

**Rick Hansen**  
**State Representative**

District 52A  
Dakota County



# Minnesota House of Representatives

August 25, 2017

Larry Gunderson  
Pesticide and Fertilizer Management Division  
Minnesota Department of Agriculture (MDA)  
625 Robert Street North  
St. Paul, MN 55155

Dear Mr. Gunderson:

Thank you for the opportunity to comment on the “Proposed Permanent Rules Relating to Water Resource Protection Requirements” issued by the Minnesota Department of Agriculture (MDA). As an employee of the MDA in 1990, I was deeply involved in the staffing of the original Nitrogen Fertilizer Task Force and the development of the August 1990 Recommendation of the Nitrogen Fertilizer Management Plan.

As written, the second portion of the proposed regulatory framework relies on subjective information obtained by surveying affected farmers. Whether this fatal flaw is by design or unintentional, it must be addressed in order for this rulemaking effort to have a fighting chance of protecting our groundwater and achieving the objectives of the 1989 Groundwater Protection Act (GPA) and other state laws. More than twenty-five years after the GPA’s enactment, this rule as proposed would be forever stuck in the failed, voluntary approach that we have today.

There are certain objective facts that we know. First, the MDA’s long-term monitoring efforts reveal that groundwater nitrate concentrations have grown over time. Second, through the MDA’s Township Testing Program we know that in over 70 percent of the townships tested so far in 19 counties, 10% or more of the tested wells are contaminated with nitrate above the health risk limit of 10 mg/L. Third, we know that the GPA was adopted in 1989 and prohibited the MDA from adopting enforceable groundwater protection requirements before January 1, 1991.<sup>1</sup> Fourth, since 1969 Minnesota law has included nondegradation language intended to prevent contamination of our surface and groundwaters by human activities.<sup>2</sup>

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<sup>1</sup> Minnesota Statutes § 103H.275, subd. 2.

<sup>2</sup> Minnesota Pollution Control Agency. “Statement of Need and Reasonableness: In the Matter of Proposed Revisions of Minnesota Rules ch.7050, Relating to Nondegradation and minor supporting changes to Minnesota Rules chs. 7052 and 7001”

However, instead of objective and verifiable facts, the proposed rule and the regulatory framework it proposes rely upon subjective and largely unverifiable data provided by farmers/landowners, i.e., those subject to the rule. It should be noted that farm ownership is increasingly comprised of absentee landowners, and in some cases multiple landowners. The person(s) living on the farm site may not own or rent the cropland. The renter may also be absentee, living miles from the farm. Therefore, hereinafter ‘farmers’ shall include farmers, landowners, and/or renters.

Under the proposed rule, a township or drinking water supply area’s regulatory level would be determined by 1) monitored nitrate levels, and 2) the rate at which area farmers voluntarily adopt the MDA-designated Best Management Practices (BMPs). The MDA could adopt and enforce mandatory groundwater protection requirements only if both 1) nitrate contamination exceeds certain benchmarks, and 2) farmers implement BMPs on less than 80% of cropland acres. To determine adoption rates, the MDA would survey area farmers.

Put another way, the MDA could not adopt or enforce mandatory groundwater protection measures in an area if farmers report that they voluntarily implemented BMPs on at least four out of every five cropland acres. If enough farmers certify voluntary compliance, the MDA could not adopt mandatory measures regardless of whether the amount of nitrate-nitrogen in the area’s groundwater is above the health risk limit and/or growing.

Although the farmers that I know personally as my family, friends, and neighbors are honorable and trustworthy, the proposed scheme encourages farmers to attest that they are complying with voluntary measures whether this is true or not. This is not a slight against farmers, but an honest acknowledgement of human nature.

Imagine that you own a business and receive a survey from the government. This survey asks if you have voluntarily adopted certain recommended practices at your business. The practices would require you to change your business methods and/or incur costs. You’re told that if too few of the local businesses report that they have adopted these practices, you will all be forced under penalty of law to change your business practices significantly, regardless of the impact on profits. On top of that, you know it is very unlikely that the government would, or even could, audit your survey responses and verify whether you have actually incorporated the voluntary practices or not. How do you fill out that survey? Be honest.

A scheme that can only progress if regulated entities admit that they aren’t voluntarily using certain nitrogen fertilizer practices is destined to fail. While running for Governor of California during the Great Depression, in an attempt explain why his progressive reform policies weren’t taken seriously, Upton Sinclair said: "It is difficult to get a man to understand something, when his salary depends upon his not understanding it."<sup>3</sup> The consequences of failure are too significant to have the success of this proposed rule hinge on the results of a survey that doesn’t acknowledge the realities of human nature.

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<sup>3</sup> Sinclair, Upton (1994). *I, Candidate for Governor: And How I Got Licked*. Berkeley, CA: University of California Press. p. 109.

If this is truly a good-faith effort to finally address a known and growing problem, the MDA must fix this flaw and propose an effective and realistic method to address the problem at hand.

Sincerely,

A handwritten signature in black ink that reads "Rick Hansen". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Rick Hansen  
State Representative