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East Otter Tail
Soil & Water Conservation District

August 2017

Larry Gunderson
Pesticide and Fertilizer Management Division
Minnesota Department of Agriculture
625 Robert Street North
St. Paul, MN 55115

Mr. Gunderson:

We are writing you today to provide the Minnesota Department of Agriculture (MDA) with our comments on the Draft Nitrogen Fertilizer Rule. We understand that the Rule is based on the Minnesota Nitrogen Fertilizer Management Plan which recommends steps for the prevention and minimization of the impacts of nitrogen fertilizer on groundwater, and emphasizes involving the local agricultural community in problem-solving for local groundwater concerns.

Protecting groundwater quality for drinking water has been identified as a priority issue in the Otter Tail County Comprehensive Local Water Management Plan (OTC CLWMP). The East Otter Tail Soil and Water Conservation District (EOT SWCD) has developed several programs to work with agricultural producers to address this issue. We feel that it is very important to keep Local Government Units (LGUs) like SWCDs engaged and informed with any efforts MDA engages in at the local level.

In reading the rule we have the following comments:

Line 1.11 – Is the definition of cropland appropriate? Since this rule is dealing with Nitrogen Fertilizer should the definition be more constrained to cropland where commercial nitrogen is applied?

Line 2.4 – The local advisory team definition uses the term advise – later in the document draft rule the role of the advisory team is described as consult (7.6 & 13.10). This should be consistent throughout the rule. It is our opinion that the role of these local advisory teams is

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very critical to the success of this plan/rule. The language of this document should reflect the importance of that local input process.

Line 5.18 – If greater than 50% of a section is vulnerable, then the whole section is considered vulnerable. What is the justification or scientific reasoning for this designation?

Line 6.7 – Is this list of exceptions to the fall N restrictions too restrictive? Research plots are limited to 20 acres, this may be too small for specific on-farm scale trials that individual ag producers may want to run. Does this limit College or University research projects? We feel this list should be expanded or include some way to get specific field trials approved.

Line 7.16 – This states the commissioner "may" form a local advisory team. This language should be the commissioner "shall" form a local advisory team. Local input and buy in into this process is critical to the success of this effort.

Line 7.18 – The method of public notice of designation is the legal newspaper and the MDA website. This **is not** an effective manner of public notice in today's society. One local newspaper and one website are not an effective way to notice those being affected by this designation. We understand that this meets the definition of public notice, however locally we know that there are issues with this type of notice. Very few people will read these notices in one newspaper and even fewer are likely to visit the MDA website to find a public notice. MDA needs to consider other methods like working with the LGU's, and farm organizations, radio, social media or direct mailings to agricultural landowners to get the notices out.

Line 7.22 – It states that the commissioner shall monitor the townships nitrate-nitrogen levels…which may include establishing a groundwater monitoring network. What does this mean? How will that be done? We feel this should be more definitive. A monitoring network that considers the place and depth of the well is critical to assessing the resource before moving to regulation. This network is sited at least 2 times later in the document (11.6 &19.15). If it is sited there, it should be more definitive (shall establish a monitoring network) in the rule.

Line 8.2 – It states that the commissioner shall conduct an evaluation. What does evaluation mean? How will it be conducted? There is no description of what this critical process means in

the rule. The agricultural committee deserves a clear explanation of how they will be assessed. This evaluation process could lead to additional regulations, it is very important to the success of this program to spell out the evaluation process. More detail is needed here.

Line 8.4 – Nitrogen Fertilizer BMP's approved by the commissioner have been implement on at least 80% of the cropland. What is the justification for the 80% of the cropland, does it meet some statistical threshold that provide sufficient protections to the groundwater? How will the cropland area be determined in this 80%? The definition for cropland in Line 1.11 may give direction to MDA, but how and where will MDA determine the number of cropland acres in a township that needs BMPs?

Line 8.10 – the commissioner shall consider whether alternative management tools (AMTs) have been implemented on cropland... What does this mean? Will the MDA allow for more leeway in the BMP use if the producer has adopted approved AMTs? Could a producer use higher nitrogen rates in portions of a field if the rates are applied variably across a field based on grid soil samples?

Line 8.15 – if a responsible party does not provide records of nitrogen fertilizer use when requested it is assumed they are not using BMPs. Is that appropriate? Is there a standard record keeping format that MDA will provide for this reporting requirement?

Line 8.19 - Non-compliance is allowed if it is due to an agricultural emergency or extreme circumstance as determined by the commissioner. How is this determination made? What about a heavy rainfall in late June right after liquid fertigation? Will rescue applications be allowed to replace the nitrogen lost from the storm event in these types of cases?

Line 11.19 – Why is the corn nitrogen rate prescribed at a 0.10 ratio here? For other crops the fertilizer guidelines are referenced. This ratio is based on Nitrogen cost and market price which cannot be predicted. Is the 0.10 ratio considered to be more protective of the environment for some reason? If so what is the reason? Is there a lower risk of Nitrogen loss with this ratio? What science is MDA using to justify this distinction for corn? This may be inequitable when compared with other crops.

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Line 12.3 – The commissioner shall consider the following when making township mitigation level designation: Whether there has been a significant change in the amount of land used for ag production.
What bearing would this have on a mitigation level based on percentages of well samples over the drinking water standard? What would be considered a significant change?

Line 12.11 – The commissioner shall consider the following when making township mitigation level designation: Other factor expected to influence nitrate-nitrogen concentration. What other factors could come into play?

Line 20.9 – A water resource protection requirement order applies to the "responsible party" In line 2.18 it defines "responsible party" as the owner, operator or agent in charge. Who is ultimately the responsible party?

We would like to stress that the impact that this rule may have could have a huge impact on ag producers on a local level. Input and buy in from the local producers and ag professionals is key to the long-term success of this process. We need to strive to work on solutions that keep our ground water quality protected and faming sustainable economically. Decisions need to be made on sound, justifiable science.

Thank you for the opportunity to provide comments in this process.

Sincerely,

Lyle Dittmann
Chairperson, EOT SWCD

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