From:	Warren Formo
To:	Gunderson, Larry (MDA)
Subject:	Nitrogen rulemaking
Date:	Friday, January 29, 2016 4:08:42 PM
Attachments:	comments N rule jan 2016.docx

Larry,

Attached you will find comments from the Area 2 Potato Growers Association, Minnesota Farmers Union and Irrigators Association of Minnesota, relating to the nitrogen fertilizer rule.

Let me know if you have any questions.

Thanks,
Warren

January 28, 2016

Larry Gunderson
Pesticide and Fertilizer Management Division
Minnesota Department of Agriculture
625 Robert Street North
St. Paul, MN 55155-2538

Dear Mr. Gunderson:

As the Department of Agriculture begins the process to develop rules related to the Nitrogen Fertilizer Management Plan, we want to remind you that Minnesota farmers and farm organizations take the protection of ground water very seriously. Advances in nitrogen management, particularly in areas with relatively higher potential for nitrate nitrogen losses due to leaching, have been widely adopted. Some would refute this point, though MDA and University of Minnesota reports show high rates of adoption of currently recognized nitrogen fertilizer BMPs. Others would suggest that it is evidence that nitrate impacts from farming cannot be adequately mitigated without significant regulation and additional changes in the way nitrogen fertilizer is managed.

We remind you that the issue of nitrate effects on groundwater is very complicated and urge you to carefully examine all relevant data as you proceed with rulemaking. We offer the following comments to assist you and to help insure that the rules developed under the Nitrogen Fertilizer Management Plan (NFMP) might reasonably expected to achieve the goal of protecting groundwater from adverse impacts of nitrogen fertilizer use.

The NFMP clearly outlines that the plan (and thus the associated rule) applies to those areas of the state where groundwater is vulnerable to contamination, generally those areas with sandy soils or karst geology. Thus while it is a statewide plan, it is truly focused on a small fraction of the state. The MDA estimates in the NFMP that 250-350 townships (15-20% of all townships) may be targeted for nitrate testing. The MDA should clearly state this focus of the NFMP and rule and clearly state that all other areas are not subject to the proposed rule.

The MDA should refrain from using statewide statistics, which are not relevant given the clearly defined areas of focus outlined in the plan. The fact that “three out of four Minnesotans rely on groundwater for their drinking water supply” may be true, but it would be more useful to know how many Minnesotans get their drinking water from groundwater in the areas of focus covered by the NFMP. Likewise, statewide crop acreages, fertilizer sales and related figures mean little in the context of actually focusing on and prioritizing efforts to protect vulnerable groundwater.

We agree with the MDA’s conclusion that tile drainage should not be a priority under the NFMP as the co-incidence of tile drainage and vulnerable groundwater is extremely minimal.

We strongly recommend that the MDA exclude wells of questionable construction or with known problems from their groundwater assessments. While it is important for all Minnesotans to have access

to safe drinking water, it is also important to account for other factors aside from current agricultural fertilizer use as rules are developed. Is the actual impact due to septic systems or feedlots? Is the nitrate condition ongoing or due to decades-old contributions? The answers to these questions may also vary considerably across the state.

In order to adequately engage local stakeholders and bring in local knowledge of water conditions and farming practices, we strongly suggest that the MDA work diligently with local advisory teams once priority areas have been identified. These local advisory teams should include farmers and agronomists with knowledge of local conditions and their input should be both actively sought and highly regarded.

Regarding part one of the proposed statewide rule, we again emphasize that the plan may be statewide, but it will only apply in areas with vulnerable groundwater. IN THESE AREAS, the restriction of fall and frozen soil applications will provide a means for the MDA to insure that farmers are following this recommended BMP. We would encourage the MDA to allow for exceptions for phosphorus fertilizers containing small amounts of nitrogen, such as MAP or DAP, in instances where fall application is part of an overall conservation strategy to reduce soil erosion.

With regards to the question of defining "fall" as after August 1, we propose that the MDA give consideration to late planted crops, which are becoming more common in irrigated areas, and which may require nitrogen applications into August or early September. The MDA should also consider that more frequent, smaller applications of nitrogen may necessitate applications to growing crops further into the late summer and early fall.

With regards to the question of cost of complying, we would not expect costs to individual farm businesses to exceed $25,000 in association with the basic rule. However, should the MDA move in the future to require Alternative Management Tools that might restrict crop choices, some farms and some fertilizer retailers may face costs in excess of $25,000.

With regards to the question of criteria for vulnerable groundwater areas, we understand the difficulty of defining geography for purposes of a rule, given the highly variable nature of soil types and their shapes. In the request for comments, the MDA seems to suggest that the identification of vulnerable groundwater areas includes elevated groundwater nitrate levels. We would suggest that the identification of vulnerable groundwater areas be considered as a separate step-wise process from the evaluation of groundwater nitrate levels, specifically that an area deemed vulnerable based on geology may have groundwater with elevated nitrate levels or it may not. Any movement toward nitrogen regulation must be accompanied by documented nitrate impacts to groundwater associated with the use of nitrogen fertilizers, as outlined in the Nitrogen Fertilizer Management Plan and as authorized in the Groundwater Protection Act. We would also suggest that the MDA define coarse textured soils based on NRCS classifications as dominated by sand and loamy sand. We also suggest that the MDA develop criteria that more accurately reflects the variability in groundwater vulnerability throughout the karst region. Even in this area, some areas have greater topsoil depths that reduce vulnerability and fall nitrogen applications can be done without undue risk of groundwater contamination.

While the township scale proposed by the MDA should be small enough to address local condition, we would suggest that the MDA also consider some exemptions for those townships in which there are clear and marked differences in soil type and groundwater vulnerability across a township.

With regards to reasonable notification, we recommend notification be sent to affected counties and townships, farm organizations and Extension professionals. The newly formed Nitrogen Fertilizer Education and Promotion Team should also play an integral role in guiding MDA efforts.

We also encourage the MDA to support ongoing educational programs of Minnesota farm organizations and the Minnesota Agricultural Water Resource Center, especially the annual Nutrient Management Conference and the annual Nitrogen Fertilizer Management Conference.

Sincerely,

Alan Peterson, President
Irrigators Association of Minnesota

Paul N. Gray, President
Area II Potato Growers Association

Doug Peterson, President
Minnesota Farmers Union