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District 52A
Dakota County

Minnesota House of Representatives

November 4th 2013

Minnesota Nitrogen Fertilizer Management Plan Public Comment

The proposed Nitrogen Fertilizer Management Plan (NFMP) does not reflect current Minnesota Statute to protect public health and the environment, specifically with groundwater. It continues a strategy that does not acknowledge current agricultural business goals, procedures and practices in situ. The plan proposes an extensive and costly public investment to mitigate contamination caused by private business practices. It is unprecedented and unwise for the public to pay this cost through massive expenditures with no evidence of any outcome meeting the statutory goals. The proposed NFMP is not legally defensible, nor does it include the innovative and creative approaches Minnesotans have come to expect in environmental protection.

The plan does not acknowledge the costs incurred by public drinking water systems because of the inability of the current NFMP to meet goals established in 1990…a generation ago. Communities in rural areas where groundwater is contaminated because of high nitrate-nitrogen levels have to bear the cost of cleaning up. The plan states that 27 public water systems (PWS) are monitoring quarterly for elevated nitrates and that MDA and MDH are helping. It is just assumed the municipalities will have to pick-up these costs. Sharing the cost, to have deeper municipal wells and / or blending water with those who contaminated the water may have an immediate incentive for more prevention activities.

The plan references Perham, St. Peter and Lincoln-Pipestone experiences with groundwater contamination from nitrates. It details the extensive public effort to change behavior, but does not provide the detailed cost over time. It appears the NFMP is either unaware or indifferent of the public costs incurred by municipalities (and the state) to mitigate agriculturally induced groundwater degradation.

The plan does not acknowledge current realities with farm ownership and rental responsibilities, nor does it recognize the influence of lenders and financing on business decisions and cropping practices. It continues the same information and education delivery mechanisms that have not shown any evidence of working so far (after 20 years). And it envisions an extensive publically funded effort at the Township level of subsidized implementation and monitoring.

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Specifically, farm ownership is increasingly comprised of absentee landowners, and in some cases multiple landowners. The person(s) living on the farm site may not own or rent the crop land. The renter may also be absentee, living miles from the farm. The NFMP relies on farmers without understanding the current reality of decision makers. Cropping practice decision makers are no longer driving to the local Extension office or SWCD for information and assistance. Financial decisions such as lending and tax implications are driving cropping rotations and practice decisions. Also, the fertilizer supply chain industry has an interest in selling the product, rather than the practice which could limit their profit.

The FANMAP program is extremely time consuming, expensive, and shows no evidence of achieving an outcome to prevent or mitigate groundwater degradation. To double down and scale up these efforts with expanded public funding will waste time and money.

The proposed NFMP also does not appear to incorporate recent scientific analysis, such as long term isotopic monitoring of nitrates in agricultural production. The NFMP continues a monitoring approach that focuses on volunteer, altruistic and ad hoc participation rather than scientifically based, statistically designed monitoring that would provide legally defensible regulatory decision making. The plan also does not provide specific resolutions to the groundwater and surface water degradation identified in the recent MN Pollution Control Agency report released this summer.

The proposed NFMP cites the:

> **103H.001 DEGRADATION PREVENTION GOAL.**
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> *It is the goal of the state that groundwater be maintained in its natural condition, free from any degradation caused by human activities. It is recognized that for some human activities this degradation prevention goal cannot be practicably achieved. However, where prevention is practicable, it is intended that it be achieved. Where it is not currently practicable, the development of methods and technology that will make prevention practicable is encouraged.*

However, the plan does not provide specific actions for prevention. Land conversion is not referenced or solutions provided. Failed efforts at information distribution and practice demonstrations have not prevented degradation. Publically funded cost share practices are not practicable on a state-wide scale for prevention and mitigation, even with Clean Water Legacy funding.

After 23 years of education and promotion, the NFMP proposes establishing a Nitrogen Fertilizer Education and Promotion Team. This will be another stakeholder process to spend public money analyzing materials and processes. This is another in a set of process and analysis mechanisms with special interests groups and agencies over extended periods of time without measurable outcomes.

The Alternative Management Tools (AMT) listed in the NFMP also have a high potential public costs, specifically land retirement and easement options.

The Appendix A. MDA lessons learned from Elevated Nitrate work with farmers is one of the most important components of the NFMP. It highlights the extensive challenges involved in the publically funded voluntary approach that we have used for a generation and that the plan proposes to expand and fund. No other businesses in the state that impact groundwater have had this type of analysis and assistance from the public sector.

The Appendix D. lays out the challenges and the opportunities for practice changes, but the methods proposed to achieve them are the same as they have been for a generation.

However, prevention can be achieved by prohibiting and / or requiring certain practices and modifications that produce degradation. These practices can be further limited in defined sensitive areas

A specific example of this is the Best Management Practice (BMP) of fall application of anhydrous ammonia in South Central Minnesota only being recommended when the six inch depth soil temperature falls below 50 degrees Fahrenheit. Acceptable, but with greater risk, "Fall application of ammonia + N-Serve after soil • temperature at the 6-inch depth is below 50°F."—U of M publication with higher soil temperatures anhydrous ammonia is converted to nitrate-nitrogen in the fall and can be lost to groundwater. Therefore, fall application of anhydrous and urea without an N-inhibitor is not recommended as is no N fertilizer application on frozen soils. This BMP should be made a requirement in sensitive areas without the never ending process scheme of water resource protection requirements.

This authority currently resides within the Fertilizer Law 18C.005:

Subd. 10. Environment.

"Environment" means surface water, groundwater, air, land, plants, humans, and animals and their interrelationships.

Subd. 37. Unreasonable adverse effects on the environment.

"Unreasonable adverse effects on the environment" means an unreasonable risk to humans or the environment, taking into account the economic, social, and environmental costs and benefits of the use of a fertilizer.

Public health can be protected by preventing unreasonable adverse effects caused by specific fertilizer practices in specific sensitive areas. The precedent already exists:

18C.201 PROHIBITED FERTILIZER ACTIVITIES.

Subdivision 1. Storage, handling, distribution, or disposal.

A person may not store, handle, distribute, or dispose of a fertilizer, rinsate, fertilizer container, or fertilizer application equipment in a manner:

(1) that endangers humans, damages agricultural products, food, livestock, fish, or wildlife;

(2) that will cause unreasonable adverse effects on the environment; or

(3) that will cause contamination of public or other waters of the state, as defined in section 103G.005, subdivisions 15 and 17, from backsiphoning or backflowing of fertilizers through water wells ***or from the direct flowage of fertilizers****.*

These regulatory authorities reside at the state level. It is unlikely that many local governments would take the regulatory action if it was expected of them. Making agricultural public benefits contingent on adoption of BMPs would also improve implementation. Preferential property tax treatment and other subsidies are a privlege, not a right.

The plan does not reference the implementation of the following statute by DNR and how it is incorporated into decision making:

103H.101 PROTECTION OF SENSITIVE AREAS.

Subdivision 1. Criteria for determination of sensitive areas.

The commissioner of natural resources in consultation with the Minnesota Geological Survey, soil and water conservation districts, local water planning authorities, and other interested parties shall develop specific criteria for identifying sensitive groundwater areas and adopt the criteria by rule.

Subd. 2. Identification of sensitive areas.

The commissioner of natural resources shall, in consultation with the Minnesota Geological Survey, identify the location of sensitive areas by mapping and other appropriate methods after consulting the Minnesota Geological Survey, soil and water conservation districts, and local water planning authorities.

Subd. 3. Notification of location of sensitive areas.

The commissioner of natural resources shall:

(1) notify political subdivisions with planning or zoning authority and provide maps and other materials that show where sensitive areas are located and indicate the type of risk of groundwater degradation that may occur from activities at or near the surface; and

(2) publish notification of sensitive areas in a newspaper of general circulation in the county where the sensitive areas are located.

Subd. 4. Information gathering.

The commissioner of natural resources shall coordinate the collection of state and local information to identify sensitive areas. Information must be automated on or accessible to systems developed at the Minnesota Geospatial Information Office.

Subd. 5. State protection of sensitive areas.

(a) The commissioner of agriculture for pollution resulting from agricultural chemicals and practices and the Pollution Control Agency for other pollutants must consider the type of risk identified under subdivision 3 when adopting best management practices, water resource protection plans, and water resource protection requirements to prevent and minimize groundwater degradation in sensitive areas.

(b) To prevent and minimize groundwater degradation, state agencies must consider the type of risk identified under subdivision 3 when undertaking an activity within a sensitive area.

Subd. 6. Actions by regulating authorities.

Upon adoption of a comprehensive local water plan as defined in section 103B.101 to 103B.355 or a water management plan under chapter 473 or sections 103B.201 to 103B.255, a regulating authority must take into account the plan and any geological assessments referenced in the plan when taking appropriate actions in sensitive areas.

Subd. 7. State agencies.

Each state agency that has a program affecting activities that may cause or contribute to groundwater pollution shall identify and develop best management practices to ensure that the program is consistent with and is effective in achieving the goal of section 103H.001. For those activities which may cause or contribute to pollution of groundwater, but are not directly regulated by the state, best management practices shall be promoted through education, support programs, incentives, and other mechanisms.

The following statutes describe landowner responsibilities and protections. Please note it describes landowner rather than farmer. Educational and regulatory efforts should recognize the differences between landowners and renter and the responsibilities of each

103H.111 LIABILITY AFTER PROTECTION OF SENSITIVE AREA.
(a) A landowner within a sensitive area, identified under section 103H.101, has a complete defense to liability for degradation of groundwater caused by surface water from the sensitive area recharging groundwater if:
(1) the landowner's portion of the sensitive area is subject to a plan adopted by the soil and water conservation district to protect the groundwater from degradation through surface water recharge;

(2) the projects and practices required by the plan have been implemented and have been certified as having been implemented by the soil and water conservation district;
(3) the projects and practices required by the plan are maintained according to the plan; and
(4) the landowner has not allowed unlawful practices on the property that disrupt the projects and practices required by the plan.
(b) The soil and water conservation district's plan must include appropriate best management practices and water resource protection requirements.

COMMENT PERIOD

The MDA prepared a traditional public input method of public meetings scheduled throughout the state based on area rather than population. The metro area had one location for input during business hours. The MDA should extend the comment period and seek representational input. Stakeholders have a vested interest in the participation for comment. Public participation needs to have greater access for the public affected by groundwater contamination and those paying for the cost of clean-up. It also appears the outreach for input effort was traditional as well and did not reach underserved communities.

Crookston
Monday, September 16, 2013 | 6:00 – 8:00 p.m.
Bede Ballroom, University of Minnesota Crookston, 2900 University Ave, Crookston, MN 56716

Wadena
Tuesday, September 17, 2013 | 6:00 – 8:00 p.m.
Robertson Theatre, Wadena - Deer Creek High School, 600 Colfax Ave. SW, Wadena, MN 56482

St. Cloud
Wednesday, September 18, 2013 | 1:00 – 3:00 p.m.
Great River Regional Library St Cloud, 1300 W. St. Germain St, St. Cloud, MN 56301

Rochester
Monday, September 23, 2013 | 6:00 – 8:00 p.m.
Cascade Meadow Wetlands & Environmental Science Center, 2900 19th Street NW Rochester, MN 55901

Roseville
Wednesday, September 25, 2013 | 1:00 – 3:00 p.m.
Roseville Public Library Community Program Room, 2180 North Hamline Ave, Roseville, MN 55113

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The NFMP does not fully recognize, reference or utilize the Clean Water Legacy Act statutory authorities. The Clean Water Fund abilities for the MDA are not acknowledged, specifically:

(5) providing funds to state agencies to carry out their responsibilities, including enhanced compliance and enforcement.

114D.10 LEGISLATIVE PURPOSE AND FINDINGS.

Subdivision 1. Purpose.

The purpose of the Clean Water Legacy Act is to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation, by providing authority, direction, and resources to achieve and maintain water quality standards for groundwater and surface waters, including the standards required by section 303(d) of the federal Clean Water Act, United States Code, title 33, section 1313(d), and other applicable state and federal regulations.

Subd. 2. Findings.

The legislature finds that:

(1) there is a close link between protecting, enhancing, and restoring the quality of Minnesota's groundwater and 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 nonpoint sources of pollution, have a responsibility to participate in and support efforts to achieve the state's water quality goals.

114D.50 CLEAN WATER FUND.

Subdivision 1.Establishment.

The clean water fund is established in the Minnesota Constitution, article XI, section 15. All money earned by the fund must be credited to the fund.

Subd. 2. Sustainable drinking water account.

The sustainable drinking water account is established as an account in the clean water fund.

Subd. 3. Purpose.

(a) The clean water fund may be spent only to protect, enhance, and restore water quality in lakes, rivers, and streams, to protect groundwater from degradation, and to protect drinking water sources by:

(1) providing grants, loans, and technical assistance to public agencies and others testing waters, identifying impaired waters, developing total maximum daily loads, implementing restoration plans for impaired waters, and evaluating the effectiveness of restoration;

(2) supporting measures to prevent surface waters from becoming impaired and to improve the quality of waters that are listed as impaired, but do not have an approved total maximum daily load addressing the impairment;

(3) providing grants and loans for wastewater and storm water treatment projects through the Public Facilities Authority;

(4) supporting measures to prevent the degradation of groundwater in accordance with the groundwater degradation prevention goal under section 103H.001; and

(5) providing funds to state agencies to carry out their responsibilities, including enhanced compliance and enforcement.

(b) Funds from the clean water fund must supplement traditional sources of funding for these purposes and may not be used as a substitute.

In summary, I would recommend the MDA extend the comment period to include greater public and scientific input. Cost analysis should also be included. Implementation plans need greater detail with consideration of other options than those that have already been tried.

Sincerely,

Rick Hansen
State Representative