

# Charting an Historic Course:

**A look at the Environmental Impacts of  
the 2007 Minnesota Legislative Session**

**Produced by members of Minnesota's Environmental Community.**

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## INTRODUCTION

During the 2007 legislative session, Minnesota legislators began charting an historic course – setting the stage for new investments in Minnesota’s environment, now, and for years to come.

The passage of a series of new energy laws will bring billions of dollars of investment and savings to Minnesota’s economy and begin to reduce Minnesota’s contribution to the global warming dilemma. Legislators also took steps to protect Lake Superior and our state’s wetland habitat, ban the use of persistent and toxic chemicals, improve recycling programs, curb the threat of exotic and invasive species, identify the links between toxic chemicals and human health problems, and more.

While significant advances were made, much was still left undone – leaving many opportunities on the table for the next legislative session. For example, Minnesota legislators continue to struggle over environmental funding issues: appropriating sufficient money to test and clean up Minnesota’s contaminated waterways, funding transit needs in both metropolitan and rural Minnesota, and providing a constitutionally dedicated source of funding for land conservation, habitat protection, clean water, and Minnesota’s parks and trail systems.

After many years of stagnated efforts to improve Minnesota’s environmental laws, state legislators turned the corner this past legislative session toward a new energy economy and a renewed interest in enacting policies to address some of Minnesota’s long-term environmental problems. These initial accomplishments, however, are only the first steps that are needed to protect and restore Minnesota’s environment and great outdoors for generations to come.

The following is a summary of the major environmental accomplishments and missed opportunities of the 2007 regular session of the Minnesota legislature.

## ENERGY AND THE ENVIRONMENT

### *Renewable Electricity Standard*<sup>1</sup>

The Renewable Electricity Standard requires a growing percentage of power generation to come from new renewable energy sources. S.F. 4<sup>2</sup> was carried by Senator Ellen Anderson (DFL – St. Paul) and Representative Aaron Peterson (DFL – Appleton). The new law requires Xcel Energy, the largest electricity producer in the state, to generate 30 percent of its energy from renewable resources by 2020, with at least 25 percent generated by wind energy. All other utilities will be required to generate at least 20 percent of their energy from renewable sources by 2025. Under this law, Minnesota will generate between 5,000 and 6,000 megawatts of new renewable energy.

This legislation will result in expanded business opportunities and financial investments in wind power, biomass, solar power, and other local renewable energy sources. A large portion of the energy is expected to come from turbines located on windy rural lands, amounting to \$10 billion in renewable energy investments, including transmission. Assuming current growth rates, the new law will reduce global warming emissions 16 percent more than the state would have otherwise reduced by 2025.

On February 7, the Senate passed the Renewable Electricity Standard 61-4, the House passed the bill 123-10 on February 19, and the Governor signed the legislation into law on February 21.

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<sup>1</sup> Organizations that contributed to this publication that advocated for the Renewable Energy Standard included Center for Energy and the Environment, Clean Water Action, Conservation Minnesota, Fresh Energy, Institute for Agriculture and Trade Policy, Izaak Walton League, Land Stewardship Project, Minnesota Center for Environmental Advocacy, Minnesota Environmental Partnership, The Nature Conservancy, Sierra Club, and the Union of Concerned Scientists.

<sup>2</sup> Minn. Laws 2007, Ch.3.

### *Global Warming Mitigation Act*<sup>3</sup>

Minnesota legislators set statewide greenhouse gas reduction goals and put in place a framework for addressing global warming pollution as part of the 2007 Legislative session's Next Generation Energy Act.<sup>4</sup> The proposal was originally introduced separately as the Global Warming Mitigation Act, S.F.192 by Senator Ellen Anderson (DFL – St. Paul) and as H.F. 375 by Representative Maria Ruud (DFL – Minnetonka). However, the Act was ultimately incorporated into Article 5 of S.F. 145, the Next Generation Energy Act<sup>5</sup>, which was carried by the respective Senate and House Energy committee chairs: Senator Yvonne Prettnier-Solon (DFL – Duluth) and Representative Bill Hilty (DFL – Finlayson).

The legislation sets net Minnesota global warming pollution reduction targets below 2005 levels of at least 15 percent by 2015, 30 percent by 2025, and 80 percent by 2050. Emissions from imported electricity as well as from all in-state sources are included in these reduction targets. The 2050 goal is based on the current scientific understanding of the emissions reductions needed to avoid dangerous effects from global warming. These goals are consistent with executive orders and state legislation elsewhere, such as Maine, New Mexico, Connecticut, and California.

Additionally, the new law requires a stakeholder group, already convened by Governor Pawlenty, to recommend an economy-wide plan for achieving these goals, which is to be submitted to the legislature by February 1, 2008. The plan must analyze and recommend the parameters of a cap and trade system that would prevent significant increases in global warming emissions above current levels and have a schedule for lowering the cap to meet the state reduction goals. The law does not limit the sectors of the economy to which the cap and trade could apply. The legislation also requires the state, to the extent possible, to develop a Midwest regional approach to

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<sup>3</sup> Organizations that contributed to this publication that advocated for the Global Warming Mitigation Act included Center for Energy and the Environment, Clean Water Action, Conservation Minnesota, Fresh Energy, Institute for Agriculture and Trade Policy, Izaak Walton League, Land Stewardship Project, Minnesota Center for Environmental Advocacy, Minnesota Environmental Partnership, The Nature Conservancy, Sierra Club, and the Union of Concerned Scientists.

<sup>4</sup> S.F. 145, 85th Legislative Session (2007-2008); Minn. Laws 2007, Ch. 136, Art. 5.

<sup>5</sup> *Id.*

greenhouse gases and consult on a regional cap and trade.

If by August 2009 the state has failed to enact a comprehensive greenhouse gas law that “directly limits and substantially reduces, over time, statewide power sector carbon dioxide emissions,” then new restrictions on the power sector go into effect. These restrictions prohibit (i) the construction of new baseload coal plants within the state, (ii) the import of power from new baseload coal plants outside the state, and (iii) new long-term power purchase agreements that would increase the power sector’s carbon dioxide (CO<sub>2</sub>) emissions. New plants and agreements evade this prohibition only if they offset the new CO<sub>2</sub> emissions either by reducing CO<sub>2</sub> from other power plants serving Minnesota or by purchasing CO<sub>2</sub> allowances from another state with a cap and trade system already in place. (Currently pending plant applications are exempted from this prohibition, but not from a future cap and trade or other regulatory structure.)

Finally, the state Public Utilities Commission is required to estimate and annually update future carbon dioxide regulatory costs and to use the estimates in all power acquisition proceedings. On May 20, the Senate passed the Next Generation Energy Act 59-5, the House passed the bill 125-9 on May 21, and the Governor signed the bill into law on May 25.

### ***Energy Efficiency***<sup>6</sup>

The energy efficiency and conservation provisions passed by the 2007 legislature establish a goal to save 1.5% of our electricity and natural gas annually and provide regulatory and incentive mechanisms to achieve this goal.<sup>7</sup> When fully implemented this goal would reduce Minnesota’s projected electricity use and CO<sub>2</sub> emissions by almost 25% in 2025. The legislation was originally authored by Senator Scott Dibble (DFL – Minneapolis) as S.F. 997 and Representative Jeremy Kalin (DFL – Lindstrom) as H.F. 1221, but was ultimately incorporated and

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<sup>6</sup> Organizations that contributed to this publication that advocated for energy efficiency legislation included Center for Energy and the Environment, Clean Water Action, Conservation Minnesota, Fresh Energy, Institute for Agriculture and Trade Policy, Izaak Walton League, Land Stewardship Project, Minnesota Center for Environmental Advocacy, Minnesota Environmental Partnership, Sierra Club, and the Union of Concerned Scientists.

<sup>7</sup> Minn. Laws 2007, Ch.136. Art.2.

passed as Article 2 of the Next Generation Energy Act.<sup>8</sup>

The legislation requires that all Minnesota gas and electric utilities submit plans to the Department of Commerce describing how they will achieve the 1.5% goal. Currently, Minnesota’s utilities save about 0.5% to 0.6% annually. If utilities cannot achieve the 1.5% goal on their own, the goal may be reduced to as low as 1% provided the utility describes other strategies it would use in helping government and others save enough energy to meet the overall 1.5% goal.

The bill also includes \$3.6 million in funds to research technologies and strategies that will continually improve utility conservation programs and reduce CO<sub>2</sub> emissions. Additionally, the bill directs the Public Utilities Commission to develop an innovative ratemaking strategy called “decoupling” that eliminates incentives for utilities to encourage energy use and eliminates disincentives for utilities to promote energy efficiency.

S.F. 997 traveled independently, and passed the Senate on a vote of 64 to 1. In the House the provisions were integrated into the House version of the Next Generation Energy Act.<sup>9</sup> The legislature ultimately accepted the minor differences in the House version during a conference committee, and passed the provisions as part of the 2007 Next Generation Energy Act as described above.

### ***Community-Based Energy Development***<sup>10</sup>

As stated above, the passing of the 2007 Renewable Electricity Standard has created the most ambitious wind market in the nation. The majority of this requirement will be met with wind power because it is a reliable and cost-effective technology, the fastest growing energy resource in the world. Over the next 13 years, Minnesota should see about \$10 billion invested in wind energy and other renewable sources. Wind energy is a powerful rural economic development tool when its owners, investors, and developers are farmers, local governments, school districts, and tribes.

During the 2007 legislative session, several environmental and conservation groups, as well as community wind advocates supported efforts to keep a significant portion of the economic benefits in local communities and advocated for the passage of a

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<sup>8</sup> S.F. 145, 85th Legislative Session (2007-2008); Minn. Laws 2007, Ch.136.

<sup>9</sup> S.F. 145, 85th Legislative Session (2007-2008).

<sup>10</sup> Organizations that contributed to this publication that advocated for community based energy development legislation included Fresh Energy.

comprehensive law providing a range of policies supporting community wind's success in Minnesota.<sup>11</sup> The law's provisions include: (1) the creation of a Community Based Energy Development Task Force to develop and recommend future wind legislation; (2) the development of a statewide study to locate the best and cheapest places for new community wind projects; and (3) the opportunity for counties to assume all responsibility for the siting of community wind energy projects up to 25 megawatts, streamlining project approval.<sup>12</sup>

Thanks to these legislative successes, Minnesotans' energy dollars will increasingly support new community wind projects, bringing industry, jobs, and economic activity to rural areas. Moreover, this economy-boosting energy technology protects human health and the health of the environment. Only with strong local support for necessary transmission projects can the full potential of wind power be realized, hence, local participation in the wind power industry is a critical priority.

The community-based energy provisions were ultimately incorporated into Article 4 of S.F. 145, the Next Generation Energy Act.<sup>13</sup>

#### ***Manitoba Hydro Amendment<sup>14</sup>***

In 1977, the governments of Canada and Manitoba and utility Manitoba Hydro signed the Northern Flood Agreement (NFA), agreeing to compensate five indigenous First Nation communities for the adverse effects of Manitoba Hydro's hydropower dams. According to members of those communities, that compensation has never come. They now have an unexpected ally in their quest to get what was promised to them—the Minnesota legislature.

To create its hydropower dam projects, Manitoba Hydro flooded over 1,000 squares miles of land in northern Manitoba in the 1970s. Residents were forced from their homes. Many lost their jobs as the flooding nearly destroyed the commercial fishing and trapping industries, leading to up to 95 percent unemployment in some communities, and some of the highest suicide rates in the industrialized world—10-times higher than the Canadian community average. Millions of acres of forest have been altered forever.

Manitoba Hydro exports 40 percent of its power to United States consumers, and Minnesota utilities are the largest export buyers. Manitoba Hydro had \$800 million dollars in export sales in 2006. Xcel Energy, the fourth largest utility in the United States, purchases approximately 25 percent. Most Minnesota consumers are unaware of the significant damage large-scale hydroelectric dams have caused to the indigenous communities and the environment of Manitoba.

An amendment authored by Representative Phyllis Kahn to the House omnibus environment and energy finance bill<sup>15</sup> required Manitoba Hydro to report annually to the Minnesota legislature on the impacts of its hydropower dams on the environment and First Nation communities covered by the NFA.<sup>16</sup> The amendment passed 69 to 62 on the House floor and was ultimately incorporated with some amendment into the legislature's 2007 omnibus environment and energy finance bill.<sup>17</sup>

The final provision states that by January 1, 2008, and annually after that, the Legislative Electric Energy Task Force will request the Manitoba Hydro Electric Board to provide the following information for each community that is a signatory of the Northern Flood Agreement, including South Indian Lake: (1) median household income and number of residents employed full-time and part-time; (2) the number of outstanding claims filed against Manitoba Hydro by individuals and communities, and the number of claims settled by Manitoba Hydro; and (3) the amount of shoreline damaged by flooding and erosion, and the amount of shoreline restored and cleaned.<sup>18</sup>

Electricity production has the potential to benefit local economies, bringing good jobs and technological innovation. Energy production should not disproportionately impact minority or low-income individuals and the environment in favor of providing resources to more wealthy individuals and companies who have other options. This new law will increase Manitoba Hydro's accountability for the impact its energy development has on the people of Northern Manitoba.

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<sup>11</sup> S.F. 145, 85th Legislative Session (2007-2008). ; Minn. Laws 2007, Ch. 136, Art. 4.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Organizations that contributed to this publication that advocated for Manitoba Hydro reporting requirements included Fresh Energy.

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<sup>15</sup> S.F. 2096, 85th Legislative Session (2007-2008).

<sup>16</sup> *Journal of the Minnesota House*, 49<sup>th</sup> Day (April 17<sup>th</sup>, 2007), p. 3836.

<sup>17</sup> S.F. 2096, 85th Legislative Session (2007-2008); Minn. Laws 2007, Ch. 57, Art. 2, § 26.

<sup>18</sup> *Id.*

### ***Rural Wind Assistance Provisions***<sup>19</sup>

The passing of the 2007 Renewable Electricity Standard has created the most ambitious wind market in the nation. The majority of this requirement will be met with wind power because it is a reliable and cost-effective technology, the fastest growing energy resource in the world. Over the next 13 years Minnesota should see about \$10 billion invested in wind energy and other renewable sources.

During the 2007 legislative session, community wind advocates helped create the Rural Wind Development Project<sup>20</sup>, a provision originally introduced by Senator Ellen Anderson (DFL – St. Paul) as S.F. 1244, and Representative Kate Knuth (DFL – New Brighton) as H.F. 1214. This provision was ultimately incorporated into the omnibus environment and energy finance bill<sup>21</sup> and will create a host of services designed to help community wind developers compete with traditional development companies. The law sends \$1 million to the Center for Rural Policy and Development at Minnesota State University at Mankato to grant to a nonprofit organization with experience dealing with energy and community wind issues to design and implement rural wind energy development assistance program. The project will provide:

- Legal, engineering, and financial services
- Help finding companies to provide long-term maintenance
- Technical and strategic assistance in negotiating long-term contracts with purchasing electric utilities
- Help finding financial and technical resources to assist connecting the wind project to the transmission grid.<sup>22</sup>

Community wind advocates also supported the passage of legislation creating a Rural Wind Energy Development Revolving Loan Fund, also sponsored by Senator Ellen Anderson and Representative Kate Knuth and ultimately incorporated into the omnibus environment and energy finance bill<sup>23</sup>. The Minnesota Department of Commerce can grant \$2

million in loans for community wind projects from the fund, to be used for required pre-development transmission-related studies. The interest rate on the loans cannot exceed a low 1.5 percent, and the total loan to any community energy project cannot exceed \$100,000. A loan like this for a community wind project is generally unavailable from banks or other lenders, and the fund will be replenished when developers pay back the loan when the project completes its financing.

### ***Cellulosic Bioenergy***<sup>24</sup>

The Clean Energy Minnesota coalition (CEM)<sup>25</sup> sought to advance legislation during the 2007 session that would develop and fund a step-by-step approach to a sustainable, agriculturally-focused, next generation cellulosic bioenergy market. The objective of the legislation was to develop a cellulosic bioenergy market in rural Minnesota that would move Minnesota toward energy independence and maximize public benefits for clean energy production, water quality, soil health, soil carbon storage, biodiversity, wildlife habitat and rural economic development. Some progress was made toward these ends. The legislation was originally introduced as S.F. 480, carried by Senator Gary Kubby (DFL – Granite Falls), and H.F. 589, carried by Representative Aaron Peterson (DFL – Appleton). Portions of the original legislation were ultimately included as provisions in both S.F. 2096<sup>26</sup>, the omnibus environment and energy finance bill, and H.F. 2227<sup>27</sup>, the omnibus agriculture and veterans finance bill.

Currently, transportation fuels are almost exclusively derived from oil; yet, biomass derived liquid transportation fuels (biofuels) are a growing share of the market. Biofuels in Minnesota today are primarily obtained from corn and soybeans. Even if all the corn and soybean crops in production today

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<sup>19</sup> Organizations that contributed to this publication that advocated for Rural Wind Assistance Provisions included Fresh Energy.

<sup>20</sup> S.F.2096, Art. 2, § 3, Sub. 6, 85th Legislative Session (2007-2008); Minn. Laws 2007, Ch. 57, Art. 2, § 3, subd. 6.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> S.F. 2096, Art. 2 §§ 28 & 3, Sub. 6, 85th Legislative Session (2007-2008); Minn. Laws 2007, Ch. 57, Art. 2, §§ 28 & 3, Sub. 6.

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<sup>24</sup> Organizations that contributed to this publication that advocated for Cellulosic Bioenergy policies included Center for Energy and the Environment, Clean Water Action, Conservation Minnesota, Fresh Energy, Institute for Agriculture and Trade Policy, Izaak Walton League, Land Stewardship Project, Minnesota Center for Environmental Advocacy, Minnesota Environmental Partnership, The Nature Conservancy, Sierra Club, and the Union of Concerned Scientists.

<sup>25</sup> A complete list of Clean Energy Minnesota members and supporting organizations is available at: <<http://www.cleanenergyminnesota.org/>>.

<sup>26</sup> Minn. Laws 2007, Ch. 57.

<sup>27</sup> Minn. Laws 2007, Ch. 45.

were used for biofuels production, they could only displace a small percentage of our gasoline and diesel use. The current high input methods for growing and harvesting corn and soybeans also have negative effects on wildlife habitat and water quality.

The most promising next stage is to produce biofuels such as ethanol from cellulosic energy crops, which can include agricultural byproducts such as corn stalks or perennial crops such as prairie grasses. Perennial crops could provide more public benefits than annuals such as corn because they can grow on a variety of landscapes across the country and closer to the areas that use more fuel. They also could provide greater conservation benefits including wildlife habitat, carbon sequestration in their roots and soil, reduce soil erosion, and increase water infiltration.

The Clean Energy Minnesota platform proposed a transition toward cellulosic plant material for producing bioenergy, with an emphasis on sustainability standards for their growing, harvesting, and processing. It is critical that stewardship criteria be integrated at the start of this industry, in order for energy crops to provide their maximum expected environmental and local community benefits. If stewardship criteria are not integrated into bioenergy production, there is the threat that future energy crop production will not be “green” but rather mirror the high-intensity annual crop agriculture model that is prevalent today. This could include genetically modified patented energy crops, high use of fertilizer, and round up ready switchgrass, which divert funds from local communities, threaten water quality, and risk native plant genetics.

CEM’s proposed legislation in the 2007 session to develop and fund a step-by-step approach to a sustainable, rural-focused, next generation cellulosic bioenergy markets included: (1) a bioenergy working lands program within a conservation framework to provide incentives for farmers to plant perennial crops for energy (Re-Invest in Minnesota – Clean Energy, or RIM-CE); (2) a revolving loan program for capital investments needed by farmers to grow perennials; (3) a tiered bioenergy production incentive for near-term heat and power sector purchase of cellulosic feedstocks for energy production - to develop an immediate market for the perennial energy crops; (4) a reserved market for cellulosic ethanol within the state Renewable Fuels Standard; (5) a longer-term tiered cellulosic biofuels production incentive that would pay incentives to producers of biofuels based on local ownership and production levels, modeled on the successful corn ethanol payment program; (6) funding to the Minnesota Pollution Control Agency for permitting new and emerging bioenergy crop utilization technologies; and (7) research dollars for

environmental monitoring, and applied and on-farm research on perennial energy crops, and technical and business development assistance to communities interested in perennial crop production for biofuels.

The results that rose from the CEM proposal were mixed.

- The legislature passed a new state-wide working lands bioenergy program, Reinvest in Minnesota - Clean Energy, which was established in the omnibus environment and energy finance bill. The program, under the Board of Water and Soil Resources, allows for perennial crops to be grown under long-term easements for the bioenergy market. A technical committee was funded with \$200,000 to develop the details of the program over the summer, for presentation to the 2008 legislature. Bonding appropriations will be asked for in 2009 to fund the initial easements. The program has been designed to “match up” to the new federal farm bill, still incomplete at this writing, which could allow federal matching funds to increase the dollars available for this program.<sup>28</sup>
- The legislature passed the revolving loan program, funded by the legislature at \$1 million, but the funds were vetoed by the governor.<sup>29</sup>
- The legislature failed to pass a tiered bioenergy payment, which appeared in the Senate version of the Agriculture Finance bill, but did not survive conference committee negotiations with the Minnesota House.<sup>30</sup>
- The legislature passed a reserved market share for cellulosic ethanol within the existing state Renewable Fuels Standard (RFS). This means that 5% of our “gasoline” fuels, (a quarter of the RFS mandate) must be derived from cellulosic feedstocks when Minnesota produces at least 60,000,000 gallons annually or by 2015, whichever comes first.<sup>31</sup>
- The legislature passed funding to the Minnesota Pollution Control Agency for researching emissions from and prioritizing the permitting of new and emerging bioenergy crop utilization technologies.<sup>32</sup>
- The legislature approved research dollars (\$500,000) for much needed research for forest and perennials biomass research and monitoring, much less than the level needed. An additional

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<sup>28</sup> Minn. Laws 2007, Ch. 57, Art. 1 § 119.

<sup>29</sup> Minn. Laws 2007, Ch. 45, Art. 1 § 17.

<sup>30</sup> See S.F 1925, 1<sup>st</sup> Engrossment, Art. 1 § 23 & 24, 85th Legislative Session (2007-2008).

<sup>31</sup> Minn. Laws 2007, Ch. 45, Art. 1 § 46.

<sup>32</sup> Minn. Laws 2007, Ch. 57, Art. 1 § 3.

\$1.4 million in funding was provided for applied research and technology transfer for converting biomass to energy. Funding for farm-scale research by the Minnesota Institute for Sustainable Agriculture (\$350,000) was passed by the legislature, but was vetoed by the governor.<sup>33</sup>

As a result of the discussions surrounding the CEM proposal, some areas of clear or emerging political consensus developed during the legislative session, including: (1) the great value of local ownership of energy production facilities; and (2) the desirability of limiting public incentive payments to such facilities; (3) the need for more research dollars for both the production of cellulosic biomass crops, and their conversion to energy; and (4) increased public benefits from perennial (versus non-perennial) cellulosic energy crops on the land, and the interest in creating a new program to pay farmers to plant bioenergy crops. Serious interest has been expressed in understanding more about the relationship between perennial crops, bioenergy and global warming.

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<sup>33</sup> Minn. Laws 2007, Ch. 45, Art. 1 § 3, subd. 4.

## FARMING AND THE ENVIRONMENT

### *Proposed Corporate Farm Law Exemption*<sup>34</sup>

This failed legislation sought to create an exemption to the state law that prevents foreign owned companies from owning or leasing Minnesota farmland. The proposed legislation was tailored so that Energias de Portugal, a Portuguese-based company, could hold a lease interest in farmland in Mower County as part of a wind energy development project. The project developer and current lease holder is Horizon Wind Energy which is owned by U.S.-based Goldman Sachs. However, Goldman Sachs intends to sell Horizon to Energias de Portugal. This sale would put the project in violation of state laws. Instead of restructuring the deal to be in compliance with state laws, Horizon and Goldman Sachs sought to push for an exemption to the law. The legislation was introduced as S.F. 2305, carried by Senator Dan Sparks (DFL – Austin, and offered as a floor amendment to H.F. 145, the session's omnibus environment and energy finance bill, by Representative Jean Poppe (DFL – Austin)

Current state law effectively prohibits foreign companies from owning or leasing Minnesota farmland.<sup>35</sup> This law is a critical complement to our state's Corporate Farm Law and a part of meeting the goal of this law which is to "protect the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and promote the stability and well-being of rural society in Minnesota and the nuclear family."<sup>36</sup> Family farm groups strongly opposed the attempt to weaken this law and maintained that the integrity of this law is critical to ensuring that, as much as possible, the wealth generated in rural communities stays local. In opposing the amendment, family farm groups were joined by advocates of community based renewable energy. This amendment should be understood in terms of the debate about where the economic benefits of renewable energy are going to flow—for farm and rural organizations, ensuring local economic benefits are critical.

The legislation was introduced in the last weeks of the session and failed to pass. Representative Poppe's floor amendment failed on a 63 to 67 vote on May 11. The Senate bill was heard later in the Tax

Committee and referred to the Ag Policy Committee without a recommendation where it died. The provision was never debated on the Senate Floor. Attempts to amend it into the Tax Bill in conference committee also failed.

Between May 4 and the end of session Horizon and Goldman Sachs contracted with 14 lobbyists to work on the issue. The issue was brought to the legislature in May (even though proponents admitted Horizon and Goldman Sachs became aware of the problem as early as mid-April) and the initial strategy was to move it as a floor amendment in the House. Proponents of the amendment began advocating for it without meeting or discussing the issue with key agriculture groups or chairs of the Agriculture Policy Committees. Opposition on the floor was led by Representative Mary Ellen Otremba (DFL – Long Prairie), chair of the Ag Policy committee with the support of Representative David Bly (DFL – Northfield) and Representative Ken Tschumper (DFL – La Crescent). Though the proponents dramatically increased their lobbying presence, they could not overcome the initial loss on the House floor and the increasing grassroots opposition to the legislation.

### *Prohibition of New Open-Air Swine Basins*<sup>37</sup>

A temporary open-air swine basins ban that was set to expire on June 30, 2007 was first passed in 1998. Overwhelming citizen complaints of health impacts from air emissions fueled the legislation.

A permanent ban on open-air manure basins was initially proposed during the 2007 legislative session by Senator Gary Kubly (DFL – Granite Falls)<sup>38</sup> and Representative Lyle Koenen (DFL – Clara City)<sup>39</sup>, H.F. 1683, over the objection of the Minnesota Pork Producers Association. Ultimately, the legislature extended the ban until 2012.

Large open –air swine basins release large quantities of ammonia. Seventy to eighty percent of the nitrogen content is thought to be released as ammonia gas. As ammonia falls back to the earth in rain, it creates a whole new source of nutrient pollution in our water that can trigger algae blooms. Algae blooms deprive our lakes and rivers of oxygen and can kill fish.

An open-air swine basin or lagoon is usually a hole in the ground lined with clay, which holds millions of gallons of untreated liquid manure. Many

<sup>34</sup> Organizations that contributed to this publication that advocated for the defeat of the proposed corporate farm law exemption included Clean Water Action and the Land Stewardship Project.

<sup>35</sup> Minn. Stat. § 500.221.

<sup>36</sup> Id. at § 500.224.

<sup>37</sup> Organizations that contributed to this publication that advocated for the prohibition of new open-air swine basins included Clean Water Action and the Land Stewardship Project.

<sup>38</sup> S.F. 1472, 85th Legislative Session (2007-2008).

<sup>39</sup> H.F. 1683, 85th Legislative Session (2007-2008).

of these reach eight to ten acres in size, holding tens of million of gallons of waste. This is the equivalent of untreated sewage for a city of 40,000 people. The broad size of the lagoon offers a large surface area for release of air pollution, creating a very wide plume. Depending on the wind, this creates far ranging air contamination — reported up to one mile wide and as much as seven miles long. Even in a rural area, this can affect many residents, including farmers.

In 1998, studies showed 168 chemicals in the air emissions released from decomposing swine manure. Today, over 302 chemicals have been identified. Many of the chemicals are very toxic, such as hydrogen sulfide. Hydrogen sulfide is an odorous gas that smells like rotten eggs. It is a neurotoxin and can cause asphyxiation. At high levels hydrogen sulfide can cause death in one breath. At low levels hydrogen sulfide will cause headaches, memory loss, dizziness, bloody noses, nausea, vomiting, diarrhea, leg cramps, tearing of the eyes, sore throat, fluid in the lungs, cough, shortness of breath, as well as induce asthma attacks to those who have asthma. Children, the elderly and the health impaired are the most at risk. Hydrogen sulfide has been detected in levels that exceed the state ambient air quality standard in many locations near lagoons through out the state.

In the House Agriculture Committee, H.F. 1683, carried by Representative Koenen, passed without opposition. An amendment was offered in that committee to also ban open-air earthen basins for dairy. Though the amendment failed, it had the effect of alerting committee members to the large scale of recently proposed dairy operations and their accompanying open-air earthen basins. For example, the basin for one 6,600 head dairy operation permitted in west central Minnesota will be 1,683 feet long, nineteen feet deep, and will hold over 53 million gallons of untreated waste.

In the Senate, an amendment was offered in the Senate Agriculture committee to Senator Kubly's S.F. 1472 to ban any expansions to existing open-air swine basins. This amendment passed, but was ultimately stripped out of the bill later in the committee process.

A final agreement was ultimately reached to extend the ban until the end of June 30, 2112, and that provision was included in the omnibus agriculture and veterans finance bill.<sup>40</sup>

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<sup>40</sup> Minn. Laws. 2007, Ch. 45, Art. 1 § 56.

## GREAT LAKES AND CLEAN WATER

### *Great Lakes Compact*<sup>41</sup>

Minnesota became the first state to ratify the Great Lakes Compact,<sup>42</sup> a draft covenant among the Great Lakes states providing a regional water management strategy to protect Great Lakes water as a natural resource. The Compact, carried as S.F. 38 by Senator Anne Rest (DFL – New Hope) and as H.F. 110 by Representative Thomas Huntley (DFL – Duluth), is the result of a five-year negotiation among the 8 states and two Canadian provinces that border the Great Lakes. Minnesota's Department of Natural Resources helped develop the Compact and supported its ratification. Before taking effect, the Compact must be ratified by all eight states bordering the Great Lakes and approved by the United States Congress.

The Compact's purpose is to retain regional control over and protect the health of the Great Lakes, the source of 95 percent of the nation's fresh water. Minnesota naturally took the lead on this issue, as Lake Superior is the largest of the Great Lakes. This bill, one of the first measures enacted in the 2007 session, represented an agreement among House, Senate, and the Governor to protect the Great Lakes.

The Great Lakes Compact was endorsed by the Governors of all 8 Great Lakes States on December 13, 2005. For the first time, it provides environmental standards for judging new water withdrawal proposals. The Compact bans water diversions from the basin, with very limited exceptions. The binding and enforceable Compact contains strong public process requirements and reflects tens of thousands of public comments. Finally, and significantly, it provides a minimum standard, leaving states free to be more protective of their own waters.

The Compact leaves to states the decision of how to treat diversions of 5.7 gallons or less in containers. Environmental advocates who have worked with Compact issues for years make a strong case for resolution of issues related to bottled water. At some future point, policymakers will need to resolve the

issue of water diversions for the purpose of sale in containers.

Ratification is not an end unto itself, but would place Minnesota at a mid-point in the journey towards an effective regional Compact. After the Compact's adoption by Congress, the state will need to take certain actions in conformity. For example, within five years after the effective date, parties must complete a water resources inventory showing the location, type, and quantity of withdrawals, diversions and consumptive uses. Within two years of the effective date, states must implement a water conservation and efficiency program, and must promote environmentally sound and economically feasible water conservation measures.

The need to protect the water of the Great Lakes from diversion is not new. Indeed, policymakers have been wrestling for decades with finding an effective regulatory device to provide protection of a resource that spans both state and international boundaries. Ontario's approval of the diversion and sale of millions of gallons of Great Lakes water triggered a public outcry that resulted in the abandonment of that scheme. The first attempt at asserting control over Great Lakes Water was the Water Resources Development Act of 1986 (WRDA).<sup>43</sup> That law made diversions contingent on the approval of the Governors of all eight Great Lakes states. The regional Great Lakes regulatory approach represented by the Compact evolved after legal infirmities were identified in that Act. The effort to develop the Compact resulted from legal advice concluding that the WRDA cannot survive a challenge in court.

Because of the controversial nature of the Compact in some other states, the Minnesota Center for Environmental Advocacy conducted a legal analysis of how the Compact would mesh with existing Minnesota water resources laws. That analysis revealed that Minnesota's water appropriations laws are significantly more protective than the Compact would require, which helped cement environmental support for ratification<sup>44</sup>.

The bill's authors, Senator Rest and Representative Huntley, gained expertise on the issue as a result of serving on the Great Lakes Commission. Additionally, extensive discussions among the environmental groups with water quality

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<sup>41</sup> Organizations that contributed to this publication that advocated for passage of the Great Lakes Compact included Clean Water Action, Conservation Minnesota, Minnesota Center for Environmental Advocacy, the Minnesota Conservation Federation, the Minnesota Environmental Partnership, and The Nature Conservancy.

<sup>42</sup> Minn. Laws 2007, Ch.2.

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<sup>43</sup> WATER RESOURCES DEVELOPMENT ACT OF 1986 (As amended September, 2000). Section 1962d-20. Prohibition on Great Lakes Diversions. (Nov. 17, 1986, P.L. 99-662, Title XI, 1109, 100 Stat. 4230.)

<sup>44</sup> The relevant water laws appear in Minn. Stat. § 103G.

expertise resulted in a unified environmental position that helped ensure passage, and set the stage for joint efforts to implement the Compact such as improved water conservation plans for the state. Further, stakeholders from the Lake Superior area were briefed on the Compact before the session began, which helped inform interested parties and gain support for the effort. Only minor opposition, based on undefined “property rights” concerns, was apparent during the bill’s passage through the legislature.

The Great Lakes Compact was passed with substantial majorities in both Houses: 97-35 in the House of Representatives, and 57-3 in the state Senate. Minnesota’s ratification created momentum for action by other states; this was demonstrated in May 2007 when the state of Illinois also ratified the agreement.

### ***Clean Water Legacy Funding***<sup>45</sup>

For the past several years, legislative efforts to provide clean water funding have fallen short, and this year was no exception. However, progress was made on several fronts and Senator Ellen Anderson (DFL – St. Paul), Representative Jean Wagenius (DFL – Minneapolis), and several other legislators were determined advocates for clean water funding in the face of limited resources.

Minnesota needs approximately \$100 million annually to test and assess the state’s surface waters, and develop and implement clean-up plans. Funding for this “Clean Water Legacy” was included in the amount of \$53.7 million for Fiscal Year 08-09 in S.F. 2096<sup>46</sup>, the omnibus environment and energy finance bill, which was carried by the Chairs of the respective Senate and House Environment Finance Divisions, Senator Anderson and Representative Wagenius. Although the \$53.7 million appropriated represents only about a quarter of the needed amount, legislators wisely chose to increase, re-allocate and target the funds in the Governor’s budget recommendations in response to environmental considerations.

The Governor recommended \$39.8 million for the Clean Water Legacy, and the final amount appropriated by the legislature was just under \$53.7 million. The largest increase over the Governor’s

recommendation—\$10 million—went to the Pollution Control Agency. About \$9 million of this increase was for assessment of state waters, a major priority for the Clean Water Legacy effort. Only if Minnesota continues to assess our waters will we know which are impaired and be able to plan and target state resources accordingly. The Governor’s budget placed a priority for funding Total Maximum Daily Loads (TMDLs, or water “clean-up plans”), and legislators slightly increased the Governor’s suggested TMDL amount in the final omnibus environment and energy finance bill.

Environmentalists also lobbied successfully to target funds to long-standing known sources of pollution. The bill appropriated \$4 million for counties to find and clean up the failing septic systems that are leaking human waste into lakes, rivers and streams. These funds will flow through the Board of Water and Soil Resources. To show specific effective ways to address water impairments caused by agriculture, BWSR received \$1.5 million to target improved agricultural practices in an agriculturally impaired watershed to demonstrate water quality benefits.

Political will exists to fund clean water, but limited resources made the situation very challenging. Clean water advocates made great strides in educating legislators about the issue of water funding, and set the stage for a supplemental funding request for 2009 as needed. The final omnibus environment and energy finance bill passed with overwhelming majorities in both chambers: 64-1 in the Senate, and 97-30 in the House of Representatives.

### ***Phosphorous Rule Delay***<sup>47</sup>

In the regulatory arena, environmental advocates opposed an effort to continue an unwise delay in imposition of a reasonable phosphorous rule proposed by the Pollution Control Agency. Last year’s clean water legacy bill included a controversial provision that delayed until July 2007 a proposed PCA rule to impose a 1 mg per liter phosphorous discharge rule for new and expanding dischargers. Despite their ability to take their case through the ordinary rulemaking process, some local government interests asked the legislature to undermine the PCA’s rulemaking progress and once again delay the rule. They were successful in this effort.

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<sup>45</sup> Organizations that contributed to this publication that advocated for increased funding for the Clean Water Legacy included Clean Water Action, Conservation Minnesota, Land Stewardship Project, Minnesota Center for Environmental Advocacy, the Minnesota Environmental Partnership, and The Nature Conservancy.

<sup>46</sup> Minn. Laws 2007, Ch.57, Art.1.

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<sup>47</sup> Organizations that contributed to this publication that advocated against the Phosphorous Rule Delay included Clean Water Action and the Minnesota Center for Environmental Advocacy.

At issue was S.F. 1435, carried by Senator Keith Langseth (DFL – Glyndon), and H.F. 1520, carried by Representative David Dill (DFL – Crane Lake). These bills proposed a 12-month delay in implementing the rule, and a 10-month delay was ultimately included in the omnibus environment policy bill, S.F. 1131.<sup>48</sup> Under the provision adopted, the PCA cannot finalize rules until May 1, 2008. Although legislators ultimately adopted the rule delay, Senator Satveer Chaudhary told local government advocates that this is the “last time” the legislature will consider extending this delay. Representative Dennis Ozment expressed his deep displeasure at the Conference Committee’s decision to include the rule delay, recounting how he felt forced into accepting the provision in the 2006 session in order to secure funding for Clean Water Legacy.

### ***Wetlands Conservation Act Reforms***<sup>49</sup>

The Wetlands Conservation Act<sup>50</sup> was subtly strengthened for the first time in its 16-year history during the 2007 legislative session. Several exemptions to the act have been tightened and the use of exemptions will be better tracked. The bill was initially introduced as S.F. 1137, carried by Senator Satveer Chaudhary (DFL –Fridley) and as H.F. 1343, carried by Representative Rick Hansen (DFL –South St. Paul), and ultimately included in S.F. 2096<sup>51</sup>, the omnibus environment and energy finance bill.

The environmental community worked on moving forward with Wetland Conservation Act (WCA) reforms based upon reports issued by the Sierra Club and the Minnesota Center for Environmental Advocacy in the preceding year. The bills were introduced by Sen. Satveer Chaudhary and Rep. Rick Hansen as discussed above and contained additional protections for Minnesota wetlands through decreasing the de minimis exemption to the WCA, requiring exemption tracking and reporting, providing mechanisms to curb abuses of other exemptions such as the forestry exemption and providing a citizen enforcement provision for wetland violations similar to that found in the federal Clean Water Act. Additionally, the administration, through the Board of Water and Soil Resources

(BWSR), put forth a bill that was introduced as S.F. 1704, carried by Senator Chaudhary, and H.F. 1935, carried by Representative Dennis Ozment (R – Rosemount). The bill represented the position of BWSR, which it had formed after lengthy discussions with stakeholders during the previous summer, and mirrored the environmental advocates’ bill in some respects and provided for some administrative priorities.

Various local governments and their lobbying organizations turned out aggressively against both bills, generally opposed to all of the above-listed provisions. The environmental and administration bills were eventually consolidated into one bill in each body with some of the most protective environmental measures cut from the bill en route. In the House, the wetlands provisions were then folded into that body’s omnibus environment and energy finance bill, H.F. 2410, and in the Senate they were put into Senator Chaudhary’s omnibus environment policy bill, S.F. 1312.

Rep. Hansen and others in the House, including Reps. Wagenius and Ozment fought back numerous attempts to strip the reform of the de minimis exemption to WCA out of the bill---at that point one of the last remaining pieces of the original proposal. This effort culminated in a controversial amendment on the House floor that resulted in retention of the decrease of the de minimis exemption on a vote of 50-84. Conversely, the Senate Environment Committee, on a second hearing of the wetland provisions (after it had passed the committee once), stripped the de minimis decrease out of the bill.

By the end of the conference committee process, the bill resulted in some incremental progress on the de minimis exemption in WCA with the de minimis exemption to replacement and mitigation of lost wetlands, decreasing in that eleven-county larger metropolitan area by half and eliminating the de minimis exemption within the shoreland protection area state-wide. Other provisions that survived included (1) a modification to the 60-day time limit for approval of wetlands actions<sup>52</sup>, (2) a provision providing authority to the Minnesota Board of Soil and Water Resources to issue civil penalty orders<sup>53</sup>, (3) a prohibition against using stormwater ponds to satisfy wetlands replacement requirements<sup>54</sup>, and a requirement to develop rules that provide for reporting of exemptions to the current wetlands laws.<sup>55</sup>

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<sup>48</sup> Minn. Laws 2007, Ch. 131, § 81.

<sup>49</sup> Organizations that contributed to this publication that advocated for wetlands conservation act reforms included the Minnesota Center for Environmental Advocacy and the Sierra Club.

<sup>50</sup> Minn. Stat. § 103G.221, et. seq.

<sup>51</sup> Minn. Laws 2007, Ch. 57, Art. 1 §§ 5,11,103-111, 120-134, & 166.

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<sup>52</sup> See Minn. Stat 15.99; Minn. Laws 2007, Ch. 57, Art. 1 § 5.

<sup>53</sup> Minn. Laws 2007, Ch. 57, Art. 1 § 11.

<sup>54</sup> Minn. Laws 2007, Ch. 57, Art. 1 § 120(e).

<sup>55</sup> Minn. Laws 2007, Ch. 57, Art. 1 § 127(d).

## *Shoreland Protections*<sup>56</sup>

Rapidly increasing shoreland development pressures are evident to anyone spending time on Minnesota's trademark lakes. The 2007 legislature's appropriation of \$1 million to the Department of Natural Resources to update existing statewide shoreland management standards is a step forward in an effort that began in 2004.

That year, the Minnesota Center for Environmental Advocacy (MCEA) submitted comments to the DNR requesting review and revision of the shoreland rules<sup>57</sup>, because the rules were severely outdated, failed to address new, increasing, and changing pressures on Minnesota lakes and streams and were no longer based on the best science available regarding shoreland development and impacts to wildlife, water quality and habitat.

The DNR itself made a similar case for new standards in the Assessment and Rationale that initiated the Shoreland Standards Update Advisory Committee, a comprehensive stakeholder group which agreed upon a complete revision of the shoreland rules in December 2005. The Assessment and Rationale described the increasing pressures on Minnesota's lakes and the fact that some of our most sensitive lake environments are most at risk. However, the DNR now takes the position that that revision is an "alternative" for local governments, and denied MCEA's petition for the adoption of the alternative shoreland standards as the new, required statewide standards.

Current law requires the DNR to adopt model standards and criteria for the subdivision, use, and development of shoreland, which must include, among other things: the area of a lot and length of water frontage; placement of structures relative to shoreline; placement and construction of sanitary and waste disposal facilities; designation of types of land uses; and preservation of natural shorelands through restriction of land uses.<sup>58</sup> Moreover, under the common law doctrine of public interest, DNR is required to maintain and preserve natural resources such as the waters and shorelands of this state, for the use, benefit and enjoyment of all the people of Minnesota.

The Environment Policy Committees in both House and Senate held hearings on the issue of shoreland management. After environmental groups

and several lakeshore owners testified strongly in support of updated statewide shoreland management rules, legislative interest grew. Representatives Frank Moe (DFL- Bemidji), Rick Hansen (DFL- South St. Paul), and Jean Wagenius (DFL-Minneapolis) were determined to ensure that the DNR take action to update the shoreland rules. In the Senate, Senators Satveer Chaudhary (DFL-Fridley), Ellen Anderson (DFL-St. Paul), and Scott Dibble (DFL-Minneapolis) were similarly committed to progress in this area.

In the omnibus environment and energy finance bill, legislators put dollars behind this determination by appropriating \$1 million to the DNR and requiring that rulemaking be commenced by January 15, 2008.<sup>59</sup> Environmentalists and other members of the Shoreland Advisory Committee hope that the DNR will move expeditiously to tackle this critical work, and will use the alternative shoreland standards developed by that committee as a basis for the rule revision.

The undeniably accelerating pace of shoreland development dramatically illustrates the need for early and decisive action by the DNR to meet its statutory obligation to "provide guidance for the wise development of shorelands of public waters and thus preserve and enhance the quality of surface waters; to preserve the economic and natural environmental values of shorelands; and to provide for the wise use of water and related land resources of the state."<sup>60</sup>

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<sup>56</sup> Organizations that contributed to this publication that advocated for increased shoreland protections included the Minnesota Center for Environmental Advocacy.

<sup>57</sup> Minn. R. Ch. 6120

<sup>58</sup> Minn. Stat. § 103F.211 (2006).

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<sup>59</sup> By January 15, 2008, the commissioner shall commence rulemaking under Minnesota Statutes, chapter 14, to update the minimum shoreland standards in Minnesota Rules, chapter 6120. Minn. Laws 2007, Ch. 57, Art. 1 § 4, subd. 2.

<sup>60</sup> Minn. Stat. § 103F.201 (2006).

## LAND USE AND RECYCLING

### *Uniform Environmental Covenant Act*

Brownfields redevelopment is based on the concept that certain properties, even though they have been contaminated with hazardous waste or chemicals, can remain contaminated without presenting a risk to human health or the environment if the use of the property is restricted in a certain manner. Proponents of the uniform environmental covenant act (UECA)<sup>61</sup>, passed by the legislature this year, purport that this new law provides a better tool for implementing and enforcing land use restrictions on contaminated properties.

The UECA provides for the long-term enforcement of restrictions on contaminated properties through a voluntary agreement, called an environmental covenant, which is approved by a state agency having jurisdiction<sup>62</sup>, becomes binding on future owners and tenants of the property<sup>63</sup>, and is recorded in the local land use records.<sup>64</sup> Proponents of the Act suggest that this covenant will provide more certainty and therefore lessen liability concerns when redeveloped properties are transferred.

Additionally, the Act is designed to ensure that restrictions on a contaminated property become perpetual, even where the common law of property might accidentally eliminate these restrictions (examples of this might include situations related to foreclosure, bankruptcy, eminent domain, adverse possession, or the marketable title act). Further, the Act provides notice provisions<sup>65</sup> and sets guidelines for third-party enforcement of the agreement.<sup>66</sup>

### *Electronic Waste Recycling*<sup>67</sup>

Electronic waste is the fastest growing form of consumer waste in the United States, and is growing almost 3 times faster than our overall municipal waste stream. Studies estimate that 315 to 600 million desktop and laptop computers in the U.S. will soon be out of date. Within the next few years, 35-75 million televisions will become obsolete as broadcasting switches from analog to digital. The 315

million or more computers that have or will become obsolete contain a total of more than 1.2 billion pounds of lead. About 40% of the heavy metals in landfills, including lead, mercury and cadmium, come from discarded electronic equipment. These products also contain brominated flame retardants, which in addition to lead, mercury, cadmium and other heavy metals, are known to be hazardous to human health.

In July 2006, a ban on disposing of cathode-ray-tubes (CRTs, televisions, computer monitors) in landfills went into effect in Minnesota.<sup>68</sup> However, no state-wide program or funding to deal with the collection and recycling of this electronic waste had been provided for, leaving Minnesota counties with the charge of preventing the e-waste from getting into landfills, but with no funding for recycling.

This year, Minnesota enacted a new law for the collection and recycling of video display devices sold to households/consumers: televisions, computer monitors, and laptop computers.<sup>69</sup> The bill was carried in the House as H.F. 854 by Representative Brita Sailer (DFL-Park Rapids) and in the Senate as S.F. 235 by Senator Linda Higgins (DFL-Minneapolis). The Minnesota Pollution Control Agency estimates that well over 19 million pounds of electronics will be recycled in its first year under this program. Under the law, manufacturers of video display devices (VDD) will register and pay a fee to the state, and collect and recycle VDD from households/consumers in Minnesota.

The first year of the program began July 1, 2007. Manufacturers of video display devices that wish to sell or have their products sold to consumers in Minnesota must register with the state by September 1, 2007, and pay a fee. The two fee tiers are: \$5,000 for manufacturers of 100 or more video display devices sold in Minnesota each year, and \$1,250 for manufacturers of less than 100 video display devices sold in Minnesota each year.

Manufacturers must meet annual targets for collection and recycling of covered electronic products, based on their sales of video display devices to households/consumers in Minnesota. From July 1, 2007 - June 30, 2008, manufacturers must collect and recycle 60% (by weight) of sales of video display devices in Minnesota to households/consumers in this time period. For the second year and beyond, the total jumps to 80% (by weight) of sales of video display devices in Minnesota to households/consumers for the July 1 - June 30 time period.

<sup>61</sup> Minn. Laws 2007, Ch. 131, Art. 1 § 59-73.

<sup>62</sup> Id. at § 62(c).

<sup>63</sup> Id. at § 63.

<sup>64</sup> Id. at § 66.

<sup>65</sup> Id. at § 65.

<sup>66</sup> Id. at § 69.

<sup>67</sup> Organizations that contributed to this publication that advocated for electronic waste recycling policies included Clean Water Action and the Sierra Club.

<sup>68</sup> Minn. Stat. § 115A.9565.

<sup>69</sup> Minn. Laws 2007, Ch. 48.

Sellers of video display devices will only be able to sell products to households in Minnesota from manufacturers that are registered with the state. Under the Minnesota law, retailers pay no fees and do not need to register with the state. Retailers are required to report to each registered manufacturer their annual sales of that manufacturer's household/consumer video display devices; the first report must be by delivered August 1, 2008.

Collectors must register with the Minnesota Pollution Control Agency (MPCA) by August 1 of each year. Beginning August 1, 2008, collectors must annually report to the MPCA, providing the weight of covered electronic devices collected for recycling from Minnesota households/consumers.

Recyclers of covered electronic devices must register with the state program by August 1 of each year. Beginning August 1, 2008, recyclers must annually report to the state program, providing the weight of covered electronic devices recycled from Minnesota households/consumers.

## MINNESOTA'S GREAT OUTDOORS

### *Constitutional Dedicated Funding*<sup>70</sup>

For nearly a decade, various outdoors and conservation organizations have been advocating at the legislature in support of a state constitutional amendment to provide a dedicated funding source for natural resource protection. This effort has grown over the years in response to declining state-level funding for the protection of Minnesota's land and water resources. Minnesota's population is continuing to grow – by an estimated 1.2 million people over the next 25 years, faster than any other Midwestern state – placing increased pressure from development on our natural amenities, and driving up the cost of acquiring land for conservation purposes. Meanwhile, many of Minnesota's water resources remain impaired (forty percent of water bodies tested fail to meet federal water quality standards), and funding for the Clean Water Legacy Act remains both insufficient and dependent on one-time money.

A number of legislative proposals were introduced early in the 2007 session in both the House of Representatives and the Senate. Both bodies coalesced around legislation introduced by leadership; H.F. 2285, authored by Representative Tony Sertich (DFL – Chislm) and S.F. 6, authored by Senator Larry Pogemiller (DFL – Minneapolis). Both versions created a dedicated fund by adding 3/8 of one percent to the existing state sales tax, and allocated the fund to a variety of purposes, including clean water, habitat protection, parks and trails, and arts and culture. However, the bills differed in the amount of funding allocated to each purpose.

The Senate took action first, with a committee hearing that included extensive public testimony during the first month of the session. S.F. 6 received relatively little opposition, with the exception of a failed 5-7 committee vote in the Senate Taxes Committee. The committee ultimately passed the bill two weeks later after amending it to become a statutory tax increase, rather than an amendment to the constitution. Senator Pogemiller successfully amended his bill back to its original form in the Rules committee, and the bill was passed by the full Senate on a vote of 52-14. Key proponents of the legislation

included Senators Ellen Anderson (DFL – St. Paul), Dennis Frederickson (R-New Ulm) and Satveer Chaudhary (DFL-Fridley).

H.F. 2285 received no legislative action until relatively late, passing seven committees and the full House floor all within the final two weeks of the session. The only significant opposition to the legislation came in the House Taxes committee, which met three separate times before passing the bill. Following extensive debate, the bill was passed off of the House floor on a vote of 86-46. Key proponents of the legislation in the House included Representatives Rick Hansen (DFL-South St. Paul), Jean Wagenius (DFL-Minneapolis), Frank Moe (DFL-Bemidji), and Dennis Ozment (R-Rosemount).

A conference committee met on the last day of the 2007 session. With little time remaining, the conference committee only considered portions of the bill which included the actual constitutional language and the November 2008 ballot language. The key disagreement involved the percentage allocations from the dedication for the various purposes outlined in the legislation. Ultimately, the conference reached an agreement to divide the funding as follows: 33% for clean water, 33% for habitat, 19.75% for arts and culture, and 14.25% for parks and trails; and also reached an agreement on preferred ballot language.

This marked the first time in nine legislative sessions that a conference committee had successfully reached an agreement on the dedicated funding issue. Despite this agreement, the House was unable to consider passage of the conference committee report before final adjournment for 2007. Legislative leaders from both bodies committed to passing the conference report in the first week of the 2008 session and advocates committed to begin forming a campaign to pass the measure on the November 2008 ballot. Statutory language which was left unresolved by the conference committee will also likely be revisited in 2008.

### *Invasive Species Funding*<sup>71</sup>

Invasive plant and animal species are nonnative species that can naturalize in Minnesota and either cause displacement of native species in their natural communities or threaten natural resources or their use in the state. An invasive species account in the natural resources fund was created, and

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<sup>70</sup> Organizations that contributed to this publication that advocated for constitutional dedicated funding included Clean Water Action, Conservation Minnesota, Izaak Walton League, Minnesota Center for Environmental Advocacy, The Nature Conservancy, the Minnesota Environmental Partnership, Minnesota Campaign for Conservation, and Trust for Public Land.

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<sup>71</sup> Organizations that contributed to this publication that advocated for funding to address invasive species included The Nature Conservancy.

appropriations were made, as part of S.F. 2096<sup>72</sup>, the omnibus environment and energy finance bill.

Invasive species management includes preventing introductions of new invasive species into Minnesota, preventing the spread of existing invasive species, and reducing the impacts caused by invasive species to Minnesota's ecology, society, and economy. There was strong bipartisan support this year for increasing funding to invasive species management because they are widely recognized as a growing threat to Minnesota's natural resources.

In Governor Pawlenty's budget recommendations, he proposed a healthy increase in invasive species funding through a series of surcharge increases. Under this plan, the Department of Natural Resources (DNR) would have dedicated surcharge revenues toward both terrestrial and aquatic invasive species management on state-administered land. The invasive species fund remained as part of the omnibus environment and energy finance bill, but the legislature chose to provide the bulk of an even larger increase in funding through the general fund.

The DNR Division of Ecological Services received a biennial increase of \$3.842 million for invasive species management. This Division also received \$125,000 in new funds to develop plans to optimize native prairie seed harvesting and replanting on state-owned lands (restoring healthy native ecosystems is a key component of invasive species management).

Additionally, the Board of Water and Soil Resources (BWSR) received \$600,000 in new funds to begin local cooperative weed management programs with the intent of managing invasive species and restoring native plants at the local level.

### ***Legislative-Citizen Commission on Minnesota Resources (LCCMR) Appropriations***<sup>73</sup>

Citizens are now included as voting members on the LCCMR, which makes recommendations to the full legislature on expenditures of lottery proceeds. This year's appropriations were made as part of H.F. 293, carried by Representative Kathy Tinglestad (R-Andover) and S.F. 450, carried by Senator Ellen Anderson (DFL – St. Paul).<sup>74</sup>

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<sup>72</sup> Minn. Laws 2007, Ch. 57, Art. 1 § 4, subd. 8; Id. at § 38.

<sup>73</sup> Organizations that contributed to this publication that advocated for appropriations from the Legislative-Citizen Commission on Minnesota Resources included The Nature Conservancy, Sierra Club, and the Trust for Public Land.

<sup>74</sup> Minn. Laws 2007, Ch. 30.

Forty percent of state lottery net proceeds serve as revenue for the Environment and Natural Resources Fund. Up to 5.5% of the market value of this trust fund may be spent annually for the public purpose of protection, conservation, preservation, and enhancement of the state's air, water, land, habitat, wildlife, and other natural resources.

In 2006, the Legislative Commission on Minnesota Resources (LCMR) was reformed to include 5 Senators, 5 Representatives and 7 Citizens. A super majority of votes is required (12 of 17) in order for recommendations to be passed on to the legislature for approval. The other primary change was from biennial appropriations to annual appropriations in an effort to get conservation dollars on the ground more quickly.

The new LCCMR recommended \$23,366,000 in expenditures for 2007, and the legislature approved their recommendations in full by unanimous and near-unanimous votes. Expenditures will include: \$1,318,000 for administration, \$14,835,000 for land resource projects, and \$5,051,000 for water resource projects, \$2,002,000 for natural resource information projects, and \$160,000 toward an emerging issues account

An additional \$300,000 was appropriated by the 2006 legislature for LCCMR to fund a comprehensive statewide conservation and preservation plan. A public/private partnership consulting team, led by the new University of Minnesota Institute on the Environment has already begun to "develop a plan for Minnesota's resources that is based on sound science, through analysis and public outreach, and that can be effectively implemented."

A full description of the funded projects and of the upcoming request for proposals process can be found at <<http://www.commissions.leg.state.mn.us/lcmr/>>.

### ***Off-Highway Vehicle Law Reforms***<sup>75</sup>

Previous years at the Minnesota Capitol have been wrought with struggles between all-terrain vehicle enthusiasts and conservation organizations. This year was no different.

Three pro-environment bills specifically relating to off road vehicles were introduced during the 2007 legislative session:

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<sup>75</sup> Organizations that contributed to this publication that advocated for off-highway vehicle reforms included Audubon Minnesota, Izaak Walton League, League of Women Voters, Minnesota Center for Environmental Advocacy, the Sierra Club.

- S.F. 1269, carried by Senator John Marty (DFL – Roseville), and H.F.1390, carried by Representative Larry Howes (R – Walker), that would have eliminated “managed trails” from the DNR’s designation process.
- S.F.1270, carried by Senator John Marty, and H.F.1389, carried by Representative Paul Thissen (DFL – Minneapolis), that would have created a new type of state forest classification, called “traditional areas” that would have been non-motorized and traditional in terms of hunting and trapping practices.
- S.F. 1094, carried by Senator Mary Olson (DFL – Bemidji), and H.F. 1127, carried by Representative Frank Moe (DFL – Bemidji) that would have stopped 4x4 truck trail planning and development statewide in all state forests.

A coalition of environmental and conservation organizations advocated in support of these proposals. Additionally, Senator Satveer Chaudhary (DFL – Fridley) introduced S.F. 1312, his omnibus environment policy bill,<sup>76</sup> which contained a concept that would have limited Off-Highway Vehicle use to trails that had been noted on a map and designated for that purpose by the Department of Natural Resources.<sup>77</sup> This proposal represented an attempt to address illegal riding activity occurring in the state as a result of the “North of Highway 2” law passed in 2005 (see below). Further, a number of ATV policy and funding provisions were forwarded by the Governor and the DNR.

Due to the rolling together of all environmental policy issues in the Senate policy committee and then on the House floor through the merger of three bills, the ATV language and funding options ended up in the omnibus environment and energy finance bill<sup>78</sup>, the omnibus environmental policy bill<sup>79</sup>, and the tax bill<sup>80</sup>. Additionally, the Game and Fish bill<sup>81</sup> was a surprise addition when a delete-all amendment on the floor resulted in troubling ATV provisions, including an expanded Willard Munger Trail System<sup>82</sup>.

The legislature passed a ban of 4x4 truck trails in state forests in three counties; Hubbard, Crow Wing, and Cass.<sup>83</sup> Beltrami County was originally included

in the House bill, but was removed in conference committee. During the 2006 legislative session, both the House and the Senate passed floor amendments that would have banned off road trucks in all state forests, but the provisions were dropped in conference committee negotiations.<sup>84</sup>

Additionally, Senator Chaudhary’s mapped trails proposal survived inclusion in the omnibus environment and energy finance bill<sup>85</sup>, but the limitation against using off-highway vehicles on designated trails does not extend to forest access routes – an undefined term that likely substantially negates the original intent of the proposal. Other off-highway vehicle provisions that passed included an increase in the registration fee for off highway vehicles from \$30 to \$45 per vehicle for a three-year registration.<sup>86</sup> However, language to change the un-refunded gas tax formula that would have nearly doubled the amount of money going to the dedicated off highway vehicle accounts failed to pass due to the veto of the tax bill.<sup>87</sup> Additionally, money in the off highway vehicle damage account (used to reimburse property owners for damage caused by the illegal use of off-highway vehicles) will be available until the money is expended, rather than expiring on July 1, 2008.<sup>88</sup> The legislature also established an ambassador-type program to promote safe and responsible off highway vehicle activities.<sup>89</sup> These DNR agreements will be with organizations for volunteer services to promote safe and responsible operation.

Finally, the legislature passed changes to the Munger Trail system in six counties.<sup>90</sup> The Munger Trail is currently open to snowmobiling and some ATV use. The new language restates that only the Gateway and the Brown’s Creek Trails are for non-motorized use only. The new provision also provides for an additional section of trail that will include the cities of Proctor, Duluth, and Hermantown in St. Louis County – a segment that has been a source of local opposition for some time.

<sup>76</sup> See S.F. 2096, 4<sup>th</sup> Engrossment, Legislative Session (2007-2008).

<sup>77</sup> *Id.* at Art. 1 § 2.

<sup>78</sup> S.F. 2096, 85<sup>th</sup> Legislative Session (2007-2008); Minn. Laws 2007, Ch. 57.

<sup>79</sup> S.F. 1312, 85<sup>th</sup> Legislative Session (2007-2008).

<sup>80</sup> S.F. 2268, 85<sup>th</sup> Legislative Session (2007-2008).

<sup>81</sup> S.F. 1131, 85<sup>th</sup> Legislative Session (2007-2008); Minn. Laws 2007, Ch. 131.

<sup>82</sup> *Id.* at §15, subd. 14.

<sup>83</sup> Minn. Laws 2007, Ch. 57 § 26.

<sup>84</sup> See *Journal of the Minnesota House*, 108<sup>th</sup> Day (May 17<sup>th</sup>, 2006), p. 7801 (amendment to H.F. 3116); H.F. 3116, 1st Unofficial Engrossment §, 84<sup>th</sup> Legislative Session (2005-2006).

<sup>85</sup> Minn. Laws 2007, Ch. 57, Art. 1 § 24.

<sup>86</sup> Minn. Laws 2007, Ch. 57 § 29.

<sup>87</sup> See Minn. Laws 2007, Ch. 149, Art. 9 § 2, subsequently vetoed.

<sup>88</sup> Minn. Laws 2007, Ch. 57, Art. 1 § 25.

<sup>89</sup> Minn. Laws 2007, Ch. 57, Art. 1 § 27.

<sup>90</sup> S.F. 1131 § 15, subd. 4, 85<sup>th</sup> Legislative Session (2007-2008); Minn. Laws 2007, Ch. 131 § 15, subd. 4.

Due to additional legislative inaction, the so called “North of Highway 2” provision remains the law in Minnesota.<sup>91</sup> Under this law adopted in 2005, DNR continues to use a dual standard for trail designation. North of Highway 2, which contains 74% of Minnesota’s state forests, all trails are open to off-highway vehicles unless they are specifically posted closed. A different, tighter and more restrictive standard exists for the 26% of state forests located south of Highway 2, where trails are closed unless they are specifically posted as being open for off-highway vehicle use. Environmental groups were unable to reverse or soften the 2005 law change during the 2007 legislative session.

### ***Wild Rice Preservation***<sup>92</sup>

Natural lake and river grown wild rice received increased protection this session from being irreversibly contaminated by experimental engineered genes. An inherent part of Ojibwe identity, Wild Rice is known to be a gift from the creator and the Ojibwe respect it as such. Today, Wild Rice continues, as it has in the past, to be a centerpiece of cultural, spiritual, and nutritional sustenance for Ojibwe communities. The legislation to protect wild rice strains was carried originally as S.F. 2103 by Senator Satveer Chaudhary (DFL – Fridley) and as H.F. 1663 by Representative Frank Moe (DFL – Bemidji), but was ultimately passed as part of S.F. 2096,<sup>93</sup> the omnibus environmental and energy finance bill.

Genetic engineering is the manipulating of genetic material and includes isolating, copying, and multiplying genes, recombining genes or DNA from different species, and transferring genes from one species to another, bypassing the reproductive process.

By mapping the genome of Wild Rice, the University of Minnesota has completed the preliminary genetic research which sets the stage for the patenting and genetic engineering of Wild Rice. During the legislative debate, the University stated its position that they are not actively engaged in the genetic engineering of Wild Rice, but reserved the right to conduct open air test plots of genetically engineered Wild Rice. Such tests are believed to be uncontrollable as was demonstrated by recent

multiple contamination events that struck the white rice industry as well as the escape of an experimental genetically engineered bentgrass into the wild.

S.F. 2103 and H.F. 1663 proposed amending state law to require an environmental impact statement be conducted in advance of open-air tests of genetically engineered Wild Rice. The bills also proposed requiring notification of federally recognized tribes in Minnesota and other stakeholders if a permit for such tests is submitted elsewhere in the country and puts the matter under the authority of the Environmental Quality Board. Finally, the bills proposed a study of the potential environmental threats to natural wild rice stands including development pressure, water levels, pollution, invasive species, and genetically engineered strains.

The bills distinguished between cultivated wild rice, an agricultural product, and natural wild rice which is defined as a natural resource. As a result, the House file did not receive attention from the House agriculture committee. The bill was passed on the House floor without amendment, 88-44, and was ultimately included as part of S.F. 2096<sup>94</sup>, the omnibus environment and energy finance bill. Its passage marks the first time a state has voted to protect a native crop or species from genetic changes.

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<sup>91</sup> Minn. Laws 2003, chapter 128, article 1, section 167, subdivision 1, as amended by Minn. Laws 2005, First Special Session chapter 1, article 2, section 152.

<sup>92</sup> Organizations that contributed to this publication that advocated for wild rice preservation policies included the White Earth Land Recovery Project.

<sup>93</sup> Minn. Laws 2007, Ch. 57, Art. 1 §§ 140-142, 163.

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<sup>94</sup> Minn. Laws 2007, Ch. 57, Art. 1 §§ 140-142, 163.

## PERSISTENT CHEMICALS AND PESTICIDES

### *Environmental Health Tracking and Biomonitoring*<sup>95</sup>

In a move that will have long-lasting benefits for public health, the 2007 legislature provided \$2 million in funding for a new Environmental Health Tracking program, and required the Department of Health to implement a pilot Biomonitoring program that will test citizen volunteers for PFCs, arsenic, mercury, and additional toxins. The bill, originally carried as S.F. 1074 by Senator Katie Sieben (DFL – Newport) and as H.F. 1621 by Representative Julie Bunn (DFL – Lake Elmo), was incorporated as part of S.F. 2096<sup>96</sup>, the omnibus environment and energy finance bill.

Minnesota joins over 20 states that already include environmental health tracking among their public health duties. The central objective is to improve knowledge on population rates of chronic diseases and on exposures to environmental toxins.

Environmental health tracking collects, integrates, and analyzes data on human exposure to environmental pollutants and on diseases caused or aggravated by those chemicals. Biomonitoring assesses exposure by measuring levels of chemicals in volunteer participants' body fluids and tissues. Results from this laboratory testing can be compared to data on levels of pollutants in the environment, or to rates of disease, to determine whether a significant correlation exists between those data and the level of chemicals found in the body.

Environmental health tracking is a fundamental component of disease prevention. With this core public health principle in mind, a legislative proposal was brought forward that would establish an environmental health tracking and biomonitoring system in Minnesota. In 2006, the state Senate passed a bill containing a bio-monitoring program, at the urging of then-Senator Becky Lourey, but the program was not included in the final bill.

Environmental pollutants have been shown to cause or worsen conditions such as cancer, asthma, miscarriages, neurologic diseases, developmental disorders, and others. However, the state does not have good information on how many cases are related to the environment, which makes it exceedingly difficult to protect Minnesotans from these preventable illnesses.

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<sup>95</sup> Organizations that contributed to this publication that advocated for environmental health tracking and biomonitoring policies included the Minnesota Center for Environmental Advocacy.

<sup>96</sup> Minn. Laws 2007, Ch. 57, Art. 1 §§ 143-46.

The objectives of the Health Tracking & Biomonitoring program are to: (1) characterize relationships between hazardous chemicals and disease; (2) provide the public and policymakers with solid information on environmental pollutants and the health risks they cause; and, (3) establish a scientific basis for disease prevention strategies and regulatory efforts targeted toward the true public health risks the tracking system identifies.

In recent years many other states have begun assessing environmental exposures and tracking the rates of diseases that may be related to those exposures. Minnesota has fallen behind in this essential area of public health practice. In passing this legislation, Minnesota takes a significant step to protect the health of its people and begin catching up with dozens of other states already working toward establishing a nationwide health tracking network.

Concern about the bill came from the American Chemistry Council, agricultural chemical interests, the Minnesota Department of Agriculture, the Minnesota Chamber of Commerce, and 3M. At various points, amendments supported by industry representatives were adopted with the agreement of the authors.

One of the most significant first steps to implement the legislation will be the appointment of a scientific Advisory Panel to oversee the health tracking and biomonitoring work. A report on the biomonitoring pilot project is due in January 2008.

### *Mercury Products Phase Out*<sup>97</sup>

Although Minnesota took a big step in 2006 in regulating mercury emissions from coal plants<sup>98</sup>, mercury is still used unnecessarily in many health care and consumer products. Mercury, which pollutes all of Minnesota's water bodies, is a neurotoxin and can build up in fish. This new law<sup>99</sup> phases out products containing mercury for which there are safer alternatives, including: measuring devices (thermostats, blood pressure devices, switches and other devices), some over the counter pharmaceuticals, and some cosmetics. The bill also expands labeling, recycling, and retail notification requirements for fluorescent and high-intensity discharge lamps, for which there are no mercury-free alternatives. Under this new law,

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<sup>97</sup> Organizations that contributed to this publication that advocated for a mercury products phase out included the Institute for Agriculture and Trade Policy.

<sup>98</sup> Mercury Emissions Reduction Act of 2006, Minn. Laws 2006, Ch. 201.

<sup>99</sup> Minn. Laws 2007, Ch. 109.

manufacturers, retailers, and consumers all have responsibility for ensuring fluorescent lamps containing mercury are properly labeled, handled and recycled. The bill also bans the use of mercury in K-12 schools. The legislation was carried as S.F. 1085 by Senator John Marty (DFL – Roseville) and H.F. 1316 by Representative Melissa Hortman (DFL – Brooklyn Park).

While a couple of provisions were lost along the way, the bill garnered interesting and productive dialog on related issues including the use of mercury in vaccines, dental amalgams, and the problem of mercury releases from crematoria in Minnesota. Interestingly, there was no discussion in any hearing or floor debate of whether mercury in the environment or products was a problem. That reality seems to have been accepted, and Minnesota's legislators understand their responsibility to protect public health from the toxic metal.

Most of the opposition to the bill came from national lamp manufacturers that didn't want to meet a different standard for labeling in Minnesota, though they were ultimately willing to negotiate the language to reach a compromise. Unwilling to negotiate on the crematory provision were three metro-based funeral homes. Additionally, some of the major retailers opposed the bill through the Minnesota Retailers Association, arguing they didn't want to put notification of the mercury content in fluorescent lamps in their stores.

After much negotiation both inside and outside of committee hearings, the bill was passed with very little opposition to the final version. The Senate version of the bill, S.F. 1085, was amended in conference committee and passed both houses by an overwhelming majority: 59-2 in the Senate, and 109-23 in the House of Representatives. Governor Pawlenty signed the bill into law on May 21st, 2007.

### ***Phase out of Products Containing Brominated Flame Retardants<sup>100</sup>***

Polybrominated diphenyl ethers (PBDEs) are toxic persistent chemicals used in brominated flame retardants (BFRs) in a wide array of consumer products. PBDEs accumulate in the environment and in fish, human blood, and breast milk. Two of the three common commercial flame retardants, penta- and octa-BDE, are already being phased out by the industry due to their persistence and toxicity in the environment. However, a third form, deca-BDE, is

<sup>100</sup> Organizations that contributed to this publication that advocated for a phase out of brominated flame retardant products included the Institute for Agriculture and Trade Policy.

still used in electronic enclosures, home textiles, and mattresses for commercial use. Animal studies show that deca-BDE is a developmental toxin. Safer alternatives to deca-BDE include product redesign and safer chemical flame retardants. Although many electronic manufacturers are already phasing out deca-BDE, regulation is necessary to prevent future exposures, especially for young children who carry the highest body burdens of these chemicals.

Legislation to phase out the use of products containing PBDEs was originally introduced as S.F. 651 by Senator Sandra Pappas (DFL – St. Paul) and H.F. 934 by Representative Karen Clark (DFL – Minneapolis), and ultimately passed as a component of S.F. 2096<sup>101</sup>, the omnibus environment and energy finance bill. As originally introduced, the bills called for the phase out of penta-, octa- and deca-BDE in electronic enclosures, mattresses, and textiles designed for home use.

Bromine Science Environmental Forum (BSEF), which is made up of the four companies that manufacture deca-BDE testified in opposition to the bill. While the accuracy of their science-based claims was disputed by environmental groups, the claims created enough doubt in the minds of some legislators, and a compromised bill was ultimately passed. Amended language from the original bill was incorporated into the omnibus environment and energy finance bill, which now bans penta- and octa-BDE, requires PBDE-free state purchasing, and calls for the Minnesota Pollution Control Agency to conduct a study of deca-BDE. The study must consider current uses, health and environmental risks, and available alternatives to the deca-BDE flame retardant. The report is due in January 2008.

Other states that have banned, or are considering banning, deca-BDE required state agency reports first. As of this spring, Washington and Maine have both passed a deca-BDE phase out.

### ***Atrazine Policies<sup>102</sup>***

Atrazine is a commonly used, harmful pesticide that has been linked to reproductive problems, cancer, and endocrine disruption in humans. Because atrazine takes several months to break down in the soil, it poses a high risk of leakage into rivers, lakes, and private wells. Currently, the federal limit of atrazine in our drinking water is three parts per billion. Atrazine regulations for private wells in

<sup>101</sup> Minn. Laws 2007, Ch. 57, Art. 1 §§ 149-52.

<sup>102</sup> Organizations that contributed to this publication that advocated for new atrazine policies included Clean Water Action and the Land Stewardship Project.

Minnesota currently allow six times that amount. Based on the scientific research that links atrazine to the above-mentioned health issues, a drinking water standard for atrazine for private wells of 20 parts per billion is unacceptable.

Representative Ken Tschumper (DFL-La Crescent) introduced a bill that imposed strict standards on atrazine, reduced the allowable concentration in drinking water, and required environmental reviews for farms that use the chemical.<sup>103</sup> The bill was weakened and ultimately rolled into the House omnibus health and human services finance bill.<sup>104</sup> Tschumper attempted to amend the bill on the House floor to add in many of the original provisions, and from there, the bill took an interesting turn.

Syngenta, the Swiss-based multinational corporation that makes atrazine, as well as other agribusiness groups, opposed Representative Tschumper's amendment and the focus it placed on atrazine. As a result of their opposition, the House compromise was something far more reaching than even Representative Tschumper intended: an expansive update on drinking water standards for dozens of chemicals, including atrazine. Representative Tschumper's amendment, which passed on a voice vote on the House Floor on April 20, 2007, the same day that the bill passed the House Chamber, would have required the Minnesota Department of Health to start a formal rule making process for updating drinking water standards for as many as 90 "commonly detected contaminants" by March 1, 2008.<sup>105</sup>

The Senate's version differed, and a compromise was negotiated in conference committee that would require the Commissioner of the Department of Health to adopt rules relating to health limits for the ten most commonly detected contaminants.<sup>106</sup> Both the House and Senate adopted the conference report, but the entire omnibus bill was ultimately vetoed by Governor Pawlenty on May 8, 2007.

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<sup>103</sup> H.F. 1986, Art. 10, § 50, 85th Legislative Session (2007-2008).

<sup>104</sup> See S.F. 2171, 3<sup>rd</sup> Unofficial Engrossment, 85th Legislative Session (2007-2008).

<sup>105</sup> *Journal of the Minnesota House*, 52<sup>nd</sup> Day (April 20<sup>th</sup>, 2007), p. 4139-40.

<sup>106</sup> See S.F. 2171, Conference Committee Report, 85th Legislative Session (2007-2008).

## TRANSPORTATION CHOICES

### *Transportation Spending Bill*<sup>107</sup>

During the 2007 legislative session, transit advocates hoped to secure funding for the Transportation Choices 2020 initiative, which would have allowed the metropolitan region to double bus services and add eight new transitways (i.e. light rail, commuter rail or bus rapid transit) by 2020 through the imposition of a ½ cent regional sales tax and redistribution of the Motor Vehicle Sales Tax. The Transportation Choices proposal was originally introduced as S.F. 1032, carried by Senator Katie Sieben (DFL – Newport), and as H.F. 1112, carried by Representative Shelley Madore (DFL – Apple Valley).

A version of the Transportation Choices 2020 proposal ultimately appeared in the session's omnibus transportation finance bill, S.F. 798, carried by Senator Steve Murphy (DFL – Red Wing), and H.F. 946, carried by Representative Bernie Lieder (DFL – Crookston). The transportation funding bill would have enabled huge progress in expanding transit options that are more energy-efficient and less polluting than driving.

The bill included 50% to 75% of a ½ cent regional sales tax to go to metro area transit and up to 5% to go to bicycle, pedestrian or transit-oriented-development projects. It also directed motor vehicle sales tax (MVST) revenue from leased vehicles to both metro area transit and greater Minnesota transit. Additionally, the bill contained a 5 cent gas tax increase and imposed other new revenue sources for roads and highways.

The bill originally passed the House and Senate with the 2/3 majorities required to override the Governor's threatened veto. In the House, the bill passed 90-43, and in the Senate it passed 47-17. Additionally, at the time of passage, all seven metro counties indicated support for the ½ cent sales tax, 72% of metro residents supported the sales tax, and several legislators advocated for funding for additional rail studies in key highway corridors including I-94, I-394 and I-494. Despite this result, the Governor vetoed the bill on May 15, 2007. An attempt to override the Governor's veto of the transportation funding occurred during the last 20 minutes of the legislative session, but came up a few votes short – the final vote was 83-50, but at one time

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<sup>107</sup> Organizations that contributed to this publication that advocated for dedicated transit funding included the Minnesota Center for Environmental Advocacy, Sierra Club and Transit for Livable Communities.

the voting board showed 89 yeas prior to being closed.

The 2007 legislature did pass a “lights on” transportation funding bill that provides base funding for metropolitan transit and the Minnesota Department of Transportation<sup>108</sup>. While the state will not be able to expand transit options, sufficient funding (\$20 million in FY 2008 to metro area transit) was provided to prevent any service cuts or fare increases.

### *2007 Bonding Bill – Transit Components*<sup>109</sup>

Relatively early in the legislative session, Governor Pawlenty vetoed the 2007 Capital Investments (bonding) Bill, S.F. 2157, carried by Senator Keith Langseth (DFL – Glyndon) and H.F. 886, carried by Representative Alice Hausman (DFL – St. Paul). This bill included substantial authorizations for bonding for transitway projects including: Central Corridor LRT (\$40 million), Union Depot (\$3 million), high speed rail between St. Paul and Chicago (\$2 million), Rush Line commuter rail, Red Rock commuter rail, and Southwest LRT(\$1/2 million each), and Northstar commuter rail extension, Northshore Express passenger rail and a regional study of additional transitway corridors (\$1/4 million each).

### *Green Fleet School Buses*<sup>110</sup>

The Minnesota legislature approved funding in SF 2096, the omnibus environment and energy finance bill<sup>111</sup>, for a \$2.4 million grant for diesel emission reduction efforts, including Project Green Fleet (PGF), an effort to reduce pollution in Minnesota's air and protect children's health by installing pollution-control equipment on Minnesota school buses. PGF is a voluntary partnership between government, private industry, and the non-profit sector that purchases and installs pollution control equipment at no cost to participating school districts and fleet owners. Retrofit devices are installed on buses to clean or trap diesel exhaust and prevent pollution. As a result of this legislative grant, the Pollution Control Agency will facilitate the

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<sup>108</sup> Minn. Laws 2007, Ch. 143.

<sup>109</sup> Organizations that contributed to this publication that advocated for dedicated transit funding included the Sierra Club and Transit for Livable Communities.

<sup>110</sup> Organizations that contributed to this publication that advocated for funding for Green Fleet school buses include the Minnesota Center for Environmental Advocacy.

<sup>111</sup> Minn. Laws 2007, Ch. 57, Art. 1 § 3, subd. 6.

retrofitting of 4,000 school buses statewide over the next four years. The investment will allow even greater school district and fleet owner participation and will leverage additional public investments and expanded support from private funders.

## **CONCLUSION**

During the 2007 legislative session, Minnesota legislators began charting an historic course – setting the stage for new investments in Minnesota’s environment, now, and for years to come. But, we can do better and there is still much left to do. Minnesota’s environmental and conservation groups, with the support of Minnesotans from all walks of life, will continue to work with state law makers to protect Minnesota’s environment and great outdoors for generations to come.