Minnesota
Environmental
Partnership

www.MEPartnership.org
Suite 100
546 Rice Street
St. Paul, MN 55103
Phone 651.290.0154
Fax 651.290.0167

To: Members of the Minnesota Senate

Re: **SF 4499 Environment and Natural Resources Finance Omnibus bill**

May 13, 2020

Dear Senators:

We, the undersigned organizations and the citizens we represent, thank you for your work to protect people and the environment we depend on even as the state faces this critical health crisis. This is important work and we appreciate all of the extra effort you and your staff have undertaken to make this bill come together.

We thank you for the opportunity to share what we feel are particularly important parts of the first engrossment of SF 4499, as well as provisions that are of significant concern to us, including:

- **revocation of PCA authority to implement Clean Cars rulemaking**
- **permission for industries exceeding air pollution limits to continue exceeding those limits**
- **exemptions allowing industry to not comply with water quality standards for 16 years.**

We support:

Section 68: Creating voluntary Certified Salt Applicator Program to reduce permanent salt pollution of our waters. This provision aims to reduce the salt pollution impacting Minnesota's rivers, streams and lakes by directing MPCA to develop a training program that promotes best management practices for snow and ice removal and deicer application. The program would allow commercial applicators to obtain certification as a water-friendly applicator upon successful completion of the program.

We oppose:

Section 1: Prohibiting contract conditions that are not in formal rules. This section prohibits agencies and regulated parties from including conditions in permits or contracts that are not formal rules. Current practice allows contracts and permits to be created with negotiated terms that specify how rules apply in a particular context. This significant departure from that practice would make it more difficult for the agency to provide flexibility and work with permittees and other stakeholders. Existing state law provides remedies for those who believe that a state agency is enforcing a guidance document or policy that has not been properly adopted into rules (Minnesota Statutes Section 14.381), making this section unnecessary.

Sections 28-31: Inadequate regulation of wake surfing. This proposed state-wide standard would restrict wake surfing only within 200 feet from shores, docks, swimmers, rafts and stationary watercraft. Peer-reviewed scientific studies of the impacts of wake surfing suggest that it must occur at least 1,000 feet from shore and in water at least 16 feet deep to avoid impacts. Wake surfing has been shown to cause erosion of shores and harm vegetation, disturb fish in spawning areas, and stir up sediment that degrades water quality, in addition to presenting dangers to swimmers and smaller water craft. The proposed standard would take away the ability of local governments to pass more stringent ordinances for their lakes and rivers.

Section 54: Preventing modification of groundwater permits during transfer.
This section prevents the DNR from modifying permits as they are transferred with the sale of land to take into account evolving groundwater sustainability issues.

Section 55: Requiring economic impact estimates and mitigation strategies in water management plans. Water management plans should prioritize the protection of Minnesota's water resources. This provision would 1) require the Department of Natural Resources to provide an economic impact estimate of any new restrictions or policies on existing and future groundwater users *before* the water management plan has even been prepared; and 2) provide strategies for addressing these economic impacts. This provision improperly shifts the focus of the DNR to economic interests over the protection of natural resources.

Section 56: Preventing agencies from talking about Groundwater Management Areas. This limitation is a gag rule on agencies, limiting their ability to talk about Groundwater Management Areas to only information about public hearings and responses to direct public and media inquiries. Preventing open communication with the public is poor public policy and hinders meaningful citizen engagement. It is also a violation of the Data Practices Act which requires public data to be provided upon request, including drafts, and also requires state staff to explain the meaning of data.

Section 57: Arbitrarily defining what is "sustainable" with regard to groundwater management areas. This confusing provision seems to take away the ability of the DNR to determine the actual sustainability of a water-use permit appropriation by creating an arbitrary metric: "For the purposes of this subdivision… 'sustainable' means a change in hydrologic regime of 20 percent or less relative to the August median stream flow." This is contrary to the definition recommended by natural resource experts as it is a one-size-fits-all definition that does not take into account the variability of local conditions.

Section 58: Protecting large-scale irrigators over people with reduced well water levels. This provision would force the DNR to reduce the compensatory awards to individuals who have experienced compromised well water levels if they took action to solve their water difficulties efficiently (which usually involves hiring someone to drill the new well and seal the old one at the same time). Requiring the DNR to consider the "condition of the impacted well" will hurt those already suffering reduced access to water, most often caused by those with larger volume uses.

Section 59: Requiring legislative approval for MPCA fee increases. This section makes training fees under the Pollution Control Agency subject to legislative approval which is unnecessary as state law and rule already limits how fees are to be calculated.

Sections 61, 62, 63: Requiring legislative approval for MDH fee increases. These sections make fees under the Minnesota Department of Health subject to legislative approval which is unnecessary when existing laws already limit the parameters under which agencies develop fees.

Section 60: Allowing industry 16 years to meet water quality standards.
This section gives industry a blanket 16-year exemption from complying with any new water quality standards that may be developed, if the industry previously invested in wastewater treatment upgrades. The Legislature has given additional time to municipal wastewater permits to comply with additional standards because of the need for bonding to pay for upgrades, but this reason does not apply to industrial polluters. State agencies currently provide "schedules of compliance" to ensure that existing sources have a reasonable amount of time to comply with new requirements.

Section 66: Revoking authority to pursue Clean Cars rulemaking.
With the additional of the single word "not", this provision would revoke the authority of the Minnesota Pollution Control Agency to implement Clean Cars Rulemaking. The MPCA has had the authority to limit pollution, including air contaminants from vehicles, since the Pollution Control Agency was created in 1967. Clean Cars rulemaking will give Minnesota households better options for protecting their personal, as well as public, health and saving money by giving them greater access to cars that emit less pollution. This rulemaking is also critical to moving our transportation system in a more sustainable direction.

Section 72: Redirecting funding for statewide solid waste diversion programs.
This section would force the MPCA to transfer 95% of the annual revenue in receives for landfill abatement to counties. This mandated transfer would gut *statewide programs and projects* that support *statewide* solid waste diversion programs, such as grants to develop new markets for reusable or recyclable materials, educational programs, and technical assistance. Because a balance of both local and statewide programs are needed, this legislation is unwise.

Section 78: Allowing pollution levels to be exceeded indefinitely. The effect of this provision would be to allow any industrial polluter that is found to be exceeding allowable air pollution levels to be able to continue to pollute at those levels as long as it doesn't make changes to its operations. If passed, this legislation would endanger public health and the environment and contravene federal law. The legislation forces the MPCA to ask the federal EPA to approve this change, but the EPA cannot approve a change that violates the federal Clean Air Act – which this provision does.

Thank you for your attention to these concerns. Many of these provisions outlined above would compromise the health of our air, land, water and people, and are not acceptable to Minnesota voters. Our hope is that these objectionable provisions will be removed or significantly altered. If they are not, we ask that you oppose passage of this bill.

Sincerely,

Steve Morse
Executive Director (and the following 23 organizations on the next page)

Alliance for Sustainability

Audubon Minnesota

Austin Coalition for Environmental Sustainability

Clean Water Action Minnesota

Environment Minnesota

Friends of the Cloquet Valley State Forest

Friends of the Mississippi River

Friends of the Minnesota Scientific and Natural Areas

Humming for Bees

Lakeville Friends of the Environment

Land Stewardship Project

League of Women Voters Minnesota

Mankato Area Environmentalists

Minnesota Center for Environmental Advocacy

Minnesota Ornithological Union

Minnesota Trout Unlimited

Minnesota Well Owners Organization

Northeastern Minnesotans for Wilderness

Pollinate Minnesota

Renewing the Countryside

Sierra Club - North Star Chapter

Vote-Climate

Wilderness in the City