Governor. We hope the Legislature will make a commitment to funding it, whether in this bill or in other language.
- The House version of the Public Safety omnibus bill funds two dedicated staff for **railroad and pipeline emergency preparedness** and response activities and reinstates the railroad and pipeline safety assessment. A portion of the assessment is transferred from the Department of Public Safety to MPCA for this work. MPCA supports this work going forward.

In addition to leaving this important work unfunded, the Senate version of the bill **cuts the MPCA's General Fund base budget by 85%**. It moves the agency funding nearly entirely away from the General Fund, thus relying on the Environmental Fund to pay for core agency functions and environmental programs. This is a precarious move for several reasons.

When MPCA starts relying exclusively on the Environmental Fund, the burden of paying for environmental work that benefits all Minnesotans is paid for by a select few funding sources. This is not good public policy and it is not what is best for Minnesota. Currently, nearly 60% of Environmental Fund revenues are generated through the Solid Waste Management Tax. MPCA's statutory goal is to reduce waste, which will reduce revenue from this tax. If our funding sources are not diversified with General Fund and other revenues, the MPCA will be forced to pay for more of our work through permit fees and enforcement.

I've been a business leader in states where environmental agencies are funded almost entirely through permit fees and enforcement actions. It is not healthy for the business community, the public, nor for the environment and human health. This is why we oppose the Senate shifting the following costs from the General Fund to the Environmental Fund:

- \$506,000 for MPCA's staff Municipal Liaison and Economist
- \$1.918 million for grants to counties for administering the feedlot program grants
- \$2.162 million in operational funding for the Environmental Quality Board
- \$216,000 for coordinating the St. Louis River Area of Concern cleanup

One of the priorities I have set as a new Commissioner is efficiency and due diligence across all our work, including permitting. It is a goal we all share. Unfortunately, a number of provisions in the Senate version of this bill will make our work less efficient and less cost-effective. The following direct funding cuts or failures to renew funding will lead to the discontinuation of important work:

- In the Senate bill, a \$4.98 million (General Fund) cut to our operations budget for the biennium corresponds to the requested MN.IT operating increase we received in our last biennial budget. This increase was necessary due to an increase in IT rates enterprise-wide, and it maintained our base level of IT services. This cut represents a 20% **reduction in our MN.IT operating budget**.

This is not a cost that can be absorbed in our existing budgets and would result in a cut to environmental programming. (Senate cut only)

- The Greater Minnesota **competitive recycling and composting grant program**, which provides \$2 million in grants, is also eliminated in the Senate bill. Just in the last round of funding, these grants went to the cities of Moorhead, Northfield, and Red Wing; Clearwater, Grant, Lake, Lyon, Pine, Pipestone, Polk, St. Louis, Swift and Winona counties; and the Pope-Douglas Solid Waste Management Board. These opportunities will no longer be available to Greater Minnesota communities. (Senate cut only)
- The Senate bill also eliminates \$230,000 (General Fund) in historical funding for ongoing **watershed monitoring activities**. The cut brings up constitutional questions regarding the potential substituting and supplanting of non-Clean Water Fund with Clean Water Fund dollars. (Senate cut only)

Both bills miss one opportunity for strategic investment that was included the Governor's budget:

- Both versions of the bill omit funding for the Environmental Quality Board to scope a **Generic Environmental Impact Statement** (\$643,000 General Fund) in the Karst Region of southeast Minnesota. Consolidating the environmental review on nitrates in groundwater was intended to accomplish this work more efficiently and help our agency, residents, and industry better understand the issues facing our waters in this region. Not funding this work will continue to result in further ambiguity which we can expect will result in delays around decision-making in permitting.

There are also two funding provisions of concern related to the Remediation Fund:

- \$1.5 million in the Senate bill, or \$1.8 million in the House bill, is transferred from the Remediation Fund to the **Dry Cleaner Account** to help speed up reimbursements for dry cleaners. We agree there are problems with the Dry Cleaner Account, but this proposal creates a bad precedent of excusing one specific industry from the "polluter pays" principle, while avoiding some of the other problems with the Dry Cleaner Account. The provision also does not fund the study on insurance cost recovery.
- A cap of \$40 million in the Senate bill, or \$44 million in the House bill, is set on the transfer of funds from the Environmental Fund to the Remediation Fund. There needs to be flexibility in the transfer language for emergency and unexpected situations in which a cap could hinder our ability to respond. There was a technical error in the Governor's budget bill on the issue, and we have provided language that would address the error and our concerns.

Policy:

From a policy standpoint, the House and Senate bills demonstrate very different priorities in terms of protecting human health and the environment. The House, Senate, and Governor are in agreement on one policy item, and that is updating the terms and conditions for MPCA's **Small Business Environmental Loan program**. Thank you for including this provision in both bills.

MPCA has serious concerns about the language in Sec. 44 of the House bill that **reinstates the Citizens' Board**. Citizen engagement is a priority in the Walz-Flanagan administration, and there are already several opportunities to accomplish this including the Environmental Quality Board, the MPCA Advisory Committee, and the MPCA Environmental Justice Advisory Group. I am also concerned that this provision removes decision-making authority from the Governor and the Commissioner. While our position has been neutral, this provision carries a fiscal note of \$669,000, including 3 FTEs, that is unfunded. These costs cannot be absorbed into our budget, which leads us to oppose this policy measure.

We have also recommended two small changes to Section 2 of the House bill, which provides funding from civil penalties for **community health boards**.

In addition, we would like to work with the authors on a different approach to Section 87 of the House bill, which deals with financial assurance for **waste tire facilities**.

Unfortunately, the Senate version of the bill also contains a number of concerning policy provisions, including:

- **TCE Emissions Response Account:** Section 118 creates a new account for the civil penalty from Water Gremlin Company's alleged unlawful emissions. We have concerns with the precedent being set in allowing one community full access to civil penalty funds, and the contrast in equity with how other communities were handled in the past or will be handled in the future. This precedent is also problematic because it creates an expectation that penalties for environmental violations can address the impacts of the violation to a specific community. They cannot, and they are not meant to. Penalties are based on the seriousness of a violation and on the economic benefit gained by noncompliance. Segregating this money in a dedicated fund also has the potential to deplete the balance of the Environmental Fund to the point where MPCA cannot respond to environmental emergencies that arise between legislative sessions.
- **Legislative oversight of water fees:** Sections 107, 113-115, and 123 in the Senate bill redundantly complicate the MPCA's ability to cover costs by increasing water fees. Existing Minnesota Statute 14.18 subd. 2 already requires legislative approval of new or increased fees. Consistent with that statute, Agency action to increase water fees would have to be approved by the legislature during the biennial budget session immediately following their adoption into rule.
- **Social permit:** Section 111 sets the unreasonably high bar of requiring unanimous agreement among all 87 county boards in Minnesota before the state can change water quality standards to make them more protective of human health and the environment. This item has an estimated \$3.1 million cost per biennium, and includes no funding for implementation.
- **Regulatory freeze for industrial facilities:** Section 112 exempts industrial facilities from complying with new or modified pollution limits for 16 years after construction of a new facility. While the agency supports this exemption for municipal facilities, the economic burden of publicly financed debt to pay for new municipal wastewater treatment plants does not translate to industrial facilities. As a result, this exemption is not justified for industrial facilities.

- **Usage of Closed Landfill Investment Fund (CLIF):** Section 117 makes the dollars in CLIF inaccessible to the agency for care and maintenance of the 110 landfills in the program into perpetuity. The direct appropriation requirement is different from all the other funds and accounts used for remediation activities. We support Section 89 of the House bill, which authorizes the Commissioner to spend from the fund.
- **Limit on assistant commissioners:** Section 120 limits the number of assistant commissioners to three when the agency currently has four assistant commissioners. This will cause us to reduce or reassign staff the Commissioner has already tasked with specific roles and responsibilities.
- **Limit on program management and oversight costs:** Section 121 imposes a 3% limit on costs for administering grant programs, delivering technical services, providing fiscal oversight, and ensuring accountability for all grant programs. This will severely restrict the agency's ability to issue grants in a timely manner, and provide statutorily-required levels of technical assistance, accountability, and fiscal oversight. To maintain required levels of service, we would need to cut other environmental programs.
- **Enforceability of national ambient air quality standards (NAAQS):** Section 122 creates an uneven playing field for air permit holders. Under the change, larger air emitters receive a break with showing compliance with the NAAQS, while smaller emitters would not see a change. Our focus should be on larger emitters since they potentially pose a larger human health and environmental risk.
- **Restrictions on adopting more protective environmental standards at the state level** (Section 123): There are many reasons that Minnesota might choose to adopt more stringent environmental standards than the federal government; imposing additional requirements on the process of adopting these standards will only slow down the process unnecessarily.
- **Requirements that standards be expressed in milliliters or milligrams** (Section 123): This requirement would result in confusing standards that do not conform to the units of measure in federal regulations, published scientific work, or other states' laws. There are also unit-less standards such as pH, for which it would be impossible to comply with this requirement.
- **Unadopted rules:** MPCA uses guidance documents to help businesses understand and comply with regulations. Sec. 124 would restrict the agency's ability to use these documents to clarify state and federal law, and would leave information in these documents vulnerable to frivolous lawsuits. Permittees and the public are asking for more guidance and information, not less.
- **TCE ban:** MPCA recognizes the opportunity and political will to shift industry toward environmentally preferable alternatives to TCE. However, we have concerns with the language in Sec. 126—namely, that it is an unfunded mandate that would require at least 5 FTE (\$605,000) to be effectively enforced. We are also concerned that some of the language in Subdivision 4 (related to exemptions) is too vague or broad to be implemented.
- **Restriction on extending comment periods:** Sec. 129 of the Senate bill gives a project proposer control over the agency's ability to extend a public comment period. This provision is unnecessary, as the agency rarely extends comment periods, and when it does, it is generally in response to overwhelming public interest in participating in the comment process. This could

impose a significant burden on the public in circumstances where a proposer may not elect to extend the comment period.

- **Appropriation reductions for unfilled positions:** Section 153 will cut the agency's budget for positions that are unfilled for 180 days, regardless of the reason. This would have the unintended consequence of encouraging the MPCA to fill all positions more rapidly, rather than structuring our search to identify and hire the best-qualified candidate.
- **Solar generation on closed landfill study:** Section 158 creates a study for private development of solar generation on properties in the closed landfill program. We believe the scope of the technical and policy aspects of the study need refinement to take into account the state's enterprise sustainability and closed landfill program goals. If it is to be funded, the project should not be funded through the Closed Landfill Investment Fund.

Thank you for the opportunity to share our thoughts on the bill. While there is a great divide between the policy and fiscal goals set forth in each body, I am committed to working on solutions that achieve our joint goals of protecting and improving the environment and human health. My team and I look forward to continuing to work on our agency's budget with you in the coming weeks.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Bishop". The signature is fluid and cursive, with the first name "Laura" being more prominent than the last name "Bishop".

Laura Bishop
Commissioner

cc: Hue Nguyen, Deputy Chief of Staff to Governor Tim Walz
Suzanne Sobotka, Policy Advisor to Governor Tim Walz
Sen. Carrie Ruud
Sen. Justin Eichorn
Sen. Mark Johnson
Sen. David Tomassoni
Rep. Peter Fischer
Rep. John Persell
Rep. Jamie Becker-Finn
Rep. Nathan Nelson