



Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, Minnesota 55155-4194 | 651-296-6300

800-657-3864 | Use your preferred relay service | info.pca@state.mn.us | Equal Opportunity Employer

March 29, 2017

The Honorable Bill Ingebrigtsen
Chair, Senate Environment & Natural Resources Finance Committee
3207 Minnesota Senate Building
95 University Avenue West
St. Paul, MN 55155-1606

Dear Senator Ingebrigtsen:

As the Omnibus Environment and Natural Resources Appropriations bill, SF 723, is considered on the Senate Floor, I wanted to reiterate my concerns with this bill and for the impacts it would have on Minnesotans.

Thank you for restoring the Environmental Quality Board with your amendment in the Senate Finance Committee. I also appreciate that SF 723 includes Governor Dayton's "25 by 25" policy legislation, and the MPCA's policy language extending the ban on construction of new open-air swine manure pits for another five years. However, I remain concerned about many provisions in your bill, as I outlined in my March 22 letter and again here.

If SF 723 were enacted, Minnesotans would feel the impact in several ways.

- **For Businesses:** Permits will take longer. Neither our data nor new permit applications would be available online any time soon.
- **For Cities:** Many municipalities will not be able to renew their wastewater treatment plant permits due to suspension of standards. Without a renewed permit, a city would have enhanced exposure to citizen and third party lawsuits and may face problems in obtaining state funding through the Public Facilities Authority. In addition, cities would lose a tool for solid waste management through policy language in SF 723 that preempts municipal bans/fees on plastic and paper bags.
- **For Counties:** Counties that own one of the 42 construction and demolition landfills leaking contamination into the groundwater will need to deal with cleanup on their own. The MPCA would not have funding in the next two years, under SF 723, to assist counties and others with addressing this contamination. Counties will need to look to their local taxpayers to cover these costs.
- **For Citizen Volunteers:** Some 700 citizen volunteer stream-water monitors could no longer assist MPCA, because SF 723 would eliminate the staffing that supports and coordinates this program.
- **For all Minnesotans:** The risk of indoor air contaminated vapors near 110 potential superfund sites statewide will not be addressed under this bill, leaving homeowners without the information they need to protect the health of their children and families. Again, the response to remedy this problem is not addressed in SF 723.

While overall, SF 723 cuts appropriations to the MPCA by 3% per year from the Governor's proposed FY18-19 budget, it reduces General Fund appropriations to MPCA by 86 percent and transfers many of these programs to the Environmental Fund. This puts additional budgetary pressure on the Environmental Fund, which would cause problems in the event of any future reductions in revenue to that fund (such as future reductions in solid

waste management tax revenue and/or the proposed \$10 million reduction from Motor Vehicle Title Transfer Fee revenue that is contained in HF861, the House Omnibus Transportation bill).

In addition, your bill has several other “unintended consequences” that would have the same effect as cuts:

- **About \$9 million of unfunded mandates on the Agency.** Three bills included in SF 723 (Senate Files 1087, 695 and 1802) will cost at least \$9 million to implement, but the Omnibus bill provides no funding to do so.
- **\$2.4 million reduction in legal services for NorthMet PolyMet mining proposal.** Without these funds, the state will be ill prepared for litigation that is expected no matter which way this permit is decided.
- **Potential loss of \$16.5 Clean Water Fund water monitoring appropriation.** Because SF 723 cuts by 50% the base water monitoring appropriation, it throws our water monitoring program into the heated “supplement but not supplant” Constitutional debate and makes future Clean Water Fund water monitoring appropriations uncertain.
- **Agency absorbs inflationary cost increases.** By framing cuts against FY16-17 spending – and not against FY18-19 projected costs – SF 723 in effect requires the Agency to absorb inflationary costs of doing business.

Meanwhile, the Trump Administration is looking at a 45 percent reduction in US EPA grants to states for federal fiscal year 2018 for core services such as permits, compliance, and inspections. SF 723 neither recognizes nor accommodates any federal cuts. Because SF 723 will slow down our work, it would compound the impact of federal cuts.

The policy bills in SF 723 are also of concern. As a whole, they will limit citizens’ voice in the environmental review process; add layers of procedural requirements that will slow down permitting; and introduce politics into the use of scientific facts. These include policy language that would:

- Suspend phosphorus water quality standard for two years (SF 695) SF 723 suspends the phosphorus water quality standard and several other water quality rules (anti-degradation, variance rules) for two years. As a result, the MPCA could write no permits for wastewater treatment plants during this timeframe. This, in turn, could leave cities exposed to third party lawsuits and may impede their ability to obtain funding for upgrades to aging infrastructure from the Public Facilities Authority. These suspensions are illegal under federal law.
- Delay the identification of polluted waters (SF 672) Right now, 40 percent of our waters are impaired, or polluted. Minnesotans expect us to keep track of polluted waters and clean them up. This bill makes it harder for the state to do both. By allowing contested case hearings for *draft* lists of impaired waters (current law allows such hearings on *final* lists), this bill will delay the public’s ability to know which Minnesota waters are polluted. Repeated hearings will stall important clean water work statewide. This bill also adds new requirements to permit notification that impede reaching the 150-day permitting goals set in 2011.
- Require redundant reviews of water decisions (SF 695) Current law has a process for anyone to challenge a decision of a commissioner. This language adds several layers to that process -- only for MPCA -- with no demonstrated need. Under this bill, one person could grind our clean water work to a halt. This bill overturns a longstanding judicial precedent of deference to agency subject-area expertise. This bill also prohibits guidance, or clarifying documents that help permit holders understand what is required of them. In the end, this bill stalls our permitting efficiencies, delays business growth and expansion, tears down the work of our highly trained and hard-working scientists, and keeps us from doing the work that Minnesotans expect.

- Threaten Minnesota's eligibility for \$47 million Volkswagen settlement funds (SF 914 and SF 1256) By requiring or making legislative appropriations of the estimated \$47 million Minnesota is slated to receive from the national Volkswagen settlement, these bills could render Minnesota ineligible for these funds. Faulty engines from VW's cheating polluted our air equivalent to having 300,000 more cars on the road over seven years. Minnesotans expect that our state will get its fair share of settlement dollars to make up for this pollution. These bills put our settlement at risk by clouding the state's authority to receive and disburse these funds.
- Slow down permitting (SF1087) This bill adds new requirements in the permitting process that will serve to slow down our permitting work and cost taxpayer dollars. Language in this bill violates federal law and is redundant of both state and federal law. This bill overturns a longstanding judicial precedent for burden of proof with no evidence to document the need for such a fundamental change. Most troubling, this bill makes the 150-day permitting efficiency goal into a requirement if we are to avoid re-posting incomplete permit applications as required by federal law. All of these changes are being made when there has been no evidence presented that there is a problem or what the nature of the problem is.
- Remove local government tools for solid waste management (SF 1195) Local governments could no longer consider bans or fees on paper or plastic bags as part of their strategy to meet their statutory responsibility to manage solid waste under this language. Without a full range of options to consider, it will be harder for local units of government to efficiently manage their solid waste.
- Remove requirement for silica sand rulemaking (SF 1310) This language discards a broad stakeholder and citizen process to provide certainty and transparency to environmental protection rules around silica sand mining. These rules would set a common floor of expectations for this industry, in anticipation of the future resumption of silica sand mining when economic conditions allow.

This bill undermines the MPCA's core work of protecting human health and the environment. In a year of surplus, and considering the MPCA's budget request for FY18-19 was actually a slight reduction from FY16-17, it is troubling to see cuts such as these with no supporting evidence. I remain open to working with committee leadership in the coming weeks to forge a budget that meets Minnesotans' expectations for clean air, land and water that promotes health for all Minnesotans.

Sincerely,



John Linc Stine
Commissioner

cc: Stephanie Zawistowski
Anna Henderson