

April 10, 2019

The Honorable Bill Ingebrigtsen
Chair, Senate Environment & Natural Resources Finance
Minnesota House of Representatives
3207 State Office Building
St. Paul, MN 55155

Dear Senator Ingebrigtsen,

I write to convey my observations regarding the Senate Omnibus Environment & Natural Resources Finance Bill, SF 2314. A small number of the Governor's budget recommendations are in the bill. However, they are outnumbered by several concerning funding and policy provisions.

First, I would like to thank you for a few positive provisions in the bill:

- Extension of a 2016 appropriation of \$373,000 (Environmental Fund) for technical assistance to municipalities seeking Public Facilities Authority funding for projects at their wastewater treatment facilities;
- Partial funding for the Governor's initiative to evaluate opportunities to reduce the use of trichloroethylene in favor of less-toxic alternatives;
- Full funding of an inflationary increase of \$774,000 for the biennium for our air programs, as required by federal and state law;
- Policy language the Governor requested to update and modernize our Small Business Environmental Loan Program (Sec. 114).

Overall, the bill moves the agency nearly entirely away from the General Fund, thus relying on the Environmental Fund to pay for core functions and environmental programs. As a policy this is concerning for a few reasons I want to quickly highlight before getting to the specifics of the bill.

When we start relying exclusively on the Environmental Fund, we become dependent on very specific funding sources, which is problematic. I've been a business leader in states where environmental agencies are funded almost entirely through permit fees and enforcement actions. It is not a healthy situation for businesses, the public, nor for the environment and human health. It is not the Minnesota way either.

In addition, a majority of the Environmental Fund revenues are from the Solid Waste Management Tax. It is the goal of the agency to reduce waste disposal and actually at a future date reduce our own revenues. When we do so, we will be forced to rely more on permit fees and enforcement if the General Fund and other sources are not there to diversify our funding sources.

One of the priorities I have set as a new Commissioner is efficiency and due diligence with all our work, including permitting. It is a goal we all share. Unfortunately, a number of provisions in the bill make the goal more difficult to achieve. The following direct funding cuts or failures to renew funding will lead to the discontinuation of important work:

- A \$4.98 million (General Fund) cut to our operations budget for the biennium corresponds to the requested MN.IT operating increase we received in our last biennial budget. This increase was necessary due to an increase in IT rates enterprise-wide, and it maintained our base level of internal and external IT services. This cut represents a 20% reduction in our MN.IT operating budget.
- Not funding continuation of the Business-Friendly Data Services effort will stop efforts to increase efficiency for both regulated parties and the Agency by moving paper-based data and processes online. The demand for online services continues to increase each year. The bill discontinues our existing funding (and staff) for these modernization efforts and the Governor's proposed acceleration of the work in the amount of \$1.6m for the biennium.
- The Governor's request for \$484,000 to continue funding existing staff who coordinate cleanup work at the St. Louis River Area of Concern was also not included. This project uses \$25.4 million in state bond funding to leverage a \$47.2 million federal match. Without staff to do the work, we risk the federal government reassigning the money to projects in other states that are prepared to use it, and lose the opportunity to improve water quality, enhance recreational opportunities and spur economic growth.
- Our Legal Costs initiative, which covers MPCA's (and DNR's) ongoing legal expenses for the NorthMet project is not funded at all. Because choosing not to defend the agency's permitting decisions in court is not an option, this lack of legal funding will cause reductions in services and program cuts elsewhere.
- The Greater Minnesota competitive recycling and composting grant program, which provided \$2 million in grants, is eliminated. Just in the last round of funding, these grants went to the cities of Moorhead, Northfield, and Red Wing; Clearwater, Grant, Lake, Lyon, Pine, Pipestone, Polk, St. Louis, Swift and Winona counties; and the Pope-Douglas Solid Waste Management Board. These opportunities will no longer be available to these communities.
- Funds that support a dedicated staff person for railroad emergency preparedness and response activities are eliminated without the reinstatement of the railroad and pipeline safety assessment. A portion of the assessment is transferred from the Department of Public Safety to MPCA for this work.
- The bill also eliminates \$230,000 (General Fund) in historical funding for ongoing watershed monitoring activities. The cut brings up constitutional questions regarding the potential substituting and supplanting of non-Clean Water Fund with Clean Water Fund dollars.

The bill also misses a number of opportunities for strategic investment in the Governor's budget (proposals are underlined):

- There is no funding for Climate Outreach and Engagement statewide to involve all Minnesotans in addressing this critical issue facing the State. There is also no funding for Electric Vehicle Infrastructure initiatives to reduce greenhouse gases from our transportation sector.
- The bill omits dollars for the Environmental Quality Board to Scope a Regional EIS in the Karst Region of southeast Minnesota to address nitrates in groundwater.
- It fails to extend the 2017 appropriation for design and engineering work to prepare for cleanup of Freeway Landfill and Dump in Burnsville, and provides no funding to accelerate the review of Closed Contaminated Sites, to ensure people's homes are not impacted by soil vapors or private wells are not contaminated for decades while we catch up on the review process.
- There are no resources to support Recycling Market Development to aid public and private entities dealing with difficult recycling markets or address the largest portion of the trash we throw in our landfill by Reducing Food Waste through waste prevention, food rescue and removing barriers to organics processing.

There are also two funding provisions of concern related to the Remediation Fund:

- \$1.5 million is transferred from the Remediation Fund to the Dry Cleaner Account to help speed up reimbursements for dry cleaners. We agree there are problems with the Dry Cleaner Account, but the proposal only solves one of them (delayed reimbursements), while creating a troubling precedent in the process (moving away from the "polluter pays" principle).
- A cap of \$40 million is set on the transfer of funds from the Environmental Fund to the Remediation Fund. There needs to be flexibility in the transfer language for emergency and unexpected situations in which a cap could hinder our ability to respond. There was a technical error in the Governor's budget bill on the issue, and we have provided language that would address the error and our concerns.

Unfortunately, in addition to these finance issues, the bill contains a number of policy provisions that are also of concern, many having financial impacts as well.

- **Legislative oversight of water fees:** Sections 95, 101-103, and 111 restrict the MPCA's ability to cover costs by increasing water fees. Water fees have not been comprehensively increased since 1992, so it is clear that the agency has been conservative in increasing fees in the past. It is our belief that the Legislature has adequate control over fees already.
- **Social permit:** Section 99 sets the unreasonably high bar that there must be unanimous agreement among all 87 county boards in Minnesota before the state can change water quality standards to make them more protective of human health and the environment. This item has an estimated \$3.1 million price tag per biennium, and does not include any resources for implementation.
- **Regulatory freeze for industrial facilities:** Section 100 exempts industrial facilities from complying with new or modified pollution limits for 16 years after construction of a new facility. While we believe that community economic impacts justify this exemption for municipalities under the federal Clean Water Act, these community-based constraints do not apply to industrial facilities.

- **Usage of Closed Landfill Investment Fund (CLIF):** Section 105 makes the dollars in CLIF inaccessible to the agency for care and maintenance of the 110 landfills in the program into perpetuity. The direct appropriation requirement is different from all the other funds and accounts used for remediation activities.
- **TCE Emissions Response Account:** Section 106 creates a new account for the civil penalty from Water Gremlin Company's alleged unlawful emissions. We have concerns with the precedent being set and the equity in how other communities were handled in the past or will be handled in the future. The community group also wants potential projects to start yet this year, rather than waiting until next legislative session for appropriations.
- **Limit on assistant commissioners:** Section 108 limits the number of assistant commissioners to three when the Agency currently has four assistant commissioners. This will cause us to reduce or reassign staff the Commissioner has already designated for specific roles and responsibilities.
- **Limit on administrative costs:** Section 109 imposes a 3% limit on costs for administering grant programs, delivering technical services, providing fiscal oversight, and ensuring accountability for all grant programs. This will severely restrict the agency's ability to issue grants in a timely manner, and provide statutorily-required levels of technical assistance, accountability, and fiscal oversight.
- **Enforceability of national ambient air quality standards (NAAQS):** Section 110 creates an uneven playing field for air permit holders. Under the change, larger air emitters receive a break with showing compliance with the NAAQS, while smaller emitters would not see a change. Our focus should be on larger emitters since they potentially pose a larger human health and environmental risk.
- **Restrictions on adopting more protective environmental standards at the state level (Section 110):** There are many reasons that Minnesota might choose to adopt more stringent environmental standards than the federal government; imposing additional requirements on the process of adopting these standards will only slow down the process unnecessarily.
- **Requirements that standards be expressed in milliliters of milligrams (Section 110):** This requirement would result in confusing standards that do not conform to the units of measure in federal regulations, published scientific work, or other states' laws. There are also unit-less standards such as pH, for which it would be impossible to comply with this requirement.
- **Unadopted rules:** MPCA uses guidance documents to help businesses understand and comply with regulations. Sec. 112 would restrict the agency's ability to use these documents to clarify state and federal law, and would leave information in these documents vulnerable to frivolous lawsuits. Permittees and the public are asking for more guidance and information, not less.
- **Restriction on extending comment periods:** Sec. 116 gives a project proposer control over the agency's ability to extend a public comment period. This provision is unnecessary, as the agency rarely extends comment periods, and when it does, it is generally in response to overwhelming public interest in participating in the comment process. This could impose a significant burden on the public in circumstances where a proposer may not elect to extend the comment period.
- **Appropriation reductions for unfilled positions:** Section 139 will cut the agency's budget for positions that are unfilled for 180 days, regardless of the reason. We often hold and evaluate

vacancies to see how best to rework the position to make it most effective for changing needs of the agency. This would have the unintended consequence of encouraging the MPCA to fill all positions more rapidly, rather than structuring our search to identify and hire the best-qualified candidate.

- **Solar generation on closed landfill study:** Section 144 creates a study for private development of solar generation on properties in the closed landfill program. We believe the scope of the technical and policy aspects of the study need refinement to take into account the State's enterprise sustainability and closed landfill program goals. If it is to be funded, the project should not be funded through the Closed Landfill Investment Fund.

Thank you for the opportunity to share our thoughts on the bill. While there are numerous concerning provisions in this legislation, I am committed to working on solutions that achieve our joint goals of protecting and improving the environment and human health. My team and I look forward to continuing to work on our agency's budget with you over the next two months.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Bishop". The signature is fluid and cursive, with the first name "Laura" written in a larger, more prominent script than the last name "Bishop".

Laura Bishop
Commissioner

cc: Hue Nguyen, Deputy Chief of Staff to Governor Tim Walz
Suzanne Sobotka, Policy Advisor to Governor Tim Walz
Sen. David Tomassoni, Minority Lead, Senate Environment & Natural Resources Finance Committee

