

May 9, 2022

Rep. Rick Hansen
Chair, House Environment & Natural Resources Finance and Policy Division
407 State Office Building
St. Paul, MN 55155

Sen. Bill Ingebrigtsen
Chair, Senate Environment & Natural Resources Finance Committee
95 University Avenue W.
Minnesota Senate Bldg., Room 3207
St. Paul, MN 55155

Dear Chair Hansen, Chair Ingebrigtsen, and members of the conference committee:

I would like to express my appreciation for the opportunity to work together on this year's Environment and Natural Resources Omnibus bill. This year's historic projected budget surplus presents you, as legislators, with the opportunity to make significant one-time investments that protect human health and the environment for your constituents and for future generations of Minnesotans. It is often said that there are more good ideas presented at the Legislature than there are dollars to fund those ideas. This year, you have the opportunity to make strategic and smart investments in some of the most important projects that will protect our state's water, land, and air.

I have communicated the MPCA's positions on various items in the House and Senate bills in greater detail in previous letters to the authors and committee chairs of each body. I encourage the conferees to revisit these letters as they prepare for the important decisions ahead of them in the coming weeks. In short, there are many ideas before the committee that represent smart and effective environmental policy and budget investments, and I would like to thank members for including these items. There are also a number of ideas under consideration that move our state backward, increase pollution to our air, land, and water, create additional bureaucracy and regulatory uncertainty by directing MPCA to act in conflict with federal law, or fail to take advantage of this opportunity to invest in our state. I would like to comment on a few modifications that were made to the House and Senate versions of SF 4062 in finance committees and on the floor of each body.

First and foremost, the Senate version of SF 4062 includes an amendment that resurfaces the ongoing challenge of how to effectively regulate sulfate pollution that impacts wild rice waters. As you are aware, much of MPCA's authority to regulate water pollution is delegated to the agency by the U.S. Environmental Protection Agency (EPA). The EPA has given MPCA the clear direction in their letter of February 16, 2022, that the underlying session laws addressed in Section 66 "are inconsistent with the Clean Water Act" and has specifically stated that they "constitute an improper modification to MPCA's authority to implement the NPDES program." EPA has further stated their expectation that "MPCA's NPDES permits will include effluent limitations to meet all federally-approved [water quality standards] as required by the [Clean Water Act], federal regulations, and EPA-approved Minnesota laws and rules".

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As EPA's position on this issue has been clearly articulated, a directive from the legislature to conduct new rulemaking would be a costly undertaking that would not change the MPCA's current responsibilities and obligations to enforce the 10 mg/l wild rice sulfate standard, nor the agency's ability to use the flexible Clean Water Act tools to account for site specific conditions and economic challenges. MPCA incurred costs estimated at \$210,000 in a previous rulemaking on this topic, and currently the bill contains no funding to cover the cost of similar work required in Sec. 66.

In addition, there is language in the Senate version of SF 4062 that prohibits the MPCA from using its existing authority to require monitoring consistent with the 2022 PFAS Monitoring Plan. Though it is highly preferred by the agency that monitoring be completed voluntarily by the facilities identified in the Plan, the option of mandatory participation remains a foundational component of the Plan to ensure there is an accurate picture of PFAS contamination and its sources in Minnesota. Acquiring PFAS monitoring data is critical to support the MPCA's overall goal to prevent, manage, and mitigate PFAS pollution and by extension, fulfill MPCA's mission to protect human health and the environment.

MPCA staff worked with Chair Hansen and members on a number of items in the House version of the bill, and I would like to thank them for accepting many of our suggestions. These include modifications to the language on the Pig's Eye Area Task Force, on feedlot financial assurance, on date changes for legislative reports, and on appropriations for work related to PFAS. We have also had positive conversations with members about several other items in the bill, and hope that language changes can be incorporated as the conference committee process moves forward.

In developing budget and policy proposals for this session, one of MPCA's considerations was to identify ideas that could benefit all Minnesotans regardless of geography or political ideology. Notifying downstream communities when their drinking water source is threatened by sewage, helping wastewater treatment plants more effectively and efficiently manage difficult contaminants, and conducting a one-time soil and water survey to determine baseline conditions of PFAS across our state are ideas that are responsive to requests from local leaders around the state, benefit all Minnesotans and represent the value we place in our state's natural resources. It is my hope that the conference committee members will see how their constituents will benefit by advancing these proposals.

Once again, thank you to the chairs, members, and staff of the Environment and Natural Resources Committees in both bodies for the opportunity to work together on this bill. I look forward to continuing our dialogue as we work through the remainder of the legislative session.

Sincerely,



Katrina Kessler

cc: Rachel Ganani, Policy Advisor to Governor Tim Walz; Sen. David Tomassoni; Sen. Justin Eichorn; Sen. Bill Weber; Sen. Kent Eken; Rep. Ami Wazlawik; Rep. Kelly Morrison; Rep. Todd Lippert; Rep. Josh Heintzeman