

April 1, 2022

The Honorable Julie A. Rosen
Chair, Senate Finance Committee
2113 Minnesota Senate Office Building
95 University Avenue West
St. Paul, MN 55155

Dear Senator Rosen,

Thank you for the opportunity to testify in your committee regarding SF 4062, the Omnibus Environment and Natural Resources Bill. I also wanted to submit this letter to you and to the bill author, Senator Ingebrigtsen, to detail the impacts of this bill on the Minnesota Pollution Control Agency (MPCA).

I thank you and the bill author for recognizing the importance of continuing the momentum of our work on the St. Louis River mercury TMDL study by including language that extends the availability of a past appropriation through the end of FY2025. I also appreciate the inclusion of Article 2, Sec. 55, an agency policy item that modifies the due dates of reports related to the use of funds from the water quality and sustainability account for natural resource damages in the East Metro.

This year's historic budget surplus presents a once-in-a-generation opportunity to invest in the future of Minnesota communities, to provide grants that ensure local units of government can benefit from funding in the federal Infrastructure Investments and Jobs Act, and to make smart, strategic investments that prevent pollution from occurring now so that it does not need to be cleaned up, at great cost, later. The Walz-Flanagan Budget to Move Minnesota Forward focuses on these opportunities because it was developed out of conversations with Minnesotans about what they want and value from their state government.

I am disappointed to see that SF 4062 fails to take advantage of these opportunities to invest in Minnesota.

I would like to highlight a few of the most important initiatives from the Governor's budget that are overlooked in this bill:

- There has been bipartisan concern about the amount of waste sent to landfills or waste-to-energy facilities. Yet, the Governor's proposal to provide waste prevention and recycling grants is missing. Public and private facility operators are interested in expanding recycling and reuse. The nearly \$19 million proposal would provide grants to support successful waste prevention programs and help entities innovatively explore alternatives around food waste, recycling market development, composting and aerobic digestion, and the reuse of construction materials. These grants would help the state, local governments and private entities reduce waste, create jobs and make progress toward shared climate and sustainability goals.

- “Forever chemicals” known as PFAS continue to be discovered in Minnesota’s groundwater, surface water, and soil. PFAS have been detected in groundwater at Gofer Landfill near Fairmont, drinking water wells of some communities such as Bemidji, and in beloved lakes such as Lake Winona in Alexandria. The Governor’s budget includes three requests to address this emerging problem. These include a request for \$2 million in grant funding to enable public or private entities to undertake PFAS removal projects, and a second request for \$500,000 in one-time money to identify current levels of PFAS in water or soils across the state. In addition, a third proposal seeks \$2.175 million to help wastewater treatment plants address a variety of difficult contaminants, including PFAS. None of these requests are funded in SF 4062.
- Extreme weather events inflict costly and heartbreaking damage on communities across Minnesota. According to the Insurance Federation of Minnesota, homeowner insurance rates have spiked 366% since 1998 due to extreme rain events, high winds, and increasing frequency and severity of storms. The Governor’s budget includes a request for \$55 million to upgrade stormwater infrastructure so that homes, businesses, and community resources like schools, libraries, and parks are less vulnerable to damage from flooding and extreme weather. SF 4062 includes no funding for this important work.

In addition to these missed opportunities, there is critical funding from the Governor’s recommendations missing from SF 4062 that could impact MPCA’s ability to continue providing our services at current levels:

- This year’s request for an operating increase is to maintain 42 staff in land and operations programs. Like last year’s water and air increases, the land programs and operational administrative areas support local governments, small businesses, industrial permittees and others through technical assistance, compliance and permitting support, and financial support. Without the \$5.6 million in the Governor’s proposal, efficiency of current services would suffer. Potential decreases in services could include tank inspection and assistance, delays in project reviews and site assessments or constructions or redevelopment, delays in responding to records requests, reduced assistance to small business owners and local governments, and finally a longer permitting timeline which continues to be of interest to the legislature.
- Our railroad safety request similarly asks to maintain resources dedicated to emergency preparedness, which is part of MPCA’s statutory obligations. Without this funding, there is a potential for reduced response to emergencies such as natural disasters and train derailments.

The MPCA has also proposed a number of other important budget and policy initiatives that are not included in this bill, including:

- Policy language requiring notification of downstream communities in the event of a sanitary sewer overflow, especially after an extreme weather event.
- Policy language providing communities greater flexibility by allowing streamlined permitting processes for municipal wastewater treatment facilities
- Establishment of a solar panel product stewardship program to keep panels out of area landfills
- Prohibiting cadmium and lead in household products used by children and pregnant women
- Creating a brownfields redevelopment grant program that is informed by community input
- Expanding smart salting training
- Expediting brownfields redevelopment to create new local jobs and housing

- Raising the Capital Assistance Program (CAP) per-project limit that has been in place since 1985 to support local governments' recycling and solid waste projects
- Allowing the use of CAP and Greater Minnesota Recycling and Composting grants to be used for waste prevention activities
- Establishment of a local government stormwater construction program
- Technical assistance for environmental review
- Funding for rulemaking costs associated with the legalization of adult-use cannabis
- Expansion of environmental assistance loan program for small businesses

We also oppose several sections in Article 2 of SF 4062 which could lead to an increase in pollution for Minnesota and/or restrict the MPCA's ability to protect human health and the environment, and therefore are in direct conflict with the MPCA's mission.

- **Whole effluent toxicity, Secs. 72 and 78:** Since this language was developed last year, MPCA has incorporated mixing zones in the water effluent toxicity tests for large wastewater facilities statewide. This policy and the \$671,000 appropriation for rulemaking is not needed. If the legislature decides to move ahead with the appropriation for rulemaking the agency requests the removal of Section 72 (d) where antibacksliding provisions are nullified. This is in direct contradiction with the federal Clean Water Act and will increase water pollution which no Minnesotan wants.
- **Unadopted rules, Sec. 58:** This language on the use of "unadopted rules" is problematic because it requires the MPCA to put all guidance, best management practices, etc. into rule if they are to be enforceable. This long and costly process will impede the MPCA's efforts to provide clarity, consistency, and flexibility to small businesses, owners of contaminated property, and other regulated parties.
- **Legislative approval of fees, Secs. 43, 46, 47, 48, 57:** Several sections require legislative review of certain fee increases. MPCA is charged with the responsibility of regulating clean water under state law and delegated federal authority, and needs to have adequate resources to cover the cost of this work. A Water Fee Advisory Committee convened in 2018 and consisting of regulated parties recognized that it is reasonable for the agency to increase fees when necessary, and MPCA has shown great discretion in implementing fee increases in the past.
- **16-year delay in compliance for industrial facilities, Sec. 44:** The underlying language in this section was enacted in 2016 to provide more regulatory certainty for municipal wastewater treatment plants because of the need to protect public investments. Construction of private wastewater treatment facilities is part of the cost of doing business for industrial facilities; these facilities are not constructed with public money. Consequently, there is no public interest in allowing these facilities a 16-year delay in complying with modified effluent limitations that are meant to limit the amount of water pollution they are allowed to discharge.
- **Permitting efficiency reporting modifications, Sec. 56:** MPCA is committed to transparency in helping the public and regulated parties understand our success in meeting permitting timeliness goals in the great majority of cases. However, we also take seriously our obligation for thorough and diligent review of proposed projects, and to ensure that the permits issued are protective of human health and the environment and comply with federal requirements. Often, the complex permitting projects that require more time and careful review are also the ones in which the public takes a high level of interest.

- **Prescriptions on the filling of vacancies, Sec. 71:** Like any employer, MPCA is challenged when valuable staff leave the agency. When air permit writer vacancies occur, we try to fill them as soon as possible. The timelines in this section are counterproductive in achieving the shared goal of finding good candidates in a tight labor pool—a process already governed by statute, collective bargaining agreements, personnel rules, and administrative procedure and policy. This section is an overreach of the legislative branch into routine hiring processes better administered by the agency.
- **State Implementation Plan revisions, Sec. 76:** This provision would prevent MPCA from enforcing any updated air quality standards. MPCA would be required to ask US EPA to violate the Clean Air Act in approving this plan, as they would be approving that MPCA does not allow permittees to show compliance with federal air quality standards. In addition, this provision would slow down permit amendments, which often have a time-sensitive component for the permittee.
- **Chemical plastic recycling, Secs. 49-52, 54:** This language, from the American Chemistry Council, is problematic as it would classify any activity by a chemical plastic manufacturing facility as “recycling”, even if it is not. The current statutory definitions of recycling in Minnesota require materials to be turned into another reusable product. This language would consider the burning of plastic for fuel, which is waste-to-energy, to be considered as recycling.
- **Repaired drainage holes, Sec. 45:** This section requires that tanks with repaired drainage holes be deemed accepted for use in subsurface sewage treatment systems, but the language contains no criteria for how those holes must be repaired. It also eliminates the ability of MPCA or local government units to deny the use of patched tanks if they find a manufacturer is producing leaking tanks. There are no studies to suggest that repairs to drainage holes will hold up over the 30 years that a tank may be in service, and most tank manufacturers in Minnesota have ended this practice for that reason. Leaking sewage from a repaired drainage hole could pose a threat to human health and the environment, and a significant unexpected liability for homeowners.

Finally, MPCA has concerns with two appropriations and a policy item that are currently problematic. However, we see opportunities to work with the author on these items to arrive at an acceptable compromise.

- **Air fee funding study, Art. 1 , Sec. 2, Subd 2 (e):** This appropriation provides the agency with \$50,000 to conduct a study of how the six states in EPA Region 5 fund their air programs. The MPCA is not opposed to studying this issue, but a study of this type would require more funding than is currently appropriated. Additionally, all options for addressing air fees should be on the table, including fee increases, when assessing any potential changes to the MPCA’s air fees. A fully funded air program is critical to protecting human health and the environment.
- **Lake of the Woods County school demolition appropriation, Art.1, Sec. 2 Subd. 2 (f):** The Remediation Fund supports many critical cleanup efforts across the state and is meant to be responsive to urgent needs as they arise. However, MPCA would need to have more information about the contamination concerns and other details at this particular site before supporting use of the Remediation Fund for this demolition.
- **Mattress recycling, Sec. 53:** MPCA believes the concept of product stewardship is a good one, and there are examples of this type of program being very successful, such as with paint. However, there is still work to be done in this language to improve it for local governments and recyclers that collect mattresses, make it easier for consumers, and improve the environmental

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outcomes. The Oregon Legislature recently passed a similar bill that was developed through a consensus process that could serve as a model. We look forward to working on this language to find that compromise in Minnesota.

I am hopeful that we can continue to work together with the bill author during the conference committee process in order to capitalize on this opportunity and respond to communities' needs and concerns regarding the changing climate, hazardous contaminants, and our collective waste problem. I am available to meet at your convenience.

Sincerely,



Katrina Kessler
Commissioner

cc: Rachel Ganani, Policy Advisor to Governor Tim Walz, Senator Bill Ingebrigtsen, Chair, Senate Environment & Natural Resources Finance Committee, Senator Patricia Torres-Ray, Ranking Minority Member, Senate Environment & Natural Resources Finance Committee