



Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, MN 55155-4194 | 651-296-6300 | 800-675-3843 | 651-282-5332 TTY | www.pca.state.mn.us

May 16, 2011

The Honorable Denny McNamara, Chair
Environment, Energy, and Natural Resources
Policy and Finance Committee
Minnesota House of Representatives
375 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

The Honorable Bill Ingebrigtsen, Chair
Environment and Natural Resources Committee
Minnesota Senate
303 State Capitol
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Dear Chair McNamara and Chair Ingebrigtsen:

As the conference committee begins its work on the omnibus environment and natural resources policy bill, I would like to share some thoughts from the Minnesota Pollution Control Agency (MPCA).

First, we would like to thank Chair McNamara and the House members for their efforts on the bill when it was on the floor. Before the House floor vote, we shared our concerns with Chair McNamara on the bill (please find enclosed a copy of those concerns). We appreciate him taking the time to understand them and the changes he made to the bill to help address them.

However, there are a number of issues and/or potential issues that we believe warrant further discussion as SF1115 is conferred.

- While the geographic criterion for citizen signatures required for a citizen petition on a discretionary EAW was changed to include all Minnesotans, the number of required signatures is still high when considering localized issues in the sparsely populated parts of the state or in comparison to similar requirements on contested case hearings for rulemakings.
- If policy issues from outside the current scope of SF1115 become part of the discussion, we would suggest our E-Waste proposal be considered. The state's E-Waste program has been very successful in keeping electronic devices out of the waste stream and our environment. While it was nation leading when created, it has fallen behind and there is a significant deficit in the amount of funding counties and collectors are receiving from obligated manufacturers to recycle the state's electronic waste. The MPCA's proposed reforms would help correct this mounting imbalance, thus aiding counties (rural and metro alike) and create a more level playing field in regards to which companies are responsible for recycling electronic devices.

Thank you for the opportunity to share our thoughts before the conference committee convenes. If you have any questions or we can be of any assistance during the process, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink that reads "Paul W. Aasen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Paul W. Aasen
Commissioner

Enclosure

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Minnesota Pollution Control Agency

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May 6, 2011

The Honorable Denny McNamara, Chair
Environment, Energy, and Natural Resources
Policy and Finance Committee
Minnesota House of Representatives
375 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Dear Chair McNamara:

Since the Environment, Energy, and Natural Resources Committee has completed its work on the Omnibus Environment Policy Bill, I would like to share the Minnesota Pollution Control Agency's (MPCA) thoughts on the provisions included by the committee. While we have testified on the various component bills throughout the process, I would like to take this opportunity to submit a compilation of our thoughts.

First, I would like to thank you for including two of the agency's policy initiatives regarding source separated compostable materials and the clean water partnership program. In addition, the inclusion of legislation allowing the disposal of unneeded lands within the closed landfill program will assist us with handling a few sites in the program.

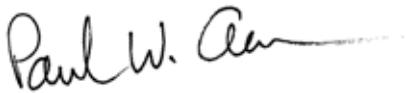
Unfortunately, there are also a number of proposals in the bill that are troublesome to the MPCA. I will quickly run through our major concerns with them in the order they appear in the bill.

- 1) Changing how the MPCA can permit aquatic pesticide applications, which the MPCA is required to do by the EPA and federal courts
 - The provision does not adequately protect all permittees and their ability to lawfully apply pesticides on or near "waters of the state" thus exposing them to third-party lawsuits under the federal Clean Water Act.
 - Nor does it fully protect the state's water quality through the use of best management practices for the aquatic application of pesticides.
 - The language is also counter to the charge the Legislature and state law has given the MPCA to protect "waters of the state," which is the basis for all of our water quality protection activities, including our delegated authority from the EPA to administer the federal Clean Water Act.
- 2) Granting an extension of the current subsurface sewage treatment systems ordinance adoption delay from 2012 to 2016
 - It delays the implementation of improvements in the new rules meant to protect the state's drinking water, ground water and surface water, especially the changes for larger systems (e.g., a system that treats the equivalent of about eight or more homes).
 - For the first time these larger systems, which tend to be in shoreland and sensitive areas, will have specific standards in the rules.
 - Studies have demonstrated these large systems frequently exceed water quality standards under the old rules.

- 3) Modifying the number of signatures needed for a citizen petition and where they are collected from in order to request the possibility of a discretionary environmental assessment worksheet (EAW)
 - The petition only puts the issue before the responsible government unit, which ultimately decides if an EAW is needed on the technical merits of the case, not the number of signatures.
 - Possible environmental impacts of a project do not stop at political boundaries and can go well beyond an adjoining county.
 - It does not allow for individuals that live outside of an area to comment on the impacts, despite working or attending school in the area.
- 4) Allowing an environment review to last the lifetime of a solid waste landfill
 - The MPCA cannot perform an environmental review with any accuracy for a proposed landfill on areas that will not be used until 20 or more years into the future. It is not reasonable to require a responsible government unit to try to predict the future that far out.
 - While the outline and general idea of the project may be known and described (so neighbors know what the current thought is for ultimate build out), the specifics that need examination are not known.
 - The potential impacts, appropriate mitigations, surrounding characteristics (e.g. will there be a housing development along side it in 20 years?), technology/practices required then, etc. are too difficult to project more than 20 years out.
 - Environmental review is typically done about every 15 to 20 years and we think that is a reasonable timeframe for evaluating changes and impacts. It is not done with every 5 year permit cycle.

I appreciate the opportunity to express my concerns and thoughts on the bill. Additionally, thank you for removing the provision that eliminated our ability to promulgate rules for a two year period. As this bill continues its journey through the legislative process, my staff and I are more than willing to further discuss these issues. It is my hope we can resolve our differences and still be able to enact the other good provisions in the bill.

Sincerely,



Paul W. Aasen
Commissioner

cc: Representative Kurt Zellers, Speaker of the House
Representative Matt Dean, Majority Leader
Representative Paul Thissen, Minority Leader
Representative Jean Wagenius
Representative Bill Hilty