From:	Sanders, Vonda (MPCA)
To:	Gunderson, Larry (MDA)
Cc:	Wall, David (MPCA); Adams, Byron (MPCA)
Subject:	Response to MDA
Date:	Thursday, January 28, 2016 9:32:11 AM
Attachments:	BA Responseto MDA.1.27.16.pdf image001.png

Sent on behalf of Byron Adams.

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January 28, 2016

Mr. Larry Gunderson
625 Robert Street North
St. Paul, MN 55155

RE: Proposed Rule Governing Nitrogen Fertilizer, Minnesota Rules, 1573; Revisor's ID Number R-04337

Dear Mr. Gunderson:

I am pleased to submit the Minnesota Pollution Control Agency's (MPCA) comments to the Minnesota Department of Agriculture's (MDA) request for comments regarding the proposed new rule called the Nitrogen Fertilizer Rule. The comments were prepared by Dave Wall and myself with input from other MPCA staff. Please direct any questions or follow up to either Dave or myself.

MPCA Comments on MDA-suggested approaches

We recognize that the nitrogen fertilizer rules are intended to focus only on land that meets the criteria for vulnerable groundwater areas. As such, the rules will not directly affect large portions of Minnesota's surface water nitrate contamination. We want to emphasize that Best Management Practice (BMP) promotion is important across the state, including tile-drained areas. For that reason, the work of the newly formed BMP Education and Promotion Team is critical, and should be given our utmost attention. Communications on the rules should include statements about the importance of the voluntary adoption of BMPs throughout the state.

In your request for comments, two distinct rules were merged together. We view the **fall fertilizer restrictions in vulnerable areas** separately from the areas with **high nitrate groundwater and inadequate BMP adoption**. We believe it is confusing to lump the two rule scenarios together. Also, we did not see much specific information in your request concerning the proposed approach for rules in areas with high groundwater nitrate and inadequate BMP adoption. Our comments are separated into these two categories for clarity.

High nitrate groundwater with inadequate BMP adoption:

1. We do not believe that the rules as outlined in your request will adequately mitigate in areas where BMPs have been adopted and elevated nitrate concentrations remain in groundwater resulting from nitrogen fertilizer (E.g. Dakota County). We know that in our most vulnerable places, BMPs alone will not always be adequate to reduce nitrate to levels below drinking water standards, particularly in the upper reaches of unconfined aquifers. The 1989 Groundwater Bill requires improved BMP development when the drinking water standard is still exceeded in areas with BMP adoption. The rule or Statement of Need And Reasonableness (SONAR) should identify the processes to be used for improved BMP development and for determining when Alternative Management Tools, such as: crop selection, rotation, and cover crops, would be used or required. The rule or SONAR should describe the process for how living cover practices become part of the BMP package that is required in our most problematic nitrate areas.

2. We are not certain which BMPs on pages 81 and 82 of the Nitrogen Fertilizer Management Plan (NFMP) will be required, or the process for selecting them. For example, will a BMP for crediting Nitrogen (N) in irrigation water be required? Additionally, an important BMP in the future will likely be precision applications, such as split applications with in-season N rates based on various climate, soil testing and crop canopy measurements. The rule will be more clearly understood if it specifies which BMPs will be required, instead of a list of activities to consider. Several of these activities are important enough to be mandatory and not optional; others could be activities to consider. Also, the list of activities/BMPs should include more of those listed in the NFMP, starting on page 76-82, instead of just 81 and 82?

3. In item #7 (page 4) of the request for comments, the first sentence refers to wellhead protection areas when the previous references have been to Drinking Water Supply Management Areas (DWSMAs). We believe DWSMAs have the more easily recognizable boundaries needed to apply BMP requirements.

4. The criteria for determining acceptable and unacceptable BMP adoption levels should be specified in rule. How many BMPs need to be adopted and how many farmers need to adopt the BMPs in these nitrate contaminated townships and DWSMAs before BMP adoption levels are considered acceptable?

Fall fertilizer restrictions in vulnerable areas:

1. Item #4 – The third sentence just applies to townships with more than 50 percent of their land in a vulnerable groundwater area. This seems to be too coarse of a scale, and perhaps a field-scale requirement should be considered. For example, Concentrated Animal Feeding Operation feedlot permits have fall restrictions on fields with over 33 percent of the soils as coarse-textured.

2. Item #8 – "Emergency nitrogen fertilizer treatment".... (missing some words, like can be, or may be) "approved by the MDA"

If you have any questions, please contact me at 651-757-2180 or by email at byron.adams@state.mn.us. Also, feel free to contact Dave Wall at 651-757-2806 or by email at dave.wall@state.mn.us.

Sincerely,

Byron Adams

Byron Adams
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BA:vs