



Minnesota Pollution Control Agency

Office of the Commissioner

February 9, 2004

The Honorable Dallas Sams, Chair
Environment, Agriculture and Economic Development Budget Division
Minnesota Senate
328 Capitol

The Honorable Dennis Ozment, Chair
Environment and Natural Resources Finance Committee
Minnesota House of Representatives
479 State Office Building

Dear Committee Chairs:

I am pleased to enclose a report to the Legislature entitled *Impaired Waters Stakeholder Process: Policy Framework* as required by Minnesota Session Laws 2003, Chapter 128, Section 2, subd. 2.

In January 2002, the Legislative Auditor, in its program evaluation *Minnesota Pollution Control Agency Funding*, recognized the existence of a significant under-funded federal Clean Water Act requirement to identify, evaluate and restore waters not meeting water quality standards and recommended that Minnesota Pollution Control Agency (MPCA) report to the 2003 Legislature with a multi-year implementation and financing plan to meet this requirement.

In March 2003, the MPCA provided a report entitled *Minnesota's Impaired Waters* to the Legislature. The response to this report was legislation requiring the MPCA report back to the Legislature in February 2004 on the "status of discussions with stakeholders on strategies to implement the impaired waters program and any specific recommendations on funding options to address the needs documented in the agency's report to the legislature, "Minnesota's Impaired Waters," dated March 2003."

The Minnesota Environmental Initiative (MEI), an independent nonprofit organization with expertise in convening stakeholders to address complex environmental problems, was selected by MPCA to facilitate an impaired waters stakeholder process to bring diverse interests together to develop the enclosed report. The report, which includes policy and funding recommendations, was based on a MEI stakeholder process conducted over a seven month period. The process included a 16-member Work Group, a 40-member Partners Group, and two well attended public forums.

Committee Chairs
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This report presents consensus recommendations for the design of Minnesota's approach to identifying and restoring impaired waters. We very much look forward to reviewing the findings of this report further with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Sheryl A. Corrigan", with a long horizontal flourish extending to the right.

Sheryl A. Corrigan
Commissioner

SAC:cmbg

Impaired Waters Stakeholder Process

POLICY FRAMEWORK

July 2003 – February 2004

This policy framework contains consensus recommendations for the design of Minnesota's impaired waters program. The recommendations were developed by the Policy Work Group and Partners Group of the Impaired Waters Stakeholder Process. The Minnesota Environmental Initiative led this collaborative effort to garner input from a cross-section of the state's water quality stakeholders at the request of the Minnesota Pollution Control Agency. More than sixty organizations contributed to the process and to creation of this document.

The following recommendations define the scope of the impaired waters program and outline strategies for the program's funding, priority setting, and identification and restoration of impaired waters. Guided by the principles of central coordination and local leadership in implementation, the program embodies a comprehensive process for protecting and restoring Minnesota's impaired rivers, lakes and streams. This process would provide a comprehensive assessment of the state's surface waters every 10 years, accelerate and prioritize TMDL report development and restoration activities and establish a dedicated source of funding to accomplish these efforts.

The Minnesota Environmental Initiative drafted and assembled this document based on consensus recommendations that owe primary authorship to the Policy Work Group and secondary authorship to the Partners Group.

Steve Morse
Chair, Impaired Waters Stakeholder Process
Minnesota Environmental Initiative

Peter Frosch
Project Manager, Impaired Waters Stakeholder Process
Minnesota Environmental Initiative

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Policy Work Group (Group of 16)
(with alternates)

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Tom Ebnet, Thirty Lakes Watershed District
3. LeAnn Buck, Minnesota Association of Soil and Water Conservation Districts
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4. Keith Hanson, Minnesota Power / Minnesota Chamber of Commerce
Deb McGovern, Flint Hills Resources
5. Craig Johnson, League of Minnesota Cities
6. Laurie Martinson / John Linc Stine, Minnesota Department of Natural Resources
Dirk Peterson, Minnesota Department of Natural Resources
7. Steve Nyhus, Minnesota Environmental Science and Economic Review Board
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8. Thom Petersen, Minnesota Farmers Union
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9. Chris Radatz, Minnesota Farm Bureau Federation
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10. Mike Robertson, Minnesota Chamber of Commerce
Deb McGovern, Flint Hills Resources
11. Kris Sigford, Minnesota Center for Environmental Advocacy
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12. Louis Smith, Minnesota Rivers Council / Minnesota Lakes Association
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13. Lisa Thorvig, Minnesota Pollution Control Agency
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Partners Group (Group of 40)

– in order of confirmation –

1. Dave Preisler, Minnesota Pork Producers Association
2. Steve Hansen, Bonestroo, Rosene, Anderlik and Associates
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4. Kathy Svanda, Minnesota Department of Health
5. Remi Stone, Builders Association of the Twin Cities
6. Nancy Larson, Minnesota Association of Small Cities
7. Diane Jensen, Minnesota Project
8. John Monson, Farm Service Agency
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26. Julie Klocker, Sauk River Watershed District
27. Terry Kuhlman, Public Facilities Authority
28. Warren Formo, Minnesota Corn Growers Association
29. John Tuma, Minnesota Environmental Partnership
30. Linda Meschke, Blue Earth River Basin Initiative
31. Al Anderson, Cenex Harvest States
32. Steve Commerford, Minnesota Soybean Research and Promotion Council
33. Dan French, independent agricultural producer
34. Rebecca Flood, Metropolitan Council
35. Mark Hauck, Benton County
36. Tim Tracy, AgStar Financial Services
37. Jeff St. Ores, Natural Resource Conservation Service
38. Klayton Eckles, City of Stillwater
39. Jeff Stoner, United States Geological Survey
40. Dallas Ross, Upper Sioux

Impaired Waters Program Structure

The stakeholder recommendations outline an impaired waters program for Minnesota focused on local water quality restoration. This program would base local activities on sound, transparent science and support those activities through a process of central prioritization and allocation led by a stakeholder council. While not the program's primary objective, protection of non-impaired waters would be viewed as a legitimate use of program resources.

1. The pollution control agency and other public agencies should engage stakeholders, including local citizens, land owners and managers, and public and private organizations, in the identification of impaired waters, in developing TMDLs and allocation plans, and in planning and implementing restoration of impaired waters.

The federal Clean Water Act requires the Minnesota Pollution Control Agency (MPCA) to identify impaired waters and present a biennial impaired waters list to the U.S. Environmental Protection Agency (EPA) for review and approval. MPCA is also primarily responsible for: planning and coordinating the restoration of impaired waters, monitoring the effectiveness of restoration actions in achieving water quality standards for impaired waters and promoting actions to prevent waters from becoming impaired. Even so, the success of an impaired waters program relies heavily on the cooperation and leadership of other public, private and nonprofit sector entities whose activities impact the quality of surface waters and who have authority and responsibility for water management, planning and protection. For this reason, MPCA should seek broad stakeholder participation not only in implementing restoration efforts, but also early in the process beginning with water quality assessment and the development of TMDLs.

2. To the extent practicable, the pollution control agency and other public agencies should endeavor to enter into formal and informal agreements and arrangements with federal agencies and departments.

The purpose of this collaboration will be to jointly utilize staff and resources to deliver programs or conduct activities to achieve the intent of the impaired waters program, including efforts under the Clean Water Act and other federal soil and water conservation efforts. For their part, other state and federal agencies should identify opportunities to participate and assist in the impaired waters program and contribute funding or technical assistance when needed.

3. An impaired waters coordinating council should be created to advise on program administration and implementation, and to foster coordination and cooperation among various stakeholder groups.

The coordinating council will be charged with the implementation and further development of these stakeholder recommendations. Longer-term responsibilities of the council include providing the governor with recommendations for appropriating water protection account funds to impaired waters activities, as well as the submission of a biennial report to the legislature reviewing impaired waters activities and appropriations in the current biennium with recommendations for spending in the next biennium. The pollution control agency would provide administrative support for the council.

A new body is preferable over existing water-related entities because those existing bodies do not represent the stakeholder diversity or impaired waters focus required for the successful, sustained implementation of the program.

4. The pollution control agency, in collaboration with other state agencies, should develop a statewide plan to guide the implementation of the impaired waters process (i.e. assessment, TMDL, restoration).

The pollution control agency should develop a plan detailing the general procedures and timeframes for implementing these stakeholder recommendations. The plan would also include a framework for priority setting and a work plan for activities in the next fiscal biennium. The first statewide plan should be completed by December 1, 2004; an updated version of the plan would be produced by December 1 of each subsequent even-numbered year.

5. The pollution control agency and its partners in the impaired waters program should identify and encourage implementation of measures to prevent otherwise non-impaired waters from becoming impaired.

Though not the central focus of Minnesota's impaired waters program, prevention must be an integral part. Prevention is a cost-effective and logical step in preserving the state's overall water quality and in managing the volume of impaired waters work. In an area where a TMDL is being developed, MPCA and stakeholders should seek to identify waters at risk of becoming impaired and intervene with prevention measures when the likelihood of success is favorable.

6. The pollution control agency and other public agencies should seek to provide stakeholder education and solicit stakeholder participation in impaired waters activities.

The pollution control agency, department of natural resources, board of water and soil resources, department of agriculture, office of environmental assistance, and other public agencies involved in the implementation of these recommendations should develop and implement strategies for informing, educating, and encouraging the participation of citizens, stakeholders, and others regarding the identification of impaired waters, development of TMDLs and allocation plans, and development and implementation of restoration for impaired waters. In particular, the pollution control agency should make reasonable efforts to provide timely information to the public and to stakeholders about impaired waters that have been identified by the agency. This should include efforts to communicate the binding implication of TMDL load allocations to point sources.

7. Voluntary clean-up options that prove effective in meeting water quality goals should be preferred over new regulation.

In cases where new regulation might be considered, preference should be given to measures that bring individuals and organizations together to solve problems on a voluntary basis rather than instituting and enforcing regulatory requirements to accomplish the same purpose.

8. To the extent practicable, the impaired waters program should balance the allocation of resources across geographies, program stages and the spectrum of impairment severity.

The pollution control agency and coordinating council must ensure geographic coverage so that that all major watersheds of the state receive consideration. Program decision-makers must also ensure adequate support and funding for all three major program stages: assessment, TMDLs and allocation plans and restoration (the majority of resources being reserved for restoration efforts). Finally, program resources should be distributed so they address both severely impaired waters and those waters where immediate restoration can prevent severe impairment.

9. A decision-making matrix should be developed and utilized to weigh various prioritization criteria, and thus, provide guidance to the impaired waters program.

Several factors make prioritization of water bodies necessary, these include limited resources, the quantity and significance of surface water in Minnesota and the breadth of the Clean Water Act mandate to identify and restore impaired waters. A priority point system or point matrix would assist program leaders in targeting and balancing limited resources toward an ever-expanding list of impaired waters. A prioritization formula would first be applied with the new impaired waters list in 2006. Specific priority

recommendations appear at the start of each subsequent section (i.e. assessment, TMDL, restoration).

Funding

Identifying options for a long-term, sustainable funding source for an impaired waters program is one of the stated objectives of the Impaired Waters Stakeholder Process. In addition to the recommendations below, the stakeholders endorsed three other funding sources for the program. Federal agriculture and conservation legislation is identified as a major and immediate source of potential revenue for rural restoration efforts. Stakeholders recommend MPCA and other state agencies coordinate with the National Resource Conservation Service (NRCS) and Farm Service Agency (FSA) to leverage federal funds for impaired waters. General fund revenue and lottery proceeds are identified as future potential funding sources. (Please see appendix C for additional information on the funding recommendations.) After analyzing data on the estimated annual need for assessment, TMDL, and restoration efforts, the Policy Work Group established a revenue target for the impaired waters program of \$75-100 million per annum.

10. Funding solutions will address both point and nonpoint problems.

Funding solutions must be found to address both point and nonpoint sources. Public and private lands should be eligible to receive appropriations from the coordinating council for impaired waters activities.

11. A water protection account should be created as an account in the environmental fund.

Funds in the account should be made available for the implementation of activities as outlined in the impaired waters legislative proposal. These funds cannot supplant any other funds that are currently available or may become available from any other source, whether federal, state, local or private, for implementation of those activities.

Funds from the water protection account may be used to: 1) fund the pollution control agency and other public agencies to implement these stakeholder recommendations; 2) provide grants, loans and technical assistance to public agencies and others who are participating in the process of identifying impaired waters, developing TMDLs and allocation plans, implementing restoration plans for impaired waters and monitoring the effectiveness of restoration; 3) leverage and maximize the state's investment with the public facilities authority's financial management tools; 4) prevent otherwise non-impaired waters from becoming impaired waters; and 5) support the efforts of public agencies associated with individual sewage treatment systems and financial assistance programs for upgrading and replacing such systems.

12. A water protection fee should be created and imposed on all service connections to sanitary sewer systems that are served by waste water treatment plants, facilities or systems permitted by the pollution control agency and on all individual sewage treatment systems.

A fee of \$36 per year would be charged to homes served by either a municipal sewage treatment works or individual sewage treatment system. A fee of \$150 per year would be charged to the following: 1) non-residential connections to sanitary sewer systems served by a publicly owned treatment works; 2) each waste water treatment plant, facility or system permitted by the pollution control agency, excluding publicly owned treatment works; 3) individual sewage treatment systems not permitted by the pollution control agency which serve non-residential establishments; 4) and any other wastewater system that accepts and discharges untreated wastewater for either a residential or non-residential unit. Wastewater connections that provide service to both residential and non-residential uses will be considered non-residential connections. All fees collected, save one percent which may be retained by the collecting entity for administrative costs, would be paid to the commissioner of revenue and deposited in the water protection account.

Provided revenues are generated in the range of \$75-\$100 million per year, appropriations would breakdown roughly as one-fifth to assessment, one-fifth to TMDL activities and three-fifths to restoration projects.

Assessment

It is the goal of Minnesota's impaired waters program to meet the Clean Water Act directives to: 1) assess all navigable waters of the state to determine if they meet water quality standards established to protect designated uses (33 U.S.C.A. §1315; aka section 305 (b) of the Federal Water Pollution Control Act); and 2) identify and list impaired waters—those not meeting water quality standards (33 U.S.C.A. §1313, aka section 303 (d) of the Federal Water Pollution Control Act).

13. Priority for monitoring, assessment, and listing of water bodies should be given to: human health hazards, areas where evidence of an impairment exists, and areas where evidence of improvement indicates the potential for delisting.

Waters with impairments that pose the greatest potential risk to human and/or aquatic health should receive priority status. So too should areas where remote sensing, citizen monitoring or other data and information provide evidence that an impaired condition exists and areas where remote sensing, citizen monitoring or other data and information indicate improving conditions and a potential for delisting.

14. Utilize assessment data while it is legally viable (within 10 years of collection).

The data from assessed water bodies should be used to complete water quality assessments for 303(d) listing purposes within the legally allotted time period (10 years). Due to financial limitations, every water body would not necessarily be assessed in each 10 year cycle. Prioritizing a set of water bodies for assessment, study and restoration within this timeframe could mitigate the dual challenges of a legal 10 year “expiration date” on assessment data and the onerous financial burden of paying for 100 percent assessment every 10 years.

15. Aim for comprehensive assessment of Minnesota’s surface waters every 10 years.

Meeting the federal requirement for comprehensive assessment every 10 years is a necessary goal for the impaired waters program. “Comprehensive assessment” will mean MPCA assessment of lakes over 500 acres, citizen monitoring with Secchi disks and chemistry for lakes between 100-500 acres, and citizen monitoring with Secchi disks alone for lakes under 100 acres. Remote sensing will also be used to flag potentially troubled lakes in the smaller size category for MPCA follow-up. The stream chemistry and flow monitoring component will include 86 sites in 81 major watersheds. “Conventional” parameters will be measured (pH, nutrients, fecal coliform, turbidity, temperature). This strategy will yield baseline data, current conditions and important data on trends and implementation effectiveness on a system scale.

MPCA expects it will continue to find impairments in approximately 40 percent of the water bodies assessed. Yet the number of TMDLs to be completed does not increase in arithmetic lockstep, since TMDLs can be prioritized and grouped together at appropriate hydrologic scales. A comprehensive assessment scenario would facilitate the implementation of stakeholder recommendations number 20 and 21, which call for addressing multiple pollutants in one TMDL project and using a regional geographic scale when possible.

Stakeholders expressed interest in exploring creative programmatic recommendations that could achieve the comprehensive assessment scenario for less than the MPCA’s estimated cost.

Below are the assumptions that underlie and inform these policy recommendations on assessment:

- 1. Comprehensive assessment will include a variety of techniques and data-gathering partners as described in the MPCA’s Data Collection Components of a Statewide*

Surface Water Quality Assessment Strategy and accompanying cost spreadsheet for comprehensive monitoring.

2. *All water quality monitoring data utilized for assessment purposes will meet strict Quality/Assurance and Quality/Control protocols adopted by the MPCA.*
3. *Data sufficient for assessment is more than a snapshot, and must meet or exceed requirements described in the MPCA's Guidance Manual For Assessing the Quality of Minnesota Surface Waters For the Determination of Impairment.*
4. *It is expected that the MPCA will seek partnerships with public agencies and non-governmental organizations to conduct water quality monitoring, will assist in training of monitors, will assist in developing a monitoring plan that will result in assessment level data, and will fund data gathering efforts by these outside entities.*
5. *The MPCA will seek quality-assured assessment-level data collected by outside parties and utilize it in making assessments. Public agencies and non-governmental organizations conducting assessment level water quality monitoring will similarly be expected to convey this data to the MPCA for use in assessment analyses.*
6. *Assessment results—waters that are clean, threatened or impaired— should be readily available to the general public and presented to the Impaired Waters Coordinating Council.*

TMDL

The impetus for developing a multi-stage water quality program in Minnesota is the Total Maximum Daily Load (TMDL) provision of the federal Clean Water Act. Each TMDL includes an allocation plan for reducing pollutant discharges. These allocations are binding and have proven extremely controversial in many states. Hence, effective public and stakeholder participation in TMDL activities is viewed as essential to avoiding costly and protracted legal disputes and to ensuring TMDLs are utilized as vehicles to promote broadly-supported and scientifically-based water quality restoration efforts.

16. The pollution control agency should set priorities for developing and approving TMDL reports and submitting TMDL reports to the U.S. EPA taking into account the severity of the pollution, the designated uses of those waters and other applicable federal TMDL requirements.

In setting priorities, the pollution control agency should also give consideration to waters and watersheds: 1) with impairments that pose the greatest potential risk to human or aquatic health; 2) where other public agencies and participating organizations and individuals (especially local, basin-wide or regional agencies or organizations) have demonstrated readiness to assist in carrying out the responsibilities, including availability and organization of human, technical, and financial resources necessary to undertake the work; and 3) where there is demonstrated coordination and cooperation among cities, counties, watershed districts and soil and water conservation districts in planning and implementation of activities that will assist in carrying out the responsibilities.

17. The phrase “TMDL study” should be avoided and “TMDL report” used in its place.

Public and stakeholder perception will be critical in the impaired waters program. “Study” implies inaction and does not accurately portray the binding implications of TMDL results. The alternative moniker “report” was adopted in place of “study”.

18. To increase efficiency and stakeholder involvement in TMDL planning, the impaired waters program should require a preliminary evaluation of an impaired water body to tailor the approach to study and restoration.

Such a “scoping process” would allow for local considerations (social, political, and scientific) to be integrated into planning and execution. A scope group may: 1) identify, recruit, and charge local partners; 2) establish timelines for addressing a particular impaired water body; 3) determine what geographic reach is appropriate; and 4) estimate cost. The scoping process is intended to achieve the necessary balance between structure and flexibility, central coordination and local control, required for the successful completion of each TMDL.

19. The pollution control agency should work with local partners to identify stakeholders and effectively engage them in the TMDL process.

Once a water body is listed, it is standard procedure for the pollution control agency to hold a public meeting to notify local stakeholders (residential and non-residential; point source permit holders and non-point source polluters) of the impairment. The agency should use public meetings as opportunities to educate stakeholders on impaired waters and TMDL, explain the steps in the impaired waters process and how locals can be involved, and identify and recruit local leaders to participate on the TMDL steering team.

Stakeholders defined the TMDL process as a series of steps, which were often described as “scoping process,” “study,” “allocation,” and “implementation.” The structure for stakeholder involvement throughout these steps could be anchored by the aforementioned TMDL steering team, which would be composed of MPCA staff and a core of local leaders. Members of the steering team would coordinate all stages of the TMDL. Additional stakeholders who chose to be involved during one or more stages (i.e. “scoping process” or “allocation”) could collaborate with the steering team.

Because bright lines do not always exist between the end of one stage and the beginning of the next, breaking the TMDL down in this manner may appear artificial. However, identifying mile-markers in the process would allow MPCA and its partners to demonstrate progress. Further, recognizing these stages would encourage broad

stakeholder involvement by allowing individuals to define the scope of their participation (a stakeholder only interested in the first stage or last stage may feel disinclined to engage in the entire process). Steering team members may choose to organize informal orientation sessions for new stakeholder participants.

A TMDL that incorporates diverse stakeholder input is less likely to be mired in rulemaking and other legal hurdles, hence potentially expediting the process and controlling costs. The stakeholder relationships developed during the TMDL process would also become valuable assets in subsequent restoration efforts.

20. To the greatest extent practicable, coordinate and execute multiple TMDLs and allocation plans in a single project.

Realize efficiencies by doing multiple TMDLs in a single impaired water body at the same time.

21. Ensure economies of scale are captured by evaluating what geographic approach is most efficient and effective for TMDLs and restoration (e.g. region, watershed, stream, stream section).

A method should be developed to determine the appropriate geographic scope for the effort. This method could then be employed by stakeholders in the scoping process.

22. Develop a work plan for each TMDL project.

At a minimum, elements of the work plan will include: roles of third parties and the MPCA, agreed upon modeling approaches, the monitoring plan, a cost estimate, identification all potential contributors, measures of success and a description of how stakeholders will be engaged at each major step in the process, particularly in decisions on final pollution allocations. The work plan should also identify public or stakeholder education and training needs. Public and stakeholder input is needed in the development of work plans for both the TMDL and the implementation process. Work plan development could be made the responsibility of TMDL steering teams.

23. Following approval of the TMDL, public and stakeholder input must be included in the development of the implementation plan.

The MPCA requires submittal of this plan within one year following U.S. EPA approval of the TMDL.

24. The pollution control agency should retain oversight and responsibility for the TMDL process, but must consider contracting with third parties for modeling, monitoring, stakeholder analysis and involvement, implementation planning and/or the full TMDL process.

The pollution control agency may enter agreements with any qualified public or private entity setting forth the terms and conditions under which that entity is authorized to develop a third party TMDL. MPCA should ensure the development of third party TMDLs is consistent with the goals, policies and priorities described in the policy framework. A third party TMDL is subject to modification and approval by the MPCA and must be approved by the MPCA before it is submitted to the U.S. EPA. The approval of a TMDL and its associated allocation plan by MPCA shall be considered a final decision of the agency, and is subject to the contested case procedures of sections 14.57 to 14.62, and to judicial review under sections 14.63 to 14.69 of state statute.

25. To make the TMDL process more understandable and transparent, the pollution control agency should:

- I. develop a guidance manual with public input that would establish protocols and procedures to be used by either MPCA or third-parties in the TMDL process and*
- II. engage water quality experts outside the agency and create a technical framework to ensure better understanding and buy-in of the science used in developing TMDLs*

I. The guidance manual should be designed to create a transparent process, be easy to use and understand and provide flexibility to address regional concerns and conditions. In addition, to provide consistency and to avoid confusion on the use of terms, the MPCA should provide definitions in the guidance for each step in the TMDL process (listing, scoping, study, allocation and implementation). Given adequate opportunities for public input, a formal rulemaking process will be unnecessary to adopt these guidelines.

II. Stakeholders strongly recommend the science behind TMDLs should be made available for public review before it is finalized. The pollution control agency should make use of available expertise from educational, research and technical organizations, (including higher education institutions) to provide appropriate independent expert review of models, methods and approaches used by the agency in identifying impaired waters, and in developing TMDLs and allocation plans for those waters.

Data should be communicated in a transparent technical framework that could include the methods, approaches and models used by MPCA in identifying impaired waters and in developing TMDLs and allocation plans. Public scientific review could be one of several mile markers in a flexible TMDL framework, each of which could be checked off to

demonstrate progress. A technical advisory committee composed of independent outside experts may be created as a subgroup of the Coordinating Council.

26. The pollution control agency should submit TMDL reports for all impaired waters in a timely manner in accordance with federal TMDL requirements.

27. The pollution control agency shall seek to support existing or ongoing efforts to address or reduce impairments in surface waters that have been listed as impaired but where a TMDL report or restoration plan has not yet been approved.

Restoration

The focus of the impaired waters program must be on improving water quality in the state's most polluted surface waters. Hence, the program's goal is to de-list impaired waters. While many programmatic details have yet to be addressed, the strategy for restoration is to support, augment and coordinate with ongoing local efforts to address impaired waters (e.g. efforts in the areas of wastewater, erosion control, hydrologic restoration and riparian corridors).

28. The pollution control agency should prioritize and target available programmatic, financial and technical resources to maximize opportunities for impaired waters restoration.

Given that restoration efforts will be led by a team of MPCA staff and local stakeholders, priority for restoration funding from the Water Protection Account should be given to: 1) waters/watersheds with restoration plans that have accounted for the potential community and economic impacts from implementation; 2) TMDLs that coordinate with and utilize existing local authorities (such as local ordinances) and infrastructures for implementation; 3) TMDLs for waters/watersheds that can be restored in whole or in part with support for existing or ongoing restoration efforts; 4) TMDLs for which local, private or other funds can be used to leverage state or federal funding; and 5) TMDLs that utilize restoration methods that have a proven ability to reduce impairment, have demonstrated durability and have the greatest long-term positive impact on water quality protection and improvement. On a case-by-case basis, the program may consider utilizing innovative approaches.

29. Restoration must always include effectiveness monitoring.

Completed restoration efforts must have an effectiveness monitoring component to ensure water quality standards are being met and for the purposes of delisting. Effectiveness monitoring data should also be captured to report on the status of ongoing restoration activities. Individual implementation measures need to be monitored for their effectiveness in achieving water quality goals for the impaired water body. Effectiveness monitoring can be supplemented by physical, chemical and biological monitoring and needs to be coordinated between local governmental units and state agencies.

30. Restoration activities need to be developed and supported by local governmental units.

State funding should be channeled to local governmental units to develop and implement restoration and prevention activities. In particular, Local Water Management programs should incorporate impaired water restoration plans. Restoration activities may also include reviewing and revising existing programs to better integrate and achieve TMDL/impaired water goals. (Though, it must be recognized that these existing programs may have previously outlined priorities that do not closely align with the impaired waters process.)

In addition to local government units, partners in restoration activities may include private landowners, businesses, state and federal government, universities, environmental groups, agriculture groups, civic organizations and others.

31. Restoration activities must address both point and nonpoint sources of pollution within a watershed.

Appendix A

Definitions

The definitions provided in this section apply to terms used in the policy framework and its appendices.

ASSESSMENT: refers to the process of comparing water quality data to the water quality standard established for a water body. The impaired waters list is determined through this assessment process.

ALLOCATION PLAN: that portion of the TMDL report containing the proposed wasteload allocation and load allocation for a pollutant which are necessary to comply with the total loading capacity for a pollutant required by a TMDL. “Wasteload allocation” includes loading attributable to existing and future point sources of the pollutant. “Load allocation” includes loading attributable to existing and future non-point sources, as well as natural background, of the pollutant. “Natural background” is the multiplicity of factors in nature that determine the physical, chemical or biological conditions in a water body in the absence of significant impacts from human activity or influence.

BMP: Best Management Practice. Typically in reference to agricultural activities.

FEDERAL TMDL REQUIREMENTS: means the requirements of Section 303(d) of the Clean Water Act, 42 U.S.C. Section 1313(d), and associated regulations and guidance.

G16: the Group of 16 or the Policy Work Group of the Impaired Waters Stakeholder Process.

G40: the Group of 40 or the Partners Group of the Impaired Waters Stakeholder Process.

IMPAIRED WATER: surface water that does not meet applicable water quality standards due in whole or in part to water pollution from point or nonpoint sources, or any combination thereof.

MEI: the Minnesota Environmental Initiative.

MPCA: the Minnesota Pollution Control Agency.

NRCS: the National Resource Conservation Service.

PUBLIC AGENCIES: all state agencies, political subdivisions and other public organizations with authority, responsibility or expertise in protecting, restoring or

preserving the quality of surface waters, managing or planning for surface waters and related lands, or financing waters-related projects. “Public agencies” includes counties, cities, towns, joint powers organizations and special purpose units of government, and the University of Minnesota and other public educational institutions.

RESTORATION: actions, including effectiveness monitoring, that are taken to achieve and maintain water quality standards for impaired waters in accordance with a TMDL that has been approved by the U.S. EPA under federal TMDL requirements.

SURFACE WATERS: waters of the state as defined in section 115.01, subdivision 22, excluding groundwater as defined in section 115.01, subdivision 6.

THIRD PARTY TMDL: a TMDL that is developed in whole or in part by a public or private entity other than the MPCA.

TOTAL MAXIMUM DAILY LOAD OR TMDL: a calculation of the maximum amount of a pollutant that may be introduced into a surface water and still assure that applicable water quality standards for that water are achieved and maintained. A TMDL is the sum of the pollutant load allocations for all sources of the pollutant. A TMDL shall take into account seasonal variations and a margin of safety.

TMDL REPORT: a document that establishes a proposed TMDL for a pollutant for any impaired water. The TMDL report must be approved by the U.S. EPA.

WATER QUALITY STANDARDS: state and federal law, rules and regulations establishing designated uses for surface waters, and setting forth the standards and requirements governing the quality or properties of surface waters which must be achieved to support those designated uses.

U.S. EPA: the United States Environmental Protection Agency.

Appendix B

Unresolved Issues

While dozens of topics were identified, discussed, and resolved during the seven months of the stakeholder process, many still remain. Some are policy issues for which time did not allow, while others are programmatic issues that the Policy Work Group decided early on would be left to state agencies and local groups to address. Finally, there were other questions, such as mercury, to which the stakeholder's authority or responsibility did not extend. In all cases, stakeholders direct other entities, specifically the Coordinating Council, to address and resolve the following unresolved issues.

Policy Issues

Listing

1. How do we address the listing of waters where the designated use or water quality standard is in question?
2. How do we ensure the use alleged to be impaired actually exists or is attainable?
3. The listing status and handling of mercury impairments

TMDL studies

4. What should our allocation process for TMDLs look like?
5. How do we determine reserve capacity for future growth?
6. Cost-benefit analysis needs to be factored into TMDLs
7. What are the procedures for public scientific review for TMDL and other stages in the impaired waters process?
8. Bridging the gap of resources where a load allocation is imposed but for some reason it cannot be implemented
9. Delegation of responsibility / accountability
10. What rough percentage of TMDLs are done by third parties?
11. What is a "phased" TMDL and should the G16 endorse this practice in an impaired waters program?

Implementation / Restoration

12. How do we ensure nonpoint source implementation measures occur? What are the responsibilities of private (farmers, business) and public (local, state, federal government) landowners?
13. Do we want to develop pollutant trading and other flexible approaches to implementation? If so, how?
14. What is the balance between land retirement and working lands?
15. Should MPCA amend the Clean Water Partnership priorities to better meet the implementation/restoration needs associated with impaired waters?

16. How should Local Water Management activities be modified to connect land use planning and multi-land development issues relating to impaired waters?
17. How can private and public drainage systems be analyzed for opportunities to address impaired waters?

Funding / Cost

18. What is the level of state funding needed to leverage available federal funds and resources?
19. How do costs differ among the possible approaches to conducting TMDLs?
20. What will the cost to farmers be?

Prioritization

21. Is the prioritization of funding done per capita? By share of pollutant load? By cost of remedial measures?

Impaired waters program structure

22. Which impaired waters activities are best fulfilled by MPCA and which by other entities?
23. How much should Minnesota's program be driven by: 1) statute, 2) rule, and 3) policy?
24. Land Use Planning for residential and other developments
25. What is the balance of restoration v. protection efforts in the impaired waters program?

Programmatic Issues

Assessment/Monitoring

26. Should we retain or modify the current listing process?
27. Should we revisit MPCA Stream Use Classification?

TMDL

28. What is the appropriate level of technical rigor for TMDLs?
29. How to build simplicity into TMDLs (take a look at the 150 page Long Prairie River Watershed TMDL Final Project Report)?
30. How do we account for the pollutant contributions from all sources in the development and implementation of TMDLs?
31. What are the specifics of preparing a TMDL for conventional pollutants?
32. How do we ensure TMDL allocation plans, when implemented, return subject waterbodies to water quality standards?
33. Build in protections for point sources that volunteer to meet a more stringent limit than called for by TMDL.
34. Consideration of critiques of TMDL models and alternative studies
35. Evaluation of past and current TMDL efforts in the state

Implementation / Restoration

36. What is the efficacy of Best Management Practices (BMPs) in various situations?
37. Who determines measures of success for restoration and how do they do it?
38. Building good working relationships with local partners

Impaired waters program structure

39. What measures are needed to evaluate the program's overall success?
40. Credit needs to given for investment and BMPs already put in place and practice by point and non-point sources.
41. Protection for point sources that have made substantial investments in pollutant reductions
42. Should an accessible (perhaps web-based) database of connections to local, regional resources be created?
43. Clarification of law on MPCA's authority to enforce waste load allocations
44. What level of support for developing new science and technology is appropriate in the impaired waters program?
45. Where can innovation save money?
46. What is the role of technology in local stakeholder involvement? Progress monitoring? Central program coordination? Program transparency?
47. Identify and build upon successes/current efforts
48. How does the program communicate outcomes? To whom?
49. How can program structure help participants focus on outcomes rather than the steps in the process?
50. Find ways other than impaired waters list (de-listing) to gauge success.
51. Problems are local, solutions should be designed to address local needs and involve local groups
52. Must identify and address the fears of stakeholders
53. Engaging agricultural producers as partners and not adversaries
54. Testing proposed rules and standards on working farms before widespread rollout
55. How do protection efforts integrate with the impaired waters process (assessment, TMDL, restoration)?
56. Is there a role for universities and colleges to collaborate on TMDLs and other aspects of the impaired waters program?

Appendix C

Supplementary Information: Funding

Estimated Need

Based on data from MPCA and the Public Facilities Authority (PFA), the estimated point and non-point source annual need for the impaired waters program is as follows:

Assessment	\$8.2m
TMDL report	\$8.9m
Restoration (non-point source)	\$46 - \$230m
Restoration (point source)	\$200m
Estimated annual need for impaired waters	\$263.1m - \$447.1m

These figures are based on MPCA's 2002 impaired waters list; as the list grows so too does the funding need for restoration. Note: the above calculation does not include the costs of protection efforts.

Funding options

After viewing numbers on the estimated annual revenue need for the impaired waters program the Policy Work Group agreed on a rough target total of \$75 - \$100 million for a funding package. Next, a list of criteria for selecting funding options was discussed and expanded substantially. The criteria is stated below. The list is neither weighted nor ordered by importance.

- A: Connection between pollution source, funding source and use is logical
- B: Bigger is better*
- C: Doesn't encourage negative environmental behavior
- D: Recognizes larger societal benefits of clean water
- E: Easy to administer
- F: Equity between point and nonpoint sources
- G: Legislative viability
- H: Stability/longevity
- I: Security of funding source
- J: Acceptability to current administration

* The Policy Work Group decided to target fewer but larger sources of revenue in an effort to minimize the number of potential political conflicts. This was only one of several considerations in the group's funding options discussion.

With decision-making criteria established, the Policy Work Group took up a list of over forty funding options with estimated revenue-generating potential, which was assembled by MPCA and the department of revenue.

The procedure proposed by MEI and accepted by the Policy Work Group for selecting funding options from the list involved two rounds of evaluation. In round one, the chair led the group through all forty-one options asking for a thumbs up (yea), thumbs down (nea) or thumbs sideways (undecided). Options with few or no thumbs up were eliminated from the list, not to be discussed. Round two saw short periods of discussion on each of the remaining options. In general, brief dialogue moved the group to consensus on the option's future. Instances where prolonged dialogue did occur are described below. The chair emphasized that decisions reached at the September 11 meeting need not be final. The group revisited the brainstorming list and discussed the funding proposal with members of the Partners Group on September 18 and October 23.

General fund (option 2)

The Policy Work Group or G16 agreed that seeking to expand general fund revenues to water programs is not presently a viable option. However, the group noted protecting and restoring the state's waters is a general obligation of the state and thus, the general fund is a legitimate source of funding for water programs. In the future, the group concluded, more general fund dollars should go to support the impaired waters effort. Until such time as additional general funds are available, the impaired waters program should retain its current level of general fund revenue, which is being directed towards the Clean Water Partnership and other such water programs.

Lottery proceeds - state trust fund and LCMR (option 13)

In the next biennium, the G16 is recommending LCMR look at directing a portion of the state trust fund proceeds from the lottery to activities of the impaired waters program.

Pesticide/fertilizer tax (option 4)

The G16 felt removing the sales tax exemption from pesticides and fertilizers failed the test of legislative viability. A significant portion of the group agreed, for the sake of equity, the impaired waters program must have a revenue stream from rural Minnesota, if not from the agricultural community specifically. The group agreed that a fee on septic systems is a fair course to pursue and also that the stakeholder process should look at targeting federal farm bill dollars at programs and projects related to impaired waters. (Voices representing the farm community noted some farmers would be paying significant amounts to upgrade their systems under voluntary BMPs for TMDL.)

Funding options: numbers 25,26 &10

Among the three funding options related to a fee on residential and commercial /industrial water hook-ups, the Policy Work Group chose to pursue the flat monthly fee variant (number 26). The group agreed this fee should be greater than \$2 per month for commercial and industrial sources; for these sources, the stakeholder process will explore a tiered system with a cap.

Note: the list of 40 plus options resulted from a collective and iterative brainstorming process by MPCA and members of the Policy Work Group and Partners Group. The list was intended as an internal discussion tool for these groups. Some options on the list may not have been viable funding sources; the options Policy Work Group members elected for further exploration received more thorough vetting. Numbers accompanying funding options are rough estimates and only meant to demonstrate the relative magnitude of each option.

As revenue estimates from the various options became more refined (subsequent to the original discussion on September 11 when this document was used) the group decided to increase the amount of the monthly flat fee (numbers 26 and 30) from \$2 per month to \$3 per month. The current estimated revenue generated by these combined fees would be approximately \$75 million per year.

Funding options brainstorming list
- For Discussion Purposes Only -
Policy Work Group: Impaired Waters Stakeholder Process

	Funding Sources	Amount Generated/Year	Assumptions
1	Water/Hazardous Waste or Air Fee Increases	\$.5 million \$.5 million	25% water fee increase 60% hazardous waste fee increase
2	General Fund	?	Based on need/availability.
3	Solid Waste Tax	\$22 million	Half that goes to General Fund each year. Modify law to redirect more of tax to environmental purposes. Creates General Fund hole.
4	Tax Fee on Farm Pesticides and Fertilizers	\$65 million	Funding audit – sales tax exemption eliminated
5	Tax Fee on Farm Pesticides and Fertilizers	\$36.8 million	FY03 Est. – 3% surcharge on sales of pesticides, herbicides, and fertilizers, agricultural and household use.
6	Increase Petroleum Distributor Fee	\$39 million – increase to \$.03/gallon	FY03 actual - \$26.8 million. Petroleum distributors pay \$.02/gallon of petroleum products.
7	Gasoline Tax (Motor Fuels)	\$281.6 million	FY03 Est. – sales tax exemption eliminated.
8	Environmental Penalty Revenues	.5 million	8 year avg – portion deposited to General Fund. Creates general fund hole.
9	Increase/Reallocate Motor Vehicle Title Transfer Use instead of Tire Tax	\$4.6 million \$5.8 million \$11.5 million	Existing \$4 title transfer fee – goes to General Fund through FY07. 5 year avg of 1,154 title transfers per year. Increase fee to \$5 per title transfer Increase fee to \$10 per title transfer
10	Tax/Fee on Sewer Water	\$27.4 million	FY03 Est. – sales tax exemption eliminated
11	Tax/Fee on Residential Water	\$11.2 million	FY03 Est. – sales tax exemption eliminated
12	Carbon Tax	\$1.3 billion	Funding audit – 1998 Legislature proposal - \$50/ton tax on the carbon content of energy inputs
13	Lottery	\$21.85 million	FY02 actual – 40% net proceeds currently go to the Environment & Nat'l Resources Trust Fund
14	Residential Heating Fuels	\$80.4 million	FY03 Est. – sales tax exemption elimination
15	Fuel/Energy	\$46.5 million	FY03 Est. – Extend 6.5% general sales tax to selected fuels and energy sources now exempted when used for home heating and agricultural and industrial production. Does not include electricity and natural gas.
16	Deed Tax	\$86 million	FY02 actual – 97% state portion (.33% of price

			paid for the property)
17	Dedicated Sales Tax	\$355 million	Half Cent for Nature. Creates General Fund hole if portion of existing sales tax used.
18	Vanity Plates	\$2.5 million	FY03 actual – DNR Critical Habitat Plates. Revenue generated is used to match private contributions.
19	Improved parcel run-off surcharge	\$16.6 million	Applies an annual surcharge of \$10 per improved residential, commercial and industrial parcel.
20	Hotel/Motel Tax Fee	\$3 million	1987 Tax Research - 1% hotel/motel room charge
20 a	Litter Control Tax/Fee	\$3 million	1987 Tax Research - .15% of gross income of corporations that manufacture products that contribute to the litter problem.
21	Tax/Fee on Bottled Water	\$5.73 million	6.5% surcharge
22	Increase Water Appropriation Fee	\$3.86 million – FY04 with 2003 increase	FY03 actual - \$2.6 million, 2003 legislative increase in fee of 37% from \$50 minimum fee for up to 50 million gallons to \$101. Fee increase will generate approx. 1.26 million per year.
23	Increase Water Testing Fee	\$7.1 million – increase to \$6 per service connection	FY03 actual - \$6.1 million. Customers pay \$5.21 per service connection.
24	Vehicle Registration Fee Based on Fuel Economy	\$4.7 million - \$5 surcharge \$9.4 million - \$10 surcharge	12/31/02 – 939,769 registered pick up trucks including most SUVs
25	Water Protection Fee	\$29 million	6.5% sales tax rate. Cost per household - \$1.36 per month average. Residential estimated to pay 79% and Commercial/Industrial 21%.
26	Water Protection Fee	\$39.7 million	\$2 flat fee/month
27	Tax on Clothing	\$404.6 million	FY03 Est. – sales tax exemption eliminated
28	ISTS Maintenance Added Fee	\$.825 million	\$75 fee (to achieve \$25/year in revenue, based on pumping every three years)
29	ISTS Sales Tax on All Work	\$7.1 million	Sales tax on designs, installations and pumping
30	Annual ISTS Fee	\$12.9 million	\$24 annual fee paid by homeowners (\$536,000 ISTS). Collected by local gov't that regulates that ISTS, or by county on property tax
31	State Revolving Fund	\$1.5 billion \$.476 million	Needs based on 2004 Project Priority List for 191 projects. Additional 31 projects have no cost estimates yet. EPA Capitalization Grants and State Match to date (1987-2003)
32	ISTS Environmental Trust Fund Loans Through Activation of 5% Clause	\$2.5 million	Based on \$5,000,000 in trust fund- 5% principal (John Helland estimate).

33	Boat License Fee/Tax	\$4,373,301 \$.5 million \$1.3 million	FY03 – 261,688 boat license sales \$2 surcharge on boat licenses \$5 surcharge on boat licenses
34	Bonding	?	Based on need/availability
35	Ag Land Preservation	\$.9 million	5 year average. Currently a \$1.6 million balance in the fund. \$5.2 million of balance transferred to the General Fund since FY96.
36	“Lost” Lottery Revenues	\$10 million	MCEA press release on the lottery, dated April 10, 2003 – average return on sales for 8 states most similar to Minnesota in terms of population and lottery sales would net \$25 million. \$10 million Environmental Trust Fund share.
37	Clean Water Check-Off	\$1 million	Chickadee check off – 2001 tax year
38	Shoreland Development Tax	?	Need to first examine federal laws, current state efforts and then opportunity for increased revenues. Would be county determined – DNR role?
39	OHV Fee	?	Need to first examine federal laws, current state efforts and then opportunity for increased revenues. Currently funds are projected to be in the red. Fee would depend on the increased revenue needed.
40	Recreation Fee on Users of Natural Resources	?	Need to first examine federal laws, current state efforts and then opportunity for increased revenues. Users already pay a fee and are taxed on equipment (federal). Fee would depend on the increased revenue needed.
41	Impervious Surface Fee	?	No easy way to calculate impervious surface amounts for the state. Satellite technology in the future is a possibility, but it is not ready yet. There may be a way to get certain classification so a fee could be targeted at commercial, industrial and institutional utilizing SIC (standard industrial classification) code.
42	Fee per Foot of Drain Tile	?	Tiling is being increasingly installed by farmer-operators using tractor-type plows so cannot just survey contractors. We could get feet of tile sold in MN data from the drainage companies, but so far they haven’t been willing to share that info.

***43** Targeted resources from federal agriculture and conservation legislation

Leveraging Federal Agriculture and Conservation Legislation in Support of Minnesota's Clean Water Vision & Impaired Waters Initiative

Background & Premise

The primary objectives of federal agriculture and conservation legislation (farm bill) programs are to reduce soil erosion, improve soil and water quality and enhance wildlife habitat. The 2002 Farm Bill authorized unprecedented levels of funding for conservation programs, including significantly more for conservation on lands in agricultural production. *As a result, the 2002 Farm Bill provides unprecedented opportunities to leverage and target farm bill conservation program funds for water quality restoration and protection, especially on agricultural working lands. The State of Minnesota can play a significant role in realizing these opportunities.*

Within the Impaired Waters Stakeholder Process, the Minnesota Pollution Control Agency and the Minnesota Environmental Initiative assembled a work group to identify key strategies to leverage the farm bill. Primary members of the work group included Barbara Weisman (lead), Minnesota Department of Agriculture; Wayne Anderson, Minnesota Pollution Control Agency; Doug Thomas, Board of Water and Soil Resources; Wayne Edgerton, Minnesota Department of Natural Resources; and Jerry Heil, Minnesota Department of Agriculture.

The work group identified six key strategies with action steps ranging from state-funded initiatives that would bring in additional farm bill funding for water quality, to efforts that would steer a higher percentage of fixed farm bill allocations toward water quality. The strategies cut across the conservation programs—that is, each strategy may involve more than one program. The work group also identified several principles and considerations to guide efforts to leverage the farm bill.

Below are the principles, considerations and key strategies identified by the work group. Also provided below are estimates of the amount of funding likely to flow to Minnesota in the remaining years of the 2002 Farm Bill for each of the major conservation programs, and a description of the types of investments that would help the State leverage these funds. The work group is in the process of estimating the costs and returns of these investments.

Principles & Considerations

- Targeting farm bill conservation program dollars to impaired waters is an important goal, but it is essential that farm bill funds continue to be available for soil, water and wildlife conservation in other watersheds, too.
- Identifying the conservation practices most likely to address or prevent specific water quality impairments in each region is an important prerequisite to any effort to leverage the farm bill for impaired waters.
- Efforts to leverage the farm bill should acknowledge agricultural producers' significant ongoing financial investment in conservation practices and systems that protect and improve water quality.

- The farm bill leveraging strategies identified below are designed to help fund restoration of impaired waters on the 2002 303-D list as well as protection of other high-priority waters. It is important to note, however, that the list of impaired waters is expected to grow rapidly as more waters are assessed.
- The State should step up its efforts to communicate and coordinate with USDA, from involvement in the USDA State Technical Committee to coordinating key programs.
- The State should invest in tools to fully leverage and enhance farm bill conservation programs, from incentive payments and adequate cost sharing to low-interest loans and technical assistance.
- The State should support innovation by capitalizing on potential opportunities to acquire matching funds for water quality initiatives developed by and for Minnesota.

Six Key Strategies

Action steps for each strategy are available from the work group.

Strategy 1—Share Impaired Waters Information Among Agencies:

Communicate information about 303D listed waters and associated pollution sources and BMPs to facilitate targeting by state, regional and local farm bill conservation program decision-makers.

Strategy 2—Increase Coordination of Programs: Increase coordination between farm bill and state programs that fund water-quality related BMPs at all levels of government involved in implementation (federal, state, regional and local).

Strategy 3—Maximize Landowner Enrollment in Programs: Maximize voluntary enrollment in conservation programs through outreach and incentives for selected water-quality related BMPs, especially in impaired watersheds.

Strategy 4—Ensure Adequate State & Local Capacity to Utilize Farm Bill Funds: Increase the capacity of existing state and local conservation programs to fully meet landowner demand for financial and technical assistance for water quality practices, and keep pace with the anticipated increase in demand due to unprecedented levels of farm bill funding.

Strategy 5—Support Innovation through Focused Research, Evaluation & Demonstration: Support innovation through public and landowner research, demonstration and evaluation of the water quality benefits of selected BMPs and conservation systems.

Strategy 6—Pursue Federal Matching Funds: Prepare to take advantage of significant opportunities that may be provided by two new provisions in the Conservation Title of the 2002 Farm bill: 1) EQIP Conservation Innovation Grants; and 2) Partnerships & Cooperation.

Examples of Investments That Could Help Minnesota Leverage Major Conservation Programs in the 2002-2007 Federal Farm Bill

Note: The work group will complete estimates of the costs and returns of specific investments in February 2004. The examples below are associated mainly with Strategies 3 and 4 above. The Conservation Reserve Enhancement Program (CREP) is not included in the examples below because the State is already doing what it can to leverage those funds (\$180 million through 2007, leveraged by a proposed state contribution of \$44-\$46 million).

Conservation Security Program (CSP): The amount of funding that flows to Minnesota for this new program will depend on how many acres landowners voluntarily enroll. We estimate Minnesota will bring in close to **\$200 million** in 2004 through 2007.

Examples of Investments that Could Target and Increase CSP Funding

- Fund targeted promotion to increase the percentage of CSP contracts that include high-priority practices in high-priority areas.
- Fund incentives to increase the percentage of the state's 24 million acres of working agricultural land devoted to high-priority practices such as cover crops and crop rotations, increasing federal funding by up to \$100 for every dollar invested.
- Invest in demonstration projects that bring in more federal dollars by persuading more producers to enroll land in high-priority working lands practices in key areas.
- Urge NRCS to utilize CSP "enhanced payments" to reward individual participation in watershed-based efforts involving at least 75% of the landowners in a watershed.

Conservation Reserve Program (CRP) Continuous Signup: The amount of funding that flows to Minnesota depends on how many acres landowners voluntarily enroll. We estimate Minnesota will bring in about **\$180 million** from 2004 through 2007.

Example of an Investment that Could Increase CRP Funding

- Fund targeted promotion to increase federal funding by approximately \$40 for every dollar invested, while targeting the increased conservation buffer and wetland acreage to Clean Water Vision and/or Impaired Waters priorities (e.g., stream banks adjacent to impaired waters in agricultural areas).

Environmental Quality Incentives Program (EQIP): About **\$95 million** in total is anticipated in the form of fixed allocations to Minnesota from 2004 through 2007.

Examples of Investments to Fully Utilize EQIP Funding

- Increase the investment in existing state cost-share and low-interest loan programs to ensure at least 75% cost-share to producers for high-priority practices in high-priority areas (e.g., feedlots adjacent to impaired waters).
- Enlarge the pool of public and private-sector technical assistance available to producers to design and install high-priority practices.

Wetlands Reserve Program (WRP): About **\$64 million** in total is anticipated in fixed allocations to Minnesota from 2004 through 2007.

Example of an Investment to Target WRP Funding

- Fund targeted promotion to align a higher percentage of WRP-funded wetland restoration projects with Clean Water Vision and/or Impaired Waters priorities.

Appendix D

Supplementary Information: Assessment

The assessment work team provided the following explanations to Partners Group members at their second meeting on October 23. The questions outlined below were raised at the first Partners Group meeting on September 18.

Question: What does the comprehensive assessment scenario really cover?

This was the most frequent comment/question from the Partners Group (18 related comments).

Lakes—The MPCA will assess all lakes above 500 acres. Citizen monitoring with Secchi disks and chemistry (phosphorus and chlorophyll-a) will cover all lakes between 100-500 acres. Citizen monitoring with Secchi disks alone will provide both interim coverage for the above lakes (i.e., flag transparency issues that arise in the 10 year interim between full assessments), and will provide partial coverage for lakes under 100 acres. Problems flagged by Secchi disk will be followed up with full assessments by the MPCA. The broad-based information gathered by the Secchi disk (alone) monitoring is also important in calibrating the data generated by remote sensing. Remote sensing, in turn, is used to flag potentially troubled lakes in the smaller size category for MPCA follow-up. About 10 percent of the figure given for MPCA lake monitoring activities is for follow up on Secchi/remote sensing red flags.

Streams—The stream chemistry and flow monitoring component includes 86 sites in 81 major watersheds. The parameters measured are “conventional” – pH, nutrients, fecal coliform, turbidity, temperature. This component gives baseline data and current conditions, and by staying put for decades, yields important data on trends and implementation effectiveness on a system scale.

The integrated stream monitoring provides a simultaneous assessment of stream biology, physical features, flow and chemistry (again conventional parameters). It incorporates efficiencies by being probabilistic/statistically based. Put another way, if one stream reach looks good, skip it and check the next, and so forth until a problem is found. When a problem is identified, zero in and backtrack to assess the scope of the impairment. As with lake monitoring, 10 percent of the integrated stream monitoring component is for MPCA follow up where concerns are flagged through citizen/remote sensing work. The comprehensive scenario does not include fish tissue testing for mercury/PCBs. This is handled by the DNR.

Question: When is a water body really assessed? How many parameters are checked? Is it based on a “snapshot”?

When a lake is referred to as assessed, it is for excess nutrients only and the parameters considered are clarity, total phosphorus and chlorophyll-a. These parameters must each be

sampled 12 times (June-September) across two summer seasons, to have sufficient data to assess. Stream chemistry assessments are for an array of conventional parameters. Stream biological assessments look comprehensively at aquatic life, and compare what is present with reference sites (Index of Biological Integrity, or IBI). The IBI varies among basins. Currently, when we refer to the 5 percent of stream miles assessed, it generally means chemical assessments, as the IBIs are still being developed. As with lakes, assessment as impaired is not a “snapshot,” with most pollutants needing a minimum number of values across a specified period of time for this determination.

Question: Should assessments be conducted locally or by the state?

Many comments from the Partners Group had to do with whether water quality assessments should be conducted by the MPCA or locally. A related theme was the need to insure that local monitoring efforts are used by the MPCA. To assess the waterbodies within a local jurisdiction requires chemical, physical and biological expertise. Practically speaking, most local units are not interested in adding such expert teams for use once every 10 years. This makes the majority of initial assessment work better suited to the state. Once the assessment is done, and TMDL preparation and implementation starts, local follow up project monitoring is appropriate and desirable.

MPCA currently uses all “assessment level” water quality data collected by outside parties, if it meets quality assurance/quality control protocols, and the agency is aware of its existence. Data from these sources is factored into the current and comprehensive assessment options.

Question: How did the Policy Work Group settle on its rate of assessment recommendation?

Seven Partners Group comments related to the G16’s policy framework goal that we comprehensively assess our waters within ten years. The G40 supported the comprehensive goal, suggested the G16 think about the work engendered by it, and voiced concern over the low number of certified labs in the state.

It is expected that we will continue to find 40 percent of water bodies assessed to be impaired. This does not mean that the number of TMDLs to be prepared increases in arithmetic lockstep. Rather, if all impairments are identified, TMDLs can be grouped together at logical hydrologic scales, and projects prioritized. A comprehensive assessment scenario facilitates the TMDL policy framework goals of addressing multiple pollutants in one TMDL project and of using a regional geographic scale when possible.

Question: What is the process for re-classifying a water body’s designated use?

Six comments from the Partners Group concerned the need to look at how waters can be re-classified (changes in designated use). Some feel that the default classification process applied in the 1970s captured some water bodies into a higher use classification (2B—warm water fisheries) than merited. The subgroup finds that there are two potential ways to address these: 1) the Agency could undertake a statewide intensive field survey to re-check classifications, at an

unknown cost of probably many millions; or 2) those aware of specific cases of improperly classified waters could come forward and utilize the use-classification process.

Currently, a process is available for petitioning to reclassify a water's designated use(s). This is handled through the MPCA's triennial rule revision process mandated by the Clean Water Act. Legislation enacted in the 2003 session (Chapter 128 (SF 905), Article 1, Section 156) requires the Agency to adopt rules clarifying this process by January 1, 2006. The Agency has begun to draft its triennial rule revisions including those mandated by the above legislation. The group requests that the MPCA give a short presentation on this rulemaking content and timeline to the G16 when the agenda allows.

Recommendation: The assessment work team recommends that the revised petition process be used to identify and correct improperly classified waters. The group further recommends that the rules clarify information a person must present to demonstrate that a beneficial use does not exist and is not attainable.

Appendix E

Process Background

Meeting schedule – Impaired Waters Stakeholder Process

<u>Meeting</u>	<u>Date</u>	<u>Subject</u>
1	17 July	workplan / TMDL 101
2	31 July	issues / Walt Poole
3	7 August	timeline / low hanging fruit / vision
4	14 August	assessment, funding options
5	21 August	study (TMDL)
6	4 September	restoration / funding
7	11 September	restoration / funding
18 September <i>Partners Group I</i>		
8	25 September	feedback debrief
9 (<i>Tuesday</i>)	7 October	restoration
10	16 October	legislative proposal/policy framework
23 October <i>Partners Group II</i>		
11	30 October	feedback debrief programmatic issues
12 (<i>Mon, 1:30-5pm</i>)	17 November	revise legislative proposal
13	4 December	programmatic issues / conference prep
13 January <i>Public Meeting: Everybody in the Water</i>		
14	22 January	large group debrief / next steps
15	5 February	policy framework hand-over, next steps

Meetings on Thursday mornings, 8:30am-12pm unless otherwise specified

WORKPLAN*

Impaired Waters Stakeholder Process

July 2003 – February 2004

GOAL

To recommend a design for Minnesota's impaired waters program, identify the partnerships that will be required for its successful implementation, and continue protection of the state's water resources

The process will define the scope of an impaired waters program, pursue funding options and determine a plan for priority setting and strategies for successfully identifying and restoring impaired waters.

WORK PRODUCTS

This process will result in a policy framework for the development and implementation of the state's impaired waters program. The framework will include a list of issues that must be addressed to establish a successful impaired waters program along with recommendations for addressing those issues. Issues will be divided between those that require legislative action and those that should be addressed through other mechanisms.

A subset of the legislative issues and recommendations will be incorporated into a 2004 legislative proposal. The Minnesota Pollution Control Agency (MPCA) will use the policy framework as a basis for developing a 2004 legislative proposal, which the agency will draft in concert with stakeholders (specifically Policy Work Group members).

The policy framework will recommend a means and a timeline for addressing issues not fully addressed in the 2004 legislative proposal.

STAKEHOLDER GROUPS

Policy Work Group (Group of 16)

Partners Group (Group of 40)

Public Stakeholder Input Group (Large Group)

The Policy Work Group is the core of a three-tiered stakeholder input process. The smallest of the three groups, it is composed of individuals with extensive experience in environmental policy formation. The slightly larger Partners Group will convene twice during the course of the Policy Work Group's regular meeting schedule to provide review and comment on the policy framework under development. The Partners Group represents the voices of those with technical and on the ground implementation responsibilities regarding impaired waters and TMDL studies

* Note: some details of the process (e.g. Partners Group participants, timeline) were developed subsequent to the workplan's adoption in August of 2003.

as well as other representatives from business, agriculture, tribal communities, environmental organizations and federal, state and local governments with a stake in water protection and restoration activities. Integrating this feedback into the policy design process is meant to ensure success not only at the legislature, but also in the field. In January 2004, the Public Stakeholder Input Group will assemble to react to the policy framework and offer an even broader sampling of feedback which the Policy Work Group will incorporate into its recommendations for next steps beyond the 2004 legislative session.

Participation in the Policy Work Group and Partners Group is by invitation of MEI. Participation in the Large Group is open to an unlimited number of individuals; notice of the event will be distributed publicly. Given the high degree of interest in MEI's June 24 Policy Forum on Impaired Waters and TMDL, attendance for the Large Group is expected to exceed 300.

The Impaired Waters Stakeholder Process is designed to be outcome-focused with genuine stakeholder input at multiple stages. The process is set to run from July 2003 to February 2004, at which time all parties will reevaluate their engagement.

Policy Work Group (Group of 16)

Members (with organization)

Perry Aasness, Minnesota Department of Agriculture
Ray Bohn, Minnesota Association of Watershed Districts
LeAnn Buck, Association of Soil and Water Conservation Districts
Keith Hanson, Minnesota Power / Minnesota Chamber of Commerce
Craig Johnson, League of Minnesota Cities
Laurie Martinson, Minnesota Department of Natural Resources
Steve Nyhus, Coalition of Greater Minnesota Cities
Thom Petersen, Minnesota Farmers Union
Chris Radatz, Minnesota Farm Bureau Federation
Mike Robertson, Minnesota Chamber of Commerce
Kris Sigford, Minnesota Center for Environmental Advocacy
Louis Smith, Minnesota Rivers Council / Minnesota Lakes Association
Lisa Thorvig, Minnesota Pollution Control Agency
Dave Weirens, Association of Minnesota Counties
Steve Woods, Board of Water and Soil Resources
Marie Zellar, Clean Water Action Alliance

Roles and Responsibilities

- Attend all Policy Work Group, Partners Group and Large Group meetings (members will send their designated alternate if unable to attend)
- Develop a proposal for the design and implementation of the state's impaired waters program that incorporates broader stakeholder input and focuses specifically on funding, priority setting and restoration
- Work with MPCA to translate elements of the policy framework into a 2004 legislative proposal for an impaired waters program
- Communicate with constituencies about process objectives and progress

- Support and respect the process by taking an open, “no surprises” approach in which members clearly lay out issues of concern within the Policy Work Group.
- Support and honor the products of the Policy Work Group by: embracing consensus issues, working to craft compromises in areas of disagreement and offering full disclosure of external limitations to support the work product up front.

Partners Group (Group of 40)

Members

- Watershed organizations and Soil Water Conservation Districts from each region of the state
- Federal agencies
- State agencies
- Local government
- Environmental organizations
- Business interests
- Consulting Firms
- Builders
- Agricultural commodity associations
- Agribusiness
- Habitat and conservation groups
- Tribal communities
- Higher education institutions
- others

Roles and Responsibilities

- Attend Partner Group meetings as well as Large Group Conference
- Track Policy Work Group progress through listserv, website and other updates provided by MEI
- Provide stakeholder input on the design of the state’s impaired waters program, specifically from the perspective of organizations involved in implementation of on-the-ground water quality programs

Public Stakeholder Input Group (Large Group)

Members

Open to public

Roles and Responsibilities

- Provide broader stakeholder input on the design of the state’s impaired waters program, of which a TMDL program is a subset
- Follow progress of Policy Work Group and Partners Group via MEI website
- Meeting takes the form of a large scale conference

PROCESS LEADERSHIP

Minnesota Environmental Initiative (MEI)

In early 2003, newly appointed Commissioner of the Minnesota Pollution Control Agency, Sheryl Corrigan, approached the Minnesota Environmental Initiative to explore the potential for MEI to facilitate an impaired waters stakeholder process that would give special attention to the issue of TMDL. The Commissioner expressed her interest in involving a neutral third-party to assist in balancing the diverse interests involved in the impaired waters debate. MEI's experience in building and sustaining partnerships made it well suited for the task.

After designing a Policy Forum focused on water quality issues in Minnesota and specifically, the pressing TMDL requirement of the federal Clean Water Act, MEI was invited by a group of issue stakeholders and the Minnesota Pollution Control Agency to facilitate an impaired waters stakeholder process. In its role as facilitator, MEI will chair the Policy Work Group and Partners Group and execute project management responsibilities within the July 2003 to February 2004 timeframe.

To serve as chair of the process, MEI brought in board member and long-time MEI partner Steve Morse. Peter Frosch, Manager of MEI's Environmental Policy program, will serve as project manager for the process. Specific responsibilities for the chair and project manager are as follows:

Chair

- Meet with project manager to confer on process and work product development
- Meet with MPCA to provide process updates and advise on work product
- Communicate with project manager and Policy Work Group members on issues regarding the Policy Work Group
- Communicate with project manager and Partners Group members on issues regarding the Partners Group
- Assist in drafting and redrafting policy framework

Project Manager

- Meet with chair to confer on process and work product development
- Meet with MPCA to provide process updates and advise on work product
- Schedule presentations for Policy Work Group
- Communicate with chair and Policy Work Group members on issues regarding the Policy Work Group
- Communicate with chair and Partners Group members on issues regarding the Partners Group
- Offer process updates via listserv and MEI website
- Draft and redraft policy framework
- Organize Policy Work Group, Partners Group and Large Group meetings

Together, the chair and project manager will fulfill the following responsibilities:

- Invite and convene the Work Group, the Partners Group and the Public Stakeholder Input Group
- Design, manage and facilitate the process
- Provide updates on process via MEI website
- Compile stakeholder input
- Communicate with key legislators throughout the process to keep them updated on progress and the developing proposal
- Develop drafts of the policy framework in consultation with MPCA

Note: MEI will neither draft legislation, nor lobby directly in support or opposition to any legislative proposal developed by this process.

Minnesota Pollution Control Agency (MPCA)

Ultimately, it is the responsibility of the Minnesota Pollution Control Agency to list, study and restore the state's impaired waters. By requesting the formation of the Impaired Waters Stakeholder Process, MPCA is exercising a new partnership approach to accomplish this daunting task. Throughout the course of the process, MPCA will be utilizing a new leadership model whereby the agency sets regulatory parameters, offers various means of support to the process and participates as a member of the Policy Work Group. By no means does this new leadership model displace MPCA's traditional regulatory and enforcement approach. Instead, partnership is another tool to fulfill the Agency's responsibilities.

At the conclusion of the stakeholder process, MPCA will receive, review and utilize the products of process. The legislative proposal generated by the process will be offered for consideration in the 2004 legislative session.

MPCA is responsible in the process to:

- Participate as a member of the Policy Work Group, Partners Group and Public Stakeholder Input Group
- Collaborate with MEI's chair and project manager
- Offer technical resources to the process as requested
- Play leadership role in developing the state's impaired waters program and 2004 legislative proposal, working closely with the Policy Work Group, Partners Group and Public Stakeholder Input Group
- Seek buy-in from other state agencies and BWSR
- Present proposal to the governor's office
- Communicate with key legislators throughout the process to keep them updated on progress and the developing proposal
- Provide majority of funding required for the impaired waters stakeholder process

TIMELINE

July (2 meetings of Work Group)

- Work Group convenes, sets goals and focal issues, lays out principles and key questions to be answered for TMDL and impaired waters programs, receives educational presentations, requests further background information from staff and signs off on work plan

August (3 meetings of Work Group)

- Work Group meets twice to identify and discuss specific issues and recommendations
- MEI staff in consultation with MPCA develop the first draft of the policy framework for an impaired waters program, based on Work Group discussions
- Policy Work Group meets to review and comment on framework for revision
- MEI staff in consultation with MPCA develops the second draft of the framework

September (3 meetings of Work Group and 1 meeting of Partners Group)

- Partners Group meets to review and comment on second draft of the framework for revision
- Work Group meets to discuss input from the Partners Group and suggest revisions to the framework
- MEI staff in consultation with MPCA develop the final draft of the framework
- Work Group meets to review the final draft of the framework and to consider its approval, and to discuss which elements of the framework could be advanced through the 2004 legislative proposal
- MPCA and Work Group members develop the 2004 legislative proposal
- Work Group meets to review and comment for revision of the 2004 legislative proposal
- MPCA presents the draft 2004 legislative proposal to the Governor's Office

October (1 meeting of Partners Group, 1 meeting of Work Group)

- Partners Group meets to review the Work Group's approved framework, and to review and comment for revision on the 2004 legislative proposal
- Work Group meets to discuss input from the Partners Group and suggest further revisions to the 2004 legislative proposal

November (no meetings)

- Further development of the 2004 legislative proposal by the MPCA and stakeholders

December (1 meeting of Work Group)

- Work Group meets for additional round of comments on 2004 legislative proposal and to begin discussing next steps for after the session

January (1 meeting of Public Stakeholder Input Group and 1 meeting of Work Group)

- Public Stakeholder Input Group (large-scale conference) for broader stakeholder review and comment on Work Group's approved framework and the 2004 legislative proposal
- MEI compiles input from Public Stakeholder Input Group for the Work Group
- Work Group meets to discuss feedback from Public Stakeholder Input Group on the framework and on the 2004 legislative proposal, and to specifically consider its implications on next steps

February (1 meeting of the Work Group)

- The Work Group and MEI will each consider the next phase of their involvement, making specific decisions about next steps

Appendix F

Legislative Proposal

Final Draft: 2/5/04

A bill for an act

relating to the environment; providing authority, direction and funding to achieve and maintain water quality standards for Minnesota's surface waters in accordance with Section 303(d) of the federal Clean Water Act; appropriating money.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. [CITATION.] Sections 1 to 9 may be cited as the "Minnesota Surface Water Protection and Restoration Act."

Sec. 2. [LEGISLATIVE PURPOSE AND FINDINGS.]

Subdivision 1. [PURPOSE.] The purpose of the Minnesota Surface Water Protection and Restoration Act is to protect, restore and preserve the quality of Minnesota's surface waters by providing authority, direction and resources to achieve and maintain water quality standards for surface waters as required by Section 303(d) of the federal Clean Water Act, 42 U.S.C. Section 1313(d), and applicable federal regulations.

Subd. 2. [FINDINGS.] The legislature finds that:

(1) there is a close link between protecting, restoring and preserving the quality of Minnesota's surface waters and the ability to develop the state's economy, enhance its quality of life, and protect its human and natural resources;

(2) achieving the state’s water quality goals will require long-term commitment and cooperation by all state and local agencies, and other public and private organizations and individuals, with responsibility and authority for water management, planning, and protection; and

(3) all persons and organizations whose activities affect the quality of waters, including point and non-point sources of pollution, have a responsibility to participate in and support efforts to achieve the state’s water quality goals.

Sec. 3. [DEFINITIONS.]

Subdivision 1. [APPLICATION.] The definitions provided in this section apply to the terms used in sections 1 to 9.

Subd. 2. [CITIZEN MONITORING.] “Citizen monitoring” means monitoring of surface water quality by individuals and non-governmental organizations which is consistent with pollution control agency guidance on monitoring procedures, quality assurance protocols, and data management.

Subd. 3. [FEDERAL TMDL REQUIREMENTS.] “Federal TMDL requirements” means the requirements of Section 303(d) of the Clean Water Act, 42 U.S.C. Section 1313(d), and associated regulations and guidance.

Subd. 4. [IMPAIRED WATER.] “Impaired water” means surface water that does not meet applicable water quality standards due in whole or in part to pollutants from point or nonpoint sources, or any combination thereof.

Subd. 5. [POLLUTANT LOAD ALLOCATIONS.] “Pollutant load allocations” means the wasteload allocation and load allocation for a pollutant which are necessary to comply with the total loading capacity for a pollutant required by a TMDL. “Wasteload allocation” includes

loading attributable to existing and future point sources of the pollutant. “Load allocation” includes loading attributable to existing and future non-point sources, as well as natural background, of the pollutant. “Natural background” means pollution resulting from the multiplicity of factors in nature that determine the physical, chemical or biological conditions in a water body but does not include measurable and distinguishable pollution that is attributable to human activity or influence.

Subd. 6. [PUBLIC AGENCIES.] “Public agencies” means all state agencies, political subdivisions, and other public organizations, with authority, responsibility or expertise in protecting, restoring or preserving the quality of surface waters, managing or planning for surface waters and related lands, or financing waters-related projects. “Public agencies” includes counties, cities, towns, joint powers organizations and special purpose units of government, and the University of Minnesota and other public educational institutions.

Subd. 7. [RESTORATION.] “Restoration” means actions, including effectiveness monitoring, that are taken to achieve and maintain water quality standards for impaired waters in accordance with a TMDL that has been approved by the U.S. EPA under federal TMDL requirements.

Subd. 8. [SURFACE WATERS.] “Surface waters” means waters of the state as defined in section 115.01, subdivision 22, excluding groundwater as defined in section 115.01, subdivision 6.

Subd. 9. [THIRD PARTY TMDL.] “Third party TMDL” means a TMDL that is developed in whole or in part by a public or private entity other than the MPCA consistent with the goals, policies and priorities in section 4.

Subd. 10. [TOTAL MAXIMUM DAILY LOAD OR TMDL.] “Total maximum daily load” or “TMDL” means a calculation of the maximum amount of a pollutant that may be introduced into a surface water and still assure that applicable water quality standards for that water are achieved and maintained. A TMDL is the sum of the pollutant load allocations for all sources of the pollutant. A TMDL shall take into account seasonal variations and a margin of safety.

Subd. 11. [WATER QUALITY STANDARDS.] “Water quality standards” means state and federal law, rules and regulations establishing designated uses for surface waters, and setting forth the standards and requirements governing the quality or properties of surface waters which must be achieved to support those designated uses.

Subd. 12. [U.S. EPA.] “U.S. EPA” means the United States Environmental Protection Agency.

Sec. 4. [IMPLEMENTATION; COORDINATION; GOALS; POLICIES; AND PRIORITIES.]

Subdivision 1. [COORDINATION AND COOPERATION.] In implementing sections 1 to 9, the pollution control agency and other public agencies shall take into consideration the relevant provisions of local and other applicable water management, conservation, land use, land management, and development plans and programs. Public agencies with authority for local water management, conservation, land use, land management, and development plans shall take into consideration the manner in which their plans affect the implementation of sections 1 to 9. Public agencies, in consultation with the pollution control agency, shall identify opportunities to participate and assist in the successful implementation of sections 1 to 9, including the funding or technical assistance needs, if any, that would be necessary to take such actions. In

implementing sections 1 to 9, the pollution control agency and other public agencies shall endeavor to engage the cooperation of all organizations and individuals whose activities affect the quality of surface waters, including point and non-point sources of pollution, and who have authority and responsibility for water management, planning, and protection. To the extent practicable, the pollution control agency and other public agencies shall endeavor to enter into formal and informal agreements and arrangements with federal agencies and departments to jointly utilize staff and resources to deliver programs or conduct activities to achieve the intent of sections 1 to 9, including efforts under the federal Clean Water Act and other federal farm and soil and water conservation programs.

Subd. 2. [GOALS FOR IMPLEMENTATION.]

The following goals shall guide the implementation of sections 1 to 9:

- (1) to identify all impaired waters in accordance with federal TMDL requirements within ten years after the effective date of this section and thereafter to assure continuing evaluation of surface waters for impairments;
- (2) to submit TMDLs to U.S. EPA for all impaired waters in a timely manner in accordance with federal TMDL requirements;
- (3) to set a reasonable time for implementing restoration of each identified impaired water; and
- (4) to identify waters within an area for which a TMDL is being developed that are at risk of becoming impaired and where early assistance or incentives may be appropriate to prevent the waters from becoming impaired waters.

Subd. 3. [IMPLEMENTATION POLICIES.]The following policies shall guide the implementation of sections 1 to 9:

(1) develop regional and watershed TMDLs , and TMDLs for multiple pollutants, where reasonable and feasible;

(2) maximize use of available organizational, technical and financial resources to perform sampling, monitoring and other activities to identify impaired waters, including use of volunteers consistent with appropriate quality assurance and quality control requirements;

(3) maximize opportunities for restoration of impaired waters, by prioritizing and targeting of available programmatic, financial and technical resources, and by providing additional state resources to complement and leverage available resources;

(4) use existing regulatory authorities to achieve restoration for point and non-point sources of pollution where applicable, and promote the development and use of effective non-regulatory measures to address pollution sources for which regulations are not applicable;

(5) utilize restoration methods that have a demonstrated effectiveness in reducing impairments and provide the greatest long term positive impact on water quality protection and improvement while incorporating innovative approaches on a case by case basis;

(6) identify for the legislature any innovative approaches that may strengthen or complement existing programs; and

(7) identify and encourage implementation of measures to prevent otherwise non-impaired waters from becoming impaired.

Subd. 4. [PRIORITIES FOR IDENTIFYING IMPAIRED WATERS.]

The pollution control agency, in accordance with federal TMDL requirements, shall set priorities for identifying impaired waters, giving consideration to:

(1) waters where impairments would pose the greatest potential risk to human or aquatic health; and

(2) waters where data developed through public agency or citizen monitoring or other means, provides evidence that an impaired condition exists.

Subd. 5. [PRIORITIES FOR DEVELOPING TMDLS.] The pollution control agency shall set priorities for developing and approving TMDLs and submitting them to the U.S. EPA taking into account the severity of the impairment, the designated uses of those waters, and other applicable federal TMDL requirements. In setting priorities, the pollution control agency shall also give consideration to waters and watersheds:

(1) with impairments that pose the greatest potential risk to human or aquatic health;

(2) where other public agencies and participating organizations and individuals, especially local, basin-wide or regional agencies or organizations, have demonstrated readiness to assist in carrying out the responsibilities, including availability and organization of human, technical, and financial resources necessary to undertake the work;

(3) where there is demonstrated coordination and cooperation among cities, counties, watershed districts, and soil and water conservation districts in planning and implementation of activities that will assist in carrying out the responsibilities.

Subd. 6. [PRIORITIES FOR RESTORATION OF IMPAIRED WATERS.] In implementing restoration of impaired waters, in addition to the priority considerations in subdivision 5, clauses (1) to (3), state agencies shall give priority for restoration funding from the water protection account to restoration projects which:

(1) coordinate with and utilize existing local authorities and infrastructure for implementation;

(2) can be implemented in whole or in part by providing support for existing or ongoing restoration efforts; and

(3) most effectively leverage other sources of restoration funding, including federal, state, local and private sources of funds; and

(4) show a high potential for early restoration and delisting based upon data developed through public agency or citizen monitoring or other means.

Sec. 5. [ADMINISTRATION; POLLUTION CONTROL AGENCY.]

Subdivision 1. [GENERAL DUTIES AND AUTHORITIES.] The pollution control agency, in accordance with federal TMDL requirements, shall identify impaired waters and propose a list of such waters for review and approval by the U.S. EPA; develop and approve TMDLs for listed impaired waters and submit the approved TMDLs to the U.S. EPA in accordance with federal TMDL requirements; and propose to delist waters from the EPA impaired waters list. The pollution control agency is primarily responsible for planning and coordinating the restoration of impaired waters; monitoring the effectiveness of restoration actions in achieving water quality standards for impaired waters; and promoting actions that are intended to prevent otherwise non-impaired waters from becoming impaired waters. The pollution control agency shall seek to support existing or ongoing efforts to address or reduce impairments in surface waters that have been listed as impaired but where a TMDL has not yet been approved.

Subd. 2. [ADMINISTRATIVE PROCEDURES FOR TMDL APPROVAL.] The approval of a TMDL by the pollution control agency shall be considered a final decision of the agency, and is subject to the contested case procedures of sections 14.57 to 14.62, and to judicial

review under sections 14.63 to 14.69. A TMDL is not subject to the rulemaking requirements of chapter 14.

Subd. 3. [THIRD PARTY TMDL DEVELOPMENT.] The pollution control agency may enter agreements with any qualified public or private entity setting forth the terms and conditions under which that entity is authorized to develop a third party TMDL. A third party TMDL is subject to modification and approval by the MPCA, and must be approved by the MPCA before it is submitted to the U.S. EPA. The MPCA shall consider authorizing the development of third party TMDLs consistent with the goals, policies and priorities determined under section four above.

Subd. 4. [IMPLEMENTATION PLAN.] The pollution control agency, in consultation with the impaired waters coordinating council, shall prepare a plan for implementation of sections 1 to 9. The plan shall address general procedures and timeframes for implementing sections 1 to 9, and shall include a more specific implementation work plan for the next fiscal biennium and a framework for setting priorities to address impaired waters consistent with section 4, subdivisions 5 and 6. The agency shall issue the first implementation plan under this subdivision by December 1, 2004, and shall issue a revised work plan by December 1 of each even-numbered year thereafter.

Sec. 6. [IMPAIRED WATERS COORDINATING COUNCIL.]

Subdivision 1. [CREATION; DUTIES.] An impaired waters coordinating council is created to advise on the administration and implementation of sections 1 to 9, and foster coordination and cooperation as described in section 4, subdivision 1. The council may also advise the pollution control agency on the development of appropriate processes for expert scientific review as described in section 7, subdivision 2. The pollution control agency shall

provide administrative support for the council. The members of the council shall elect a chair from the non-agency members of the council.

Subd. 2. [MEMBERSHIP; APPOINTMENT.] The commissioners of natural resources, agriculture, and the pollution control agency, and the executive director of the board of water and soil resources shall each appoint one person from their respective agency to serve as a member of the council. The commissioner of the pollution control agency, in consultation with the other state agencies represented on the council, shall appoint thirteen additional non-agency members of the council as follows:

- (1) two members representing statewide farm organizations;
- (2) two members representing business organizations;
- (3) two members representing environmental organizations;
- (4) one member representing soil and water conservation districts;
- (5) one member representing watershed districts;
- (6) one member representing organizations focused on improvement of Minnesota lakes or streams;
- (7) one member representing an organization of county governments;
- (8) two members representing organizations of city governments;
- (9) one member representing the metropolitan council established under section 473.123.

Subd. 3. [TERMS; COMPENSATION; REMOVAL] Terms, compensation, removal, and filling of vacancies for the council shall be as provided in section 15.059, subdivisions 2, 3 and 4.

Subd. 4. [RECOMMENDATIONS ON APPROPRIATION OF FUNDS.] The impaired waters coordinating council shall recommend to the governor the manner in which

money from the water protection account should be appropriated for the purposes identified in section 9, subdivision 3. In making its recommendations, the council shall be mindful of the purposes, policies, goals and priorities in sections 1 to 6, in particular the implementation goals and policies in section 4, subdivisions 2 and 3, and the priorities in section 4, subdivisions 4 to 6, and shall allocate adequate support and resources for identifying impaired waters, developing TMDLs, and restoration of impaired waters.

Subd. 5. [BIENNIAL REPORT TO THE LEGISLATURE.] By December 1 of each even-numbered year, the council shall submit a report to the legislature on the activities for which money from the water protection account has been or will be spent for the current biennium, and the activities for which money from the account is recommended to be spent in the next biennium. The report due on December 1, 2012, shall include an evaluation of the progress made through June 30, 2012 in implementing sections 1 to 9, the need for funding of future implementation of those sections, and recommendations for the sources of such funding.

Sec. 7. [PUBLIC AND STAKEHOLDER PARTICIPATION; SCIENTIFIC REVIEW; EDUCATION.]

Subdivision 1. [PUBLIC AND STAKEHOLDER PARTICIPATION.] Public agencies involved in the implementation of sections 1 to 9 shall encourage participation by the public and stakeholders, including local citizens, land owners and managers, and public and private organizations, in the identification of impaired waters, in developing TMDLs, and in planning and implementing restoration of impaired waters. In particular, the pollution control agency shall make reasonable efforts to provide timely information to the public and to stakeholders about impaired waters that have been identified by the agency. The agency shall seek broad and early public and stakeholder participation in scoping the activities necessary to develop a TMDL,

including the scientific models, methods and approaches to be used in TMDL development, and to implement restoration pursuant to section 3, subdivision 7.

Subd. 2. [EXPERT SCIENTIFIC ADVICE.] The pollution control agency shall make use of available expertise from educational, research and technical organizations, including higher education institutions, to provide appropriate independent expert advice on models, methods and approaches used in identifying impaired waters, developing TMDLs, and implementing restoration.

Subd. 3. [EDUCATION.] The pollution control agency, department of natural resources, board of water and soil resources, department of agriculture, office of environmental assistance, and other public agencies involved in implementation of sections 1 to 9, shall develop and implement strategies for informing, educating, and encouraging the participation of citizens, stakeholders, and others regarding the identification of impaired waters, development of TMDLs, and development and implementation of restoration for impaired waters.

Sec. 8. [WATER PROTECTION FEES.]

Subdivision 1. [DEFINITIONS.] The definitions in this subdivision apply to the terms used in this section.

(a) "Individual sewage treatment system" means a sewage treatment system, or part thereof, which is regulated by the state or its political subdivisions, and which serves a dwelling, or other establishment, or group thereof, using sewage tanks followed by soil treatment and disposal or using advanced treatment devices that discharge below final grade. Individual sewage treatment system includes holding tanks and privies.

(b) "Non-residential" includes:

(1) dwellings with four or more units served by a single connection to a sanitary sewer system, or by a single individual sewage treatment system; and

(2) except as provided in clause (d) with respect to farm property and residential business or employment, any property with both residential and non-residential uses.

(c) "Publicly owned treatment works" means a device or system used in the treatment, recycling, or reclamation of municipal sewage or liquid industrial wastes which is owned by the state, a political subdivision, sanitary district, or other public organization established under state law.

(d) "Residential" means a dwelling with less than four units, and a farm that includes buildings. "Residential" includes a seasonal or recreational dwelling, and a dwelling where a resident of that dwelling engages in a business or employment.

Subd. 2. [ASSESSMENT OF FEES.] A water protection fee as provided in subdivision 3 shall be imposed on all service connections to sanitary sewer systems which are served by waste water treatment plants, facilities or systems permitted by the pollution control agency; and on all individual sewage treatment systems.

Subd. 3. [FEE AMOUNTS.] The amounts of the water protection fees imposed under this section are as provided in this subdivision:

(a) For residential connections to sanitary sewer systems served by a publicly owned treatment works, the fee is \$36 per year for each residential unit or group of residential units that receives a separate bill from the public agency that collects fees or charges from the users of such service.

(b) For non-residential connections to sanitary sewer systems served by a publicly owned treatment works, the fee is \$150 per year for each connection. For the purpose of this clause (b), connections which provide service to both residential and non-residential uses are considered non-residential connections.

(c) For waste water treatment plants, facilities or systems which are permitted by the pollution control agency, excluding publicly owned treatment works, the fee is \$150 per year for each permitted plant, facility or system.

(d) For individual sewage treatment systems not permitted by the pollution control agency, the fee is \$36 per year for each residential dwelling, and \$150 per year for each nonresidential establishment, connected to the system.

(e) For any other wastewater system that accepts and discharges untreated wastewater, the fee is \$36 per year for each residential dwelling, and \$150 per year for each nonresidential establishment, connected to the system.

Subd. 4. [COLLECTION AND ENFORCEMENT.]

(a) Fees imposed on service connections to sanitary sewer systems served by publicly owned treatment works must be collected by the public agency that collects fees or charges from the users of that service. The fees shall be collected at the same time and with the same frequency as fees or charges for the use of such service are collected. The collecting entity may enforce payment of the fees using the same enforcement authority applicable to sewer service charges.

(b) Fees imposed on waste water treatment plants, facilities or systems permitted by the pollution control agency must be collected by the pollution control agency. The pollution

control agency may enforce payment of the fees using the same enforcement authority applicable to permit fees.

(c) Fees imposed under subdivision 3, paragraphs (d) and (e) above must be collected by the department of revenue. The department of revenue may enforce payment of the fees using the enforcement authority applicable under section 115B.49, subdivision 4(c). By March 31, 2005 the counties, with the assistance of the pollution control agency, shall identify and develop a list of all persons subject to the fees under subdivision 3, paragraphs (d) and (e) located in that county. The counties shall annually thereafter provide an updated list to the department of revenue.

(d) Any statement, invoice or other document used to collect the fees under this subdivision must clearly identify the fee as the “Minnesota State Water Protection Fee.”

Subd. 5. [PAYMENT TO COMMISSIONER OF REVENUE; DEPOSIT.]

All fees collected under this section, less one-percent which may be retained by the collecting entity as provided in subdivision 4 for administrative costs, shall be paid to the commissioner of revenue and deposited in the water protection account. Fees collected as provided in subdivision 4, paragraphs (a) and (c) shall be paid to the department within twenty days after collection. All other fees shall be paid to the department at least once annually by December 31 of the year in which they are collected. The commissioner of revenue shall assess a late fee in the amount of five percent of the amount of the fees due if the fees are not paid within 30 days of the date required under this subdivision.

Subd. 6. [EFFECTIVE DATE; REPEALER.] The fees imposed by this section shall be effective and collection shall commence for the year beginning January 1, 2005. This section is repealed effective January 1, 2015.

Sec. 9. [WATER PROTECTION ACCOUNT.]

Subdivision 1. [CREATION.] The water protection account is created as an account in the environmental fund. Money in the account shall be made available for the implementation of sections 1 to 9 without supplanting or taking the place of any other funds which are currently available or may become available from any other source, whether federal, state, local or private, for implementation of those sections.

Subd. 2. [SOURCES OF REVENUE.]

The following revenues shall be deposited in the water protection account:

- (1) the revenue from the water protection fees collected under section 8; and
- (2) interest accrued on the account.

Subd. 3. [USES OF THE ACCOUNT.]

Subject to appropriation by the legislature, the water protection account may be used for the following purposes:

- (1) to provide funds to the pollution control agency and other public agencies to carry out their responsibilities under sections 1 to 9;
- (2) to provide grants, loans and technical assistance to public agencies and others who are participating in the process of identifying impaired waters, developing TMDLs, implementing restoration plans for impaired waters, and monitoring the effectiveness of restoration;
- (3) to direct restoration funds to the public facilities authority to utilize their financial management tools to leverage and maximize the state's investment;
- (4) support measures to prevent otherwise non-impaired waters from becoming impaired waters; and

(5) support the efforts of public agencies associated with individual sewage treatment systems and financial assistance for upgrading and replacing such systems.

Sec. 10. [APPROPRIATIONS.]

Subdivision 1. [GENERAL PROVISIONS.] The appropriations in this section are from the environmental fund, and are available until June 30, 2005.

Subd. 2. [DEPARTMENT OF REVENUE; FEE COLLECTION COSTS.]

\$_____ is appropriated to the department of revenue to establish methods and procedures for administration, collection and enforcement of the fees imposed in section 8.

Subd. 3. [POLLUTION CONTROL AGENCY.] The following amounts are appropriated to the pollution control agency for the purposes stated:

(a) \$ _____ to reimburse the collecting entities as provided in section 8, subdivision 4 for their reasonable costs to establish methods and procedures for collecting the fees;

(b) \$ _____ to identify and list persons subject to fees under subdivision 3, paragraphs (d) and (e);

(c) \$ _____ for statewide assessment of surface water quality and trends; up to \$_____ of this appropriation is available for grants to support volunteer monitoring of surface waters;

(d) \$ _____ to develop TMDLs pursuant to the U.S. EPA approved 2002 impaired waters list; and

(e) \$ _____ for restoration as defined in section 3, subdivision 7.

Sec. 11. [EFFECTIVE DATE.] Sections 1 to 9 are effective the day following final enactment. Section 10 is effective July 1, 2004.