

2011 Legislative Session Review



**Minnesota Pollution
Control Agency**

2011 Regular Legislative Session

Environmental Review and Permitting Streamlining Bill (HF1*/SF42)

Summary & History: A signature issue for the Governor, Legislature and the business community at the start of the session was reforming the state's environmental review and permitting system. The Governor enacted an Executive Order containing many of the below provisions, which later were also enacted as part of HF1. The final version of the bill made the following changes related to the MPCA:

- Sets a goal of 150 days to approve or deny permits. Twice a year we must report on the permits that missed the goal and the reasons for the delay.
- Within 30 business days of receiving an application we must notify the proposer if it is complete enough to process or return it to the proposer with a list of items needed to complete it.
- Allows a proposer to start construction of their project before a water discharge permit is issued, with certain exceptions. The proposer cannot discharge until the permit is complete.
- Requires an analysis of the need and reasonableness of differences between proposed state rules (related to air quality, solid waste, hazardous waste, and water quality) and similar regulations on the federal level, in bordering states and states within the same EPA region.
- Allows for a project proposer to draft a preliminary environmental impact statement (EIS) and requires them to submit all supporting documents. Responsible Government Units (RGUs) can require additional studies or information and retains the ability to declare an EIS complete.
- Requires permit decisions to be made within 30 days (previously 90 days) of an approved EIS, with certain exceptions.
- Changes the venue where environmental review decisions can be challenged from District Court to the Court of Appeals.

Much of the debate focused on four provisions:

- Allowing a proposer to draft a preliminary EIS was heavily debated and concerns were expressed that proposers would not do a thorough job because it would not be in their best interest to highlight potential problems. As enacted, the final EIS would still need to be approved by the RGU and the RGU could request any additional documentation or studies it believes are needed to adequately examine all environmental concerns.
- Concerns were expressed over changing the court venue from District Court to the Court of Appeals when challenging environmental review decisions. Opponents argued it would make it more costly and difficult for citizens, while supporters countered it got rid of duplication since legal issues and how they are reviewed were the same at each level.
- Earlier versions of the rulemaking analysis provision created a higher legal standard for the state to approve rules that are more protective than federal regulations. In the end, the provision only restated existing requirements and expanded the comparison to additional states.
- The final issue was the exempting of the IRR from the environmental review process, which allows them to support projects prior to the completion of a review.

Status: Signed into law on March 3rd 2011, [Chapter 4](#)

Effective Date: Date following enactment (March 4th, 2011)

Environment and Natural Resources Policy Bill (HF1097/SF1115*)

Summary & History: As in the past the House and Senate pursued different methods in handling policy provisions, the House chose a formal omnibus bill and the Senate sent out individual bills for passage.

An effort was made to pre-confer the bills, which ultimately failed. It made it much easier for our positions to prevail in the actual conference committee. Please find below brief summaries on the bills and provisions rolled into the Environment and Natural Resources Policy Bill.

Status: Signed into law on May 27th, [Chapter 107](#)

Effective Date: Various, see individual provisions below for specific dates

Bills & Provisions Contained in SF1115

Bill Name & Numbers: Source Separate Compostable Materials (SSCM) Defined as Recyclable Materials (HF1463/SF1243)

Summary & History: The bill was an agency initiative to add SSCM to the definition of recyclable materials. It removes a significant barrier to the collection of organic materials by allowing communities to contract with haulers to pick them up when collecting other recyclables curbside. It also prohibits materials meant to be recycled from being disposed of in landfills. Prior to the bill's hearing some concerns were raised, including whether or not it mandated SSCM collection (it does not). We were able to satisfy these concerns prior to the provision's hearing and the bill advanced with no opposition.

Effective Date: August 1st, 2011

Bill Name & Numbers: Modifications to the Clean Water Partnership Program (HF1509/SF1354)

Summary & History: The bill (another agency initiative) amends the Clean Water Partnership Program by eliminating activities completed since 1990; simplifying, eliminating duplication and providing additional flexibility to implement it; repeals the Clean Water Partnership Project Coordination Team; and allows local Soil and Water Conservation Districts to become eligible for its grants. When created in 1987, the Clean Water Partnership Program was one of the few statutes to protect/improve Minnesota's waters. With the various changes in the area of water pollution, prevention and restoration since then, the program needed updating. There were some questions from legislators and interest groups, which led to minor modifications to the original proposal.

Effective Date: August 1st, 2011

Bill Name & Numbers: Removal of Parcels from the Closed Landfill Program (HF1148/SF855)

Summary & History: The bill allows MPCA to remove entire properties or portions of properties that no longer need to be in the Closed Landfill Program. At a few Closed Landfill sites, parts of the properties are no longer needed to serve as setbacks from or to operate the actual landfill and are "clean" parcels. Until this provision there was no legal way to transfer unneeded properties to others (private or public) for other uses. The issue of alternative uses has come up in the past and complicated legal procedures were used to accomplish the same thing or they were done without MPCA approval. This provision will immediately help sites in Wadena and Cook Counties, among others.

Effective Date: May 28th, 2011

Bill Name & Numbers: Elimination of Mandatory EAWs for Ethanol Facilities (HF716/SF435)

Summary & History: The final language only removes the mandatory EAW trigger for expanding an ethanol or biobutanol plant by more than 5 million gallons. The change does not absolve such an expansion from other possible environmental review triggers (e.g. certain level of air pollutant increases, water appropriations, EIS triggers). Since some of the triggers would have a local unit of government lead the review, which may have little experience with such projects, the provision gives the task to more experienced state agencies that can complete the review quicker. Initially the bill would have removed the mandatory EAW for a new facility of more than 5 million gallons. We testified on our experience with both types of projects and highlighted the fact that new facilities have been

much more controversial and complex than expansions and thus warrant the extra scrutiny of an EAW compared to an expansion.

Effective Date: August 1st, 2011

Bill Name & Numbers: Re-Extending the Deadline for Counties to Enact New SSTS Ordinances (HF1238/SF756)

Summary & History: The bill moves the current deadline (February 2012) for counties to adopt the new SSTS rules out until February 2014. Association of Minnesota Counties requested an additional extension for counties to adopt the new SSTS rules (pushing out the deadline four more years to 2016). We testified about our concerns with delaying the implementation of improvements meant to protect the state's groundwater and surface water, especially the needed changes for larger systems. For the first time these larger systems, which tend to be in shoreland and sensitive areas, will have specific standards in the rules. Our biggest concern was getting these standards for larger systems in place as soon as possible (preferably with no change to the current deadline).

During the hearings, an amendment was added allowing a county to not adopt an ordinance complying with the SSTS rules, if all the townships and cities within it have done so. Ramsey County requested the change since it has granted all of its planning authorities (including SSTS) to its townships and cities. The change allows it to not pass an ordinance or implement a program, if all of its townships and cities comply with state requirements.

The bill was part of a larger discussion on STSS issues with the Legislature and Counties on the 2008 Rule changes and funding. It has led to a SSTS Ad Hoc Committee being created by the Clean Water Council to examine funding issues. There are also additional on-going discussions with the Counties on the implementation of the 2008 Rules.

Effective Date: August 1st, 2011

Bill Name & Numbers: Lifetime Environmental Reviews and Permits for Landfills (HF1491/SF1244)

Summary & History: The final language only increases the length of a permit for a landfill from five to ten years. Initially the bill called for lifetime permits and environmental reviews for landfills. The legislation was drafted in such a way that it would give the proposer, not the state, the ability to call the shots on what the project for review is and what stipulations could be put on it. It was the initiative of a few county landfill operators, while other public and private landfill operators remained neutral. We testified regarding the dangerous precedent it would set if project proposers were able to dictate when environmental reviews could be done and on what. In addition, we expressed concerns with allowing lifetime environmental reviews, which would provide little specific information on large portions of the landfills to the public, and limit the MPCA's ability to ensure the protection of public health and the environment.

Effective Date: August 1st, 2011

Bill Name & Numbers: Regulation of Terrestrial and Aquatic Application of Pesticides (HF1122/SF776)

Summary & History: The original bill reaffirmed MDA's sole regulatory authority over terrestrial application of pesticides and limited our regulation of aquatic application of pesticides to "waters of the US." The provision was first put in the Agricultural Finance Bill to address the agricultural community's concern the MPCA was going further than necessary in regulating the four designated use patterns set out by the federal government (and would continue to go further in the future). The language included in the signed Agricultural Finance Bill only reaffirmed MDA's authority and did not touch the issue of "waters of the state" versus "waters of the US." However, legislators and groups continued to pursue

the language related to our authorities, which is how it ended up in the Environment and Natural Resources Policy Bill too.

During the process, we testified on the importance of these permits being tied to “waters of the state” to help protect water quality and lawful applicators of pesticides from third-party lawsuits. We also highlighted the Legislature set “waters of the state” as the foundation of all our water quality protection activities and our delegated authority from EPA to administer the CWA is based on it. Also, we worked with MDA and others on language to help address folks’ concerns in a different manner, which became the provision in the final bill. The enacted language restricts us to issuing NPDES permits for the aquatic application of pesticides to only those designated use patterns required by the federal government (now or in the future) and requires us to immediately terminate these permits if the federal government no longer requires them.

Effective Date: August 1st, 2011

Bill Name & Numbers: Environmental Review Changes, Part II (Committee Amendments)

Summary & History: Towards the end of session the Chamber amended provisions on two bills regarding the environmental review process; including coordination of permitting and environmental review of projects spanning multiple state/federal agencies, removal of economic, employment and sociological effects from EISs, requiring the EQB to select mandatory categories to be temporarily exempted from environmental review, and increasing the difficulty for filing a citizen petition for EAWs.

The Chamber, DNR, and MPCA worked out the final language requiring a state agency RGU to prepare a plan and timeline for issuing permits for a single project that spans multiple agencies. Neither the removal of economic, employment, and sociological effects from EISs (the Chamber heard from some of its members who supported its inclusion) nor the requirement for EQB to select a few mandatory categories of its choice to exempt from environmental review for five years (with annual reporting to the Legislature) were in the final bill.

Changes to the citizen petition procedure for requesting the possibility of a discretionary EAW was heavily debated. The original proposal increased the number of signatures (25 to 100) needed for a citizen petition and limited them to only residents or property owners in the county or adjacent counties where the project is located. We, along with environmental groups and the EQB voiced concerns with limiting the geographical area, because possible environmental impacts of a project do not stop at political boundaries and can go well beyond an adjoining county. In addition, it would be harder in sparsely populated areas to achieve the higher signature threshold and this provision ignores the fact the need for an EAW is judged on technical merits, not the number of signatures. The language enacted increased the number of signatures (25 to 100), but limited them only to residents and property owners of Minnesota.

Effective Date: August 1st, 2011

Agricultural Finance Bill (HF1039/SF1016*)

Summary & History: A few MPCA-related provisions were put in the Senate’s version of the Agricultural Finance Bill. These provisions related to farm waste disposal issues and pesticide regulation. Please see below brief summaries on the provisions rolled into the bill.

Status: Signed into law on April 15th, [Chapter 14](#)

Effective Date: July 1st, 2011

Bills & Provisions Contained in SF1016

Bill Name & Numbers: Regulation of Terrestrial and Aquatic Application of Pesticides (HF1122/SF776)

Summary & History: The original bill reaffirmed MDA's sole regulatory authority over terrestrial application of pesticides and limited our regulation of aquatic application of pesticides to "waters of the US." A more in-depth discussion of the overall debate is contained above in the section on the Environment and Natural Resources Policy Bill. However, the language included in the final Agricultural Finance Bill only reaffirmed MDA's authority. The waters jurisdictional change was not included in the final bill.

Effective Date: July 1st, 2011

Bill Name & Numbers: Farm Disposal of Select Solid Waste and Animal Carcasses (HF408/SF558)

Summary & History: The bill allows farmers to bury concrete and reinforcing bar on their property without getting a solid waste permit and requires them to record it on their property title. Supporters argued the current requirement to take the materials to a construction and demolition landfill is very expensive, when they could safely be buried on site since the materials are relatively benign. We testified on two main concerns. First, due to past experiences additional items (e.g. paint cans and building materials containing asbestos) will be buried with the concrete, which pose a greater environmental threat. Second, the burial would likely never be recorded without a deadline closer to the time of burial and we would be called in later to investigate when a future owner finds the undisclosed buried solid waste. In conference committee the burial was required to be recorded within 90 days, as requested by the Association of Minnesota Counties and us.

As introduced, the bill would give the Board of Animal Health (BAH) oversight of livestock mortality disposal, currently it is shared by the BAH and us. Animal producers preferred to deal with only one entity and believed it would make things easier. We agreed it would be good to codify the BAH has sole responsibility for animal disease deaths, since non-environmentally friendly methods may be needed to stop/prevent an epidemic. In conference committee, language was added, at our urging, to require environmental concerns are taken into account when disposing of non-disease related mortalities (including consulting with us when the disposal may adversely affect water quality).

Effective Date: July 1st, 2011

Energy Policy Bill (HF1025/SF1197*)

Summary & History: Initially the Energy Policy Bill only had one MPCA related provision pertaining to potential contested case hearing(s) on permits for Excelsior Energy's Mesaba Energy Project. During conference committee, an exception was made to the state's restriction on new coal-fired power to accommodate the Spiritwood plant in North Dakota. Please see below for brief summaries on the provisions in the bill.

Status: Signed into law on May 27th, [Chapter 97](#)

Effective Date: Various, see individual provisions below for specific dates

Bills & Provisions Contained in SF1197

Bill Name & Numbers: Innovative Energy Project Regulation Exemptions (HF618/SF417)

Summary & History: The initial version of the bill required the air, water and other state permits to be issued for Excelsior Energy's Mesaba Energy Project in 180 days and exempted them from additional contested cases hearings. Supporters argued the contested case hearing for its EIS was enough and the

project does not need any more delays. The 180 day permit issuance limit was deleted at the first hearing after it was explained we cannot limit the time needed to complete what amounts to a federal permit, but the project would fall under the 150-day goal created in HF1. While the Legislature can exempt the project from a contested case hearing(s), it cannot prevent the federal government from doing a similar public review/hearing. Citizens could still appeal MPCA's air and water permits to the EPA for review through its Environmental Appeals Board.

Effective Date: May 28th, 2011

Bill Name & Numbers: Repeal of State's Restrictions on New Coal-Fired Power (HF72/SF86)

Summary & History: The original bill repealed the 2007 Next Generation Energy Act restrictions put in place on new coal-fired power until a greenhouse gas control plan is established for the energy sector. Supporters' arguments ranged from concerns over the price of electricity to denial of climate change. Commerce's Division of Energy Resources took the lead on the bill. It expressed the Administration's concerns with increasing our reliance on coal and how it would hurt the future of clean and renewable energy development in the state and threaten public health and our climate. The bill advanced on its own and was sent to the Governor's desk with a new exemption for 1,500 megawatts of new coal-fired electricity (the entire repeal was removed), which was vetoed. However, an exemption was placed in the Energy Policy Bill for just Spiritwood (a 100 megawatt coal-fired facility in North Dakota), which was enacted.

Effective Date: May 28th, 2011

2011 Special Legislative Session

Environment, Energy, and Natural Resources Finance Bill (SSHF3/SSSF3*)

Summary & History: The regular legislative session ended without a state budget being enacted (except for the Agricultural Finance Bill which was agreed to in mid-April). The Legislature's budget reductions for the MPCA contained a 67% reduction in General Fund dollars and other fund transfers (an overall 3.4% reduction when considering all funds). It was vetoed along with the rest of the Legislature's budget in the end of May. A global agreement on the state budget was not completed until July 14th. The agreement resulted in significant reductions to the proposed cuts. In the end, the MPCA General Fund budget was reduced by 40% and the overall budget includes a 1.5% reduction when considering all the funds in the bill. While some areas still received steep cuts, the overall level is more manageable and places the Agency in a better position to handle expected future federal funding reductions.

The following is a listing of the final cuts in the bill:

- 100% shift of funding for SSTS activities (SSTS program \$750,000 and community technical assistance \$578,000) from the General Fund to the Environmental Fund
- 81.5% reduction in General Fund dollars for Clean Water Partnership grants (\$3.5 million)
- 69% reduction (\$1.68 million) in General Fund funding for administrative support operations
- 38% reduction (\$334,000) in General Fund dollars for the environmental health tracking and bio-monitoring program this biennium and all its funding is eliminated next biennium (these dollars are transferred to Department of Health)
- Caps the transfer of dollars from the Environmental Fund to the Remediation Fund at \$42 million

The bill included increases in the appropriations for the wastewater operators' certification and examination and air programs as proposed in the Governor's budget. Please see below for brief summaries on the policy provisions in the bill.

Status: Signed into law on July 20th, [Special Session Chapter 2](#)

Effective Date: July 1st, 2011

Bills & Provisions Contained in SSSF3

Bill Name & Numbers: Technical Changes to E-Waste Law (HF1258/SF981)

Summary & History: The provision was part of the Governor's budget and changed the appropriation from a statutory to a direct one. In addition it cleaned up some old language in the law.

Effective Date: July 1st, 2011

Bill Name & Numbers: Petrofund Sunset Extension and Eligibility Modification (HF434/SF356)

Summary & History: A sunset has been part of the Petrofund program since its creation and has periodically been extended. It was set to expire on June 30th, 2012. The bill moves the sunset date out another 5 years until 2017. This sunset change was also included in the Governor's budget. In addition the eligibility restrictions were expanded to allow used oil storage companies access to the fund to help cover the cost of any cleanup work.

Effective Date: July 1st, 2011

Bill Name & Numbers: Change in Requirement of NPDES Permits for Certain Feedlots

Summary & History: Producer groups throughout the session amended to a few bills in the Senate their desired changes to the feedlot permitting program, without introducing it as an individual bill. One such amendment proposed removing the requirement that any feedlot over a 1,000 animal units or those meeting the federal definition of a “concentrated animal feeding operation” (CAFO) be required to acquire a NPDES permit. Currently, the MPCA offers a joint NPDES/SDS permit for these facilities.

They argued their feedlots are not designed to discharge like wastewater facilities and recent court rulings have removed any requirement for them to apply for a NPDES permit. We expressed concerns with how it would create a more confusing system with additional and varied permits and regulations for producers to sort through, remove some legal protections, and set them up in “gotcha situations” where they are penalized for accidental discharges. In addition, the relative peace related to feedlots could be broken bringing back more legal challenges and complaints as during the “feedlot wars.”

The final bill did remove the requirement that CAFOs and facilities over a 1,000 animal units must get a federal NPDES permit. However, if they are over a 1,000 animal units they will need a state SDS permit and may still need a federal NPDES permit if they hit the federal triggers regarding discharging (even if under a 1,000 animal units). The change will require MPCA to create new permits and sort out the new landscape of a separate SDS permit and recent court rulings on when a federal NPDES permit is needed. While the provision was part of the bill agreement, it was something the MPCA “agreed to, not with” in concept.

Effective Date: July 1st, 2011

Bill Name & Numbers: Amends Definition of Pasture in Regards to Feedlot Permitting (HF1572/SF1331)

Summary & History: State regulations concerning when a pasture operation becomes a feedlot operation are based off federal definitions. Producers pushed a change expanding the state definition of pasture to include land used during the winter for foraging and returned to crop growing in the spring. The desired outcome would be these locations would no longer need a feedlot permit. They argued state law limits pasturing of livestock and crop growth in the spring should be considered as protective as vegetative cover. We testified that pasturing is a legitimate practice under state law and a feedlot permit is only needed when very large numbers of animals are confined in an area for long periods of time. In addition, changing the state definition will not alter the federal definition, which could still trigger the need for feedlot permits. Like the NPDES permit change, this was agreed to but not with in concept.

Effective Date: July 1st, 2011

Bill Name & Numbers: Coordination of Lake Pepin Phosphorus Standard (HF368/SF161)

Summary & History: The Coalition of Greater Minnesota Cities backed legislation requiring the MPCA to work with the Wisconsin DNR on a phosphorus standard for Lake Pepin. Since we are already working with Wisconsin on a plan for Lake Pepin, including a phosphorus standard, we only provided background as needed during hearings on the bill. The provision does not prevent us from implementing measures to restore the condition of Lake Pepin.

Effective Date: July 1st, 2011

Bill Name & Numbers: Wild Rice Sulfate Standard and Study (HF1002/SF732)

Summary & History: During session language pertaining to the wild rice sulfate standard and proposed study went through a number of revisions. The Chamber of Commerce and mining interests proposed, like the Governor, a study on the impact of sulfates on wild rice to determine if the current standard needs any revisions. The Chamber, mining interests, and their supporters also pushed legislation that

would prevent permit holders from spending any money on the design and implementation of systems to meet the current wild rice sulfate standard, while the study was underway. They argued the current standard was not scientifically sound and businesses should not be required to spend money when a future standard may not require it. Different versions of the proposal suspended the standard or changed it legislatively (e.g. from 10 mg/l to 50 mg/l).

We testified what was needed was knowledge and time to settle the issue. The study would provide the knowledge and we had the tools already to provide time for businesses while still protecting the resource during the study. We also pointed out artificially altering the standard without scientific rationale and limiting our enforcement of it would not be tolerable to the EPA under the Clean Water Act. A letter from EPA late in the session confirmed the proposed legislative changes were not acceptable and greatly changed the course of the discussion.

The final language resulted in three things: 1) created an advisory group to provide input on a wild rice sulfate study and any possible standard revision; 2) forbids expenditures on the design or implementation of sulfate treatment technologies in a permit, to the extent allowable under the federal Clean Water Act (which does not allow for this prohibition); 3) does not prevent us from including a schedule of compliance or requiring sulfate minimization practices. The final provision does not change how we have been moving forward on this issue.

Effective Date: July 1st, 2011

Bill Name & Numbers: Sustainable Water Management Study

Summary & History: We, along with other sister water agencies and the University of Minnesota, are required to evaluate the state's water regulations and governing structures. By January 2013 suggestions on ways to streamline, strengthen, and improve sustainable water management must be made to the Legislature. The study language is a complete rewrite of the proposed study associated with a water rulemaking moratorium that was once part of the bill (see the section on provisions not enacted for a complete discussion on the moratorium).

Effective Date: July 1st, 2011

Legacy Finance Bill (SSH6/SSSF6*)

Summary & History: At the end of the regular session the Legacy Finance Bill stalled out and never made it to the Governor's desk. It was the last bill debated on the House floor when the session came to a close. Controversy over a few non-MPCA provisions (public meeting changes for the Lessard-Sams Outdoor Heritage Council - LSOHC and eligibility for certain park funding) kept a vote from being taken on it. The Legislature's proposed funding allocations in the Clean Water Fund (the only fund of the four in the bill the MPCA receives dollars from) did not stray too far from the Clean Water Council (CWC) and Governor's recommendations. MPCA received a total of \$47.77 million as follows:

- \$15 million for surface water assessments and monitoring to keep up with MPCA's goal to assess and monitor 10% of our waters each year, with a \$200,000 carve out for the Red River Watch program
- \$18.8 million for TMDL studies and implementation plans to improve impaired waters and keep up with MPCA's goal of completing TMDLs for 10% of our waters each year
- \$2.25 million for groundwater assessment and monitoring
- \$1.5 million for Lower St. Louis River and Duluth Harbor water quality improvement projects
- \$2 million for Clean Water Partnership grant program

- \$800,000 for storm water research and guidance
- \$2.3 million for TMDL website portal and database development
- \$1.6 million for NPDES waste/storm water TMDL implementation efforts
- \$1.5 million for wild rice sulfate standard study
- \$1.57 million for SSTS county programs and activities
- \$450,000 for a pass through grant to the EQB for its study of groundwater in the I-94 corridor

In addition to the MPCA dollars for SSTS work, the bill contained another \$3 million for county SSTS base grants through BWSR. BWSR also received funds for counties to apply for grants to inventory straight pipe systems and help homeowners with financial assistance to replace failing SSTS systems. The bill included carry-forward provisions to allow the continued use of MPCA unspent dollars from last biennium in the areas of coal tar BMPs, rulemaking for nitrogen standards and research, beneficial wastewater and stormwater use grants, and TMDL development.

During the process there were two main areas of concern outlined by us. The first was the elimination of the current CWC and replacing it with a structure like the LSOHC or LCCMR and going to an individual project system. We, along with our sister water agencies, expressed concern and attempted to educate the Legislature on the history of the state's Clean Water Legacy Act and how funding programs needed to meet our duties under the federal Clean Water Act are different than individual projects LSOHC or LCCMR handles. In the end only minor changes were made to the CWC, including adding legislators and the Department of Health as nonvoting members.

The bill also contained many new administrative and reporting requirements adding work for fund recipients, including us. Our overall concern was that we and other fund recipients would be spending more time and dollars reporting on clean water activities instead of actually implementing clean water activities.

Status: Signed into law on July 20th, [Special Session Chapter 6](#)

Effective Date: July 1st, 2011

Bills & Provisions Contained in SSSF6

Bill Name & Numbers: Expansion of Wastewater Beneficial Use Grant Program (HF957/SF485)

Summary & History: The grant program was created by the Legislature to find beneficial uses for wastewater. A portion of the funding from the Clean Water Fund was set aside for ethanol facilities however no proposals came forward for the money for various reasons. One company was interested in the grant dollars for using stormwater instead, but the law restricted it to only wastewater. The change expanded the grant program to stormwater use and removed the cap on grants for project design.

Effective Date: July 1st, 2011

Bonding Bill (SSHF23*/SSSF9)

Summary & History: Early in the regular session Governor Dayton recommended a \$1 billion Bonding Bill and proposed \$531 million in projects (including \$7.55 million for the Closed Landfill Program). He invited the Legislature to suggest projects to complete the bill. However, the Legislature only discussed a very limited bonding bill. As part of the global agreement reached to end the government shutdown and set a state operating budget, a \$500 million Bonding Bill was agreed to. The bill included \$7 million for the Closed Landfill Program and \$550,000 for a Capital Assistance Program grant to expand the

Pope/Douglas materials recovery facility. The money for the Closed Landfill Program will help offset any possible negative ramifications to the program because of the cap on the transfer of dollars from the Environmental Fund to the Remediation Fund and allow additional work to be completed that would not have been possible without these dollars. In addition, the Public Facilities Authority received \$20 million for the Wastewater Infrastructure Funding program.

Status: Signed into law on July 20th, [Special Session Chapter 12](#)

Effective Date: July 21st, 2011

Health and Human Services Finance Bill (SSHF25*/SSSF10)

Summary & History: The Health and Human Services Finance Bill contained one provision related to MPCA activities pertaining to the Department of Health's (MDH) certification of environmental laboratories.

Status: Signed into law on July 20th, [Special Session Chapter 9](#)

Effective Date: July 21st, 2011

Bills & Provisions Contained in SSSF25

Bill Name & Numbers: Exempting Municipal Environmental Laboratories from Certification Requirements (HF367/SF162)

Summary & History: The Coalition of Greater Minnesota Cities (CGMC) advocated for exempting municipal labs from MDH's certification requirements because of the expenses associated with complying with them. Our concerns stemmed from the need for these facilities to be certified to ensure quality assurance and control when testing their wastewater treatment processes. Otherwise, we would need to find an alternative certification process or do it ourselves. We worked with MDH and CGMC on a compromise that exempts laboratories from certain quality control and personnel requirements. However, they must pay for MDH's expenses to carry out the new exemption to ensure it does not cause a hole in their budget. It is unknown if cities will partake in the change because the cost of the exemption may be higher than the cost of complying with the current program.

Effective Date: July 1st, 2011

Provisions Not Enacted

Bill Name & Numbers: Change in the Definition of Feedlot Animal Capacity

Summary & History: Along with the NPDES permit modification, Producer groups also amended on to a few Senate bills a change in the definition of animal capacity. It would alter how the capacity of a facility is determined from the maximum built capacity to an actual count of animals proposed or currently housed there.

Producer groups contended using an actual animal count to determine if environmental review or permit thresholds were crossed would be more accurate and allow them to build larger facilities to just give their animals more room. We replied that the difficulties in getting an accurate animal count and ability for producers to easily and quickly add animals would increase the number of perceived and valid overstocking complaints. Also, two producers could build the same facility but depending on animal unit counts at the time of construction, one may go through environmental review and permitting and the other could avoid it. Other industries are permitted on a maximum capacity model.

The provision was included in the Legislature's proposed Environment, Energy and Natural Resources Finance Bill. During the negotiations on the final budget bill this provision was removed.

Status: It was never introduced as a bill, only as an amendment.

Bill Name & Numbers: Water Rulemaking Moratorium and Study Requirement (HF182/SF196)

Summary & History: The Builders Association of Minnesota was the lead advocate for a two year moratorium on water rulemakings. Supporters of the moratorium argued the current system is too confusing and burdensome and does not need additional regulations. An evaluation was coupled with it to "unravel the mess" and propose ways to fix it (a completely rewritten study was included in the finance bill, see above). The MPCA, DNR and other water related agencies argued not all rulemakings are controversial, many underway would provide regulatory relief, and some are needed to comply with federal requirements. The bill was modified as session went on, but the various versions still concerned state agencies over how it would negatively affect current and future rulemakings.

Status: While included in the Legislature's proposed Finance Bill, it was not part of the final version.

Bill Name & Numbers: Change in Where Environmental Penalties Are Deposited (HF185 & HF1277/SF0923)

Summary & History: Two different bills were introduced that would change where environmental penalty dollars are deposited. Currently they are deposited in the Environmental Fund, which was a change instituted two years ago. Before then, nearly half of the dollars went to the General Fund. One proposal would have deposited all penalty dollars collected into the General Fund, instead of the Environmental Fund, and a second proposed changing it only for ethanol facility penalties.

Supporters of the bill believed the Agency was increasing penalties as a way to increase its funding. For instance, the ethanol industry believed its recent increase in penalties was a result of the change in where the money was deposited. Our sole concern was the loss of the dollars to the Environmental Fund and not having a source to replace them. We highlighted the change two years ago was not one we requested and our enforcement actions are made independent of where any penalties may be deposited.

The Senate, as part of its Finance Bill, proposed sending half of the penalty dollars to the General Fund to help balance the budget. During conference committee it was accepted as the Legislature's position. We pointed out the need for the hole to be filled, but were not against the idea as a policy if the funds were replaced.

Status: In the special session budget negotiations it was not included as part of the final bill.

Bill Name & Numbers: Legislative Approval Required for State Agencies' Rulemakings (HF203/SF261)

Summary & History: The bill would have required the Legislature to approve any rulemakings that would result in a \$10,000 cost for any person or entity. Supporters argued agencies are hurting businesses by implementing costly rules and overstepping their authorities. The DNR and MPCA took lead roles in opposing the bill. We countered Minnesota currently has one of the most intensive rulemaking processes in the country, it would limit agencies ability to act in a time sensitive manner, and \$10,000 is very little money for the large corporations we regulate.

The bill passed the House 77-54 and made it to the Senate Floor for a possible vote. Before the full Senate acted on the bill Governor Dayton sent a letter outlining his reasons for opposing it. It included text from Governor Pawlenty's veto letter on the same bill in 2003. The Senate did not act on it afterwards.

Status: The bill was passed by the House and is awaiting full Senate action.

Bill Name & Numbers: Limitations on State Agencies' Ability to Impose Penalties (HF997/SF1298)

Summary & History: The bill significantly impeded agencies' ability to take enforcement actions by adding time, complexity, and costs to the process. It would do so by adding steps to pursue a violation and broaden the circumstances for a regulated party to seek attorney's fees (despite still being found guilty of a violation).

The National Federation of Independent Businesses believed it would even the playing field for businesses against the powerful state during these actions and result in penalties they could pay without forcing them into bankruptcy. We expressed concerns by highlighting the delay it would create in getting violations from being brought into compliance (potentially causing greater environmental harm) and creation of an economic advantage for noncompliance that would disrupt the level playing field businesses demand.

The bill passed though four House committees and some of the provisions of concern were removed during the process. However, the bill would still delay agencies' ability to take action against violations and create an incentive for a party to drag it out through the courts in the hope of a slight change in the penalty amount, which would be rewarded with their attorney's fees being covered. It did not get a hearing in the Senate.

Status: House Rules Committee and Senate Judiciary and Public Safety Committee

Bill Name & Numbers: Elimination of the Environmental Quality Board (HF1360)

Summary & History: The bill would transfer most of the duties of the EQB to various agencies, including the MPCA, and boards (e.g. water responsibilities to the Clean Water Council). A smaller EQB made up of only agency commissioners (elimination of private citizens) would have some environmental review assignment responsibilities. The author argued many of the duties would be better carried out by other entities or are no longer needed, so the EQB is redundant. The Administration contended some of the EQB's functions are very important, such as planning across agencies to prevent the creation of "silos" and to study/address broad topics (e.g. land use, energy, the economy). A better way to pursue the

reform would be the Governor's suggested study over the interim of EQB's future, rather than the sudden approach proposed. The Governor's proposal and this bill included a transfer of EQB staff to the MPCA, which is being done through an administrative order.

Status: The proposal was included in the House's Environment and Natural Resources Policy Bill initially, but taken out near the end of the committee process due to fiscal concerns.

Bill Name & Numbers: Modifying the Electronic Waste Recycling Program (HF1471/SF1237)

Summary & History: As an agency proposal, the bill recommended expanding the electronic materials manufacturers are responsible for recycling to improve the fairness and financing of the program. It does so by adding desktop printers, computers, DVRs and DVD players to the list of items manufacturers are obligated to recycle (currently only TVs, computer monitors, and laptops) and lowering the required minimum screen size that needs to be collected from nine to seven inches. In addition, it reduced how many credits from past over collection could be used to meet their current obligations.

The Association of Counties, collectors (e.g. Waste Management) and recyclers supported it. The first two because manufacturers currently do not cover the full cost of collection and recycling, forcing counties/collectors to make up the difference or pass it on to consumers. While Best Buy was neutral, some non-Minnesota manufacturers were opposed because of the increase in obligated products (especially those not previously required to pay for their items to be recycled, example printer-only manufacturers). The bill received committee hearings in the House, but not the Senate.

Status: After the House committee hearings it was returned to the Environment, Energy and Natural Resources Committee. In the Senate it is still in the Environment and Natural Resources Committee.

Bill Name & Numbers: Modifying Recycling Requirements/Goals for State Government (HF1470/SF1266)

Summary & History: The bill, a Department of Administration proposal, made a number of changes to the recycling requirements for state government. We had some concerns over what it meant for the future of the surplus center, audits of the waste stream, and recycling efforts in general. The recycling center was previously turned over to an outside vendor. The Department of Administration stated the surplus center would remain and it had authority for waste audits under other parts of the law. Recycling supporters still had some concerns and requested that we help provide information on recycling to state employees and agencies.

Status: Passed the Senate 52-0 and waiting for a floor vote in the House.

Bill Name & Numbers: Creation of Recycled Water Use Standards (HF1442/SF743)

Summary & History: The Senate author is very interested in increasing the reuse of water. To do so he proposed regulations modeled off California's program. We shared our concerns that the bill would be more restrictive than our current program, which regulates the reuse of water in areas under our jurisdiction. The Departments of Health and Agriculture had public health and food safety issues with the bill. Some of our technical suggestions were incorporated, but the issue of tying our hands and our sister agencies' concerns still remained. The bill was heard in the Senate Environment and Natural Resources Committee with very little notice.

Status: In the Senate Health and Human Services and House Environment, Energy and Natural Resources Committees

Bill Name & Numbers: Closing Metro Solid Waste Landfill Fee Loophole (HF1258/SF981)

Summary & History: Currently solid waste that is landfilled in the metro area is charged a fee to fund local efforts to move solid waste up the state's waste management hierarchy and cover the long term

costs of the landfills. However, solid waste generated in the metro but landfilled outside of it is not charged the fee. The proposal (a Governor's budget recommendation) would close this loophole by accessing the fee to all solid waste generated in the metro no matter where it is landfilled to increase the amount of waste being handled higher in the hierarchy (e.g. recycling and composting) and reduce the need for landfills.

Waste Management, as one of the companies increasingly landfilling outside the metro area, opposed the provision. The proposal received little interest from the Legislature and was opposed by Waste Management. A few interest groups assisted us with lobbying legislators on the benefits of the proposal.

Status: In the Senate Environment and Natural Resources and House Environment, Energy and Natural Resources Committees

Bill Name & Numbers: TMDL Alternatives and Category 4b Designations

Summary & History: During the discussion of HF1/SF42, watersheds proposed as an amendment the use of TMDL alternatives (utilizing watershed and local water plans) and the process established for Category 4b waters to bypass and/or streamline the TMDL process under the federal Clean Water Act. We explained the procedure for Category 4b waters was for very specific cases and EPA required additional information than what local water plans currently contain. MPCA arranged for all interested parties to meet with EPA to discuss the issue. The meeting confirmed the MPCA's statements that these items would not be accepted by EPA as an alternative to a TMDL. As a result the proposal did not move forward.

Status: The amendment was removed from HF1/SF42 during the committee process and never resurfaced.

Bill Name & Numbers: Urban Stormwater Pond Buffer Requirement (HF882/SF616)

Summary & History: The bill required a 10 to 15 foot buffer around metro stormwater ponds and prohibited, between March 31 and August 31, any mowing or use of herbicides within the buffer. Minnesota Conservation Federation's goal was to increase wildlife habitat and protect bird nesting areas. The League of Minnesota Cities testified with concerns during the bill's House hearing. It was laid over for possible inclusion in an omnibus bill and the interested parties were asked to find a resolution to the concerns raised. The provision never showed up in an omnibus bill.

Status: In the Senate Environment and Natural Resources and House Environment, Energy and Natural Resources Committees

Bill Name & Numbers: Repeal of Prohibition on New Nuclear Power Plants (HF9/SF4)

Summary & History: The bill removed the state prohibition on new nuclear power plants. The Chamber of Commerce and supporters argued new nuclear power plants (along with coal plants, see HF72/SF86) need to be considered to meet Minnesota's future base-load electricity needs and make it affordable. Again Commerce's Division of Energy Resources took the lead for the Administration and expressed concerns ranging from safety issues to potential high cost overruns being passed on to ratepayers. The bill passed the House 81-50 and the Senate 50-14 early in the regular session. While it was in conference committee, a tsunami struck Japan and resulted in a nuclear crisis at one of its plants. The bill did not receive any attention after the disasters in Japan.

Status: The bill passed the House 81-50 and the Senate 50-14 and is in conference committee

Bill Name & Numbers: Creation of Single-Point Water Permit Issuance System for Local Road Projects
Report

Summary & History: An amendment to HF518 was circulated by the Association of Minnesota Counties that required various state agencies to report back with recommendations on the creation of a single-point water permit issuance system. While we support streamlining and improving our permit processes, we were interested to learn more about the level of detail that would be expected in the report (due to possible fiscal costs in preparing the report). We discussed the issue with the House author before a possible hearing, which was later canceled and never rescheduled before session ended.

Status: The bill and amendment was not heard.

Bill Name & Numbers: Repeal of Metro Compostable Bag Requirement for Yard Waste

Summary & History: An amendment to a mandate relief bill (HF7) was circulated, which included the repeal of the requirement in the metro that yard waste be disposed of in only compostable bags. The provision went into effect in 2010 with no problems reported. The author heard from supporters of the law and decided to no longer move forward with the repeal.

Status: The amendment was never offered.