

REGULATORY CAPTURE:

Government of the ~~people,~~
by the ~~people,~~
and for the ~~people~~ **SPECIAL★
INTERESTS**

Our Democracy is in Peril

Don Arnosti – Environmental Organizer

My Experience: 35 years of environmental organizing, leadership and advocacy in Minnesota

*Executive Director, Policy Director,
Conservation Director, Lobbyist,
Organizer & Board Member*

- Audubon Minnesota: 14 years
- Izaak Walton League: 5 years
- Institute for Agriculture & Trade Policy: 7 years
- Minnesota Environmental Partnership
- Project Environment Foundation (MCEA)
- Clean Water Action
- Water Legacy, more...



Outline

- I. Thesis
- II. Definitions
- III. Examples
- IV. Source of Problem
- V. Restoring Democracy
 - i. Public Actions
 - ii. Personal Actions



People or Polluters?

Evidence shows that Minnesota regulatory agencies often serve private corporate interests, rather than applying and enforcing the law in the public interest

I. Thesis: Regulatory Capture is the current state of Minnesota state governance, affecting at a minimum: MPCA, DNR, Departments of Agriculture and Health.

Two large industries cause many (not all) of the problems in Minnesota; **metallic mineral mining** and **corporate agriculture**. Common to all “capture” situations is corporate power overriding the greater public good.



II. Definitions



House Agricultural Chair Rod Hamilton arguing for the creation of a publicly-funded, industry-dominated “technology transfer board.” 2015

Regulatory capture...

Regulatory agencies may come to be dominated by the industries or interests they are charged with regulating. The result is that an agency, charged with acting in the public interest, instead acts in ways that benefit the industry it is supposed to be regulating. (Investopedia)

Public Interest...

Anything affecting the rights, health, or finances of the public at large.

(Legal-dictionary.thefreedictionary.com)



Regulatory Capture versus Outright Corruption

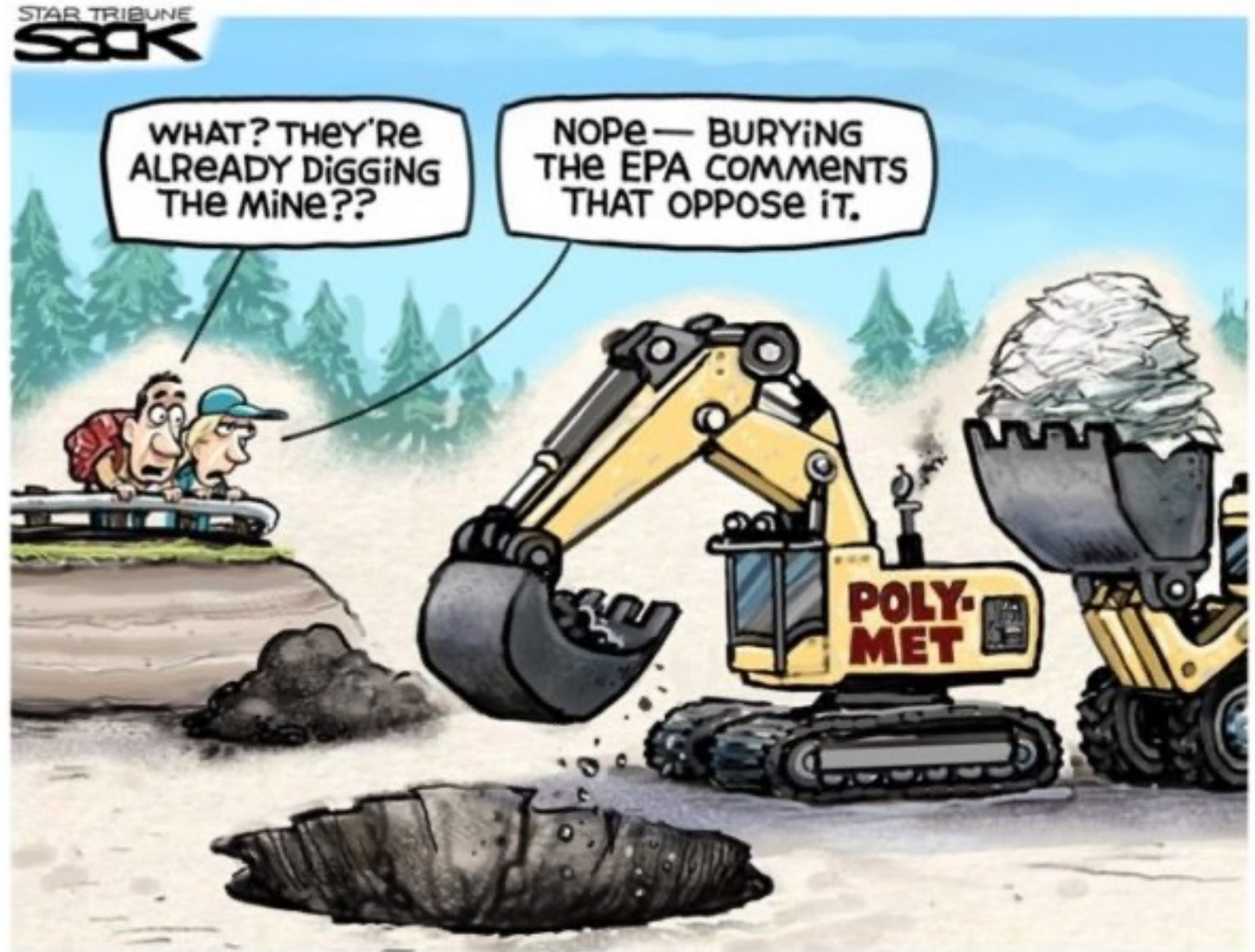
- Outright Corruption where an individual is directly paid, offered a lucrative future job or other such direct “quid-pro-quo” for favorable regulatory decisions.
- Hard to prove a “quid pro quo.”

III. Examples

All Our Children are Above Average...

We like to believe in Lake Wobegon...

- “Fortunately for all Minnesotans.. a comprehensive system of statutes, rules, standards and enforcement authority [is] already in place to address all of the concerns.”
- - Minnesota Mining Lobbyist Frank Ongaro, *Duluth News Tribune* 2013





What Was the EPA worried about?

- In a nutshell: a water pollution permit with NO LIMITS to pollution, just monitoring and reporting. EPA said it was unenforceable.
- MPCA colluded to hide EPA concerns from the public: revealed by whistle-blowers

So, in 2020, MPCA proposes rule changes to “legalize” limitless water pollution permits.

What would MPCA Rules Do?

- **Remove** numeric (class 3 and 4) standards limiting pollutants from mining and other polluters.
- **Weaken** Minnesota water quality standards that control chloride, nitrate and sulfate pollution.
- **Protect** water only for large users, privatizing water.

Easier for MPCA, Cheaper for Polluters.

- “The proposed rule will likely **reduce workload** . . . surrounding these water quality standards.” (MPCA SONAR)
- “These changes will likely result in **fewer and less restrictive limits in permits, thereby decreasing the cost of complying** . . . compared to the current rules.” (MPCA SONAR)
- Public is overwhelmingly opposed; mining industry and small cities in favor...



Timber quotas replace wildlife habitat goals on DNR Wildlife Management Areas

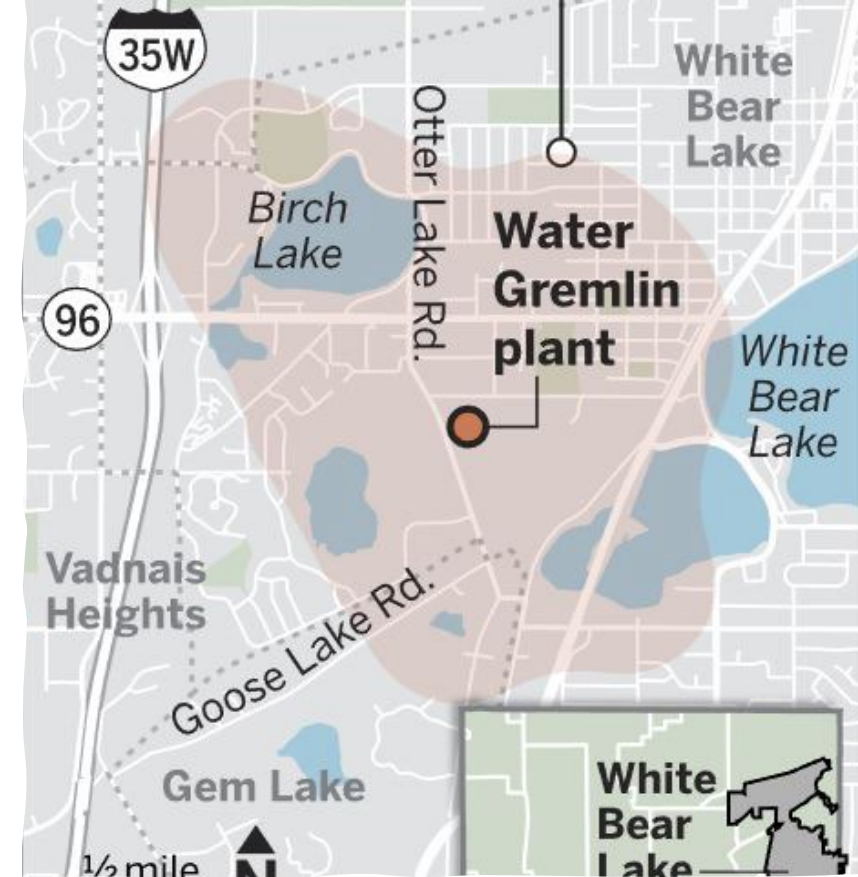
- Twenty-eight DNR employees risked their careers to sign a 2019 letter: "...do not believe it is scientifically honest or transparent to say that the 10-year timber plan is 'beneficial to wildlife.'"
- Wildlife that depends on older forests are at greatest risk of losing their habitats.
- Violation of state law requiring wildlife management areas to be managed for... wildlife, not timber.
- Multiple area wildlife managers say agency leadership is bowing to the timber industry. (MPR 8/15/19)



Water Gremlin: Through 17 Years of overlimit TCE and Lead releases – no MPCA enforcement, until local community protests and sues

* Minnesota Pollution Control Agency has only 9 inspectors for 3500 industrial dischargers. Coincidence?

* Local residents had to sue the MPCA to get public data on these toxic releases in their community.



“None of us would swim in the Cedar River” - Larry Dolphin

Izaak Walton League Citizen e-coli sampling program on the Cedar River.

Let us count the agencies looking away...
(Health, DNR, PCA, Ag, BWSR, county)

- 70% of over 500 samples exceeded health limits.
- DNA sampling indicated hog, human and cattle sources.
- Mower county working on a “10-year plan” to address human sources...
- Voluntary BMP’s are (not) an answer for livestock sources
- Safest swimming is below Austin sewage discharge! (River is diluted by treated sewage outfall.)



Cedar River Water Trail – promoted for recreation...

2016 Whitewater River Fish Kill Study Conclusion

Minnesota's Departments of Health, Natural Resources and PCA were **“unable to pinpoint the causes of the fish kill.”**



“If they can’t find the cause, then it’s the general conditions,” said Jeff Broberg. “That’s what killed the fish: the normal farming practices.”

MPCA Derails St. Louis River Mercury Cleanup Study (TMDL)

Unsafe: 1 in 10 infants in Lake Superior Region are born with unsafe mercury blood levels.

St. Louis River: impaired for mercury in water and fish due to sulfate and mercury discharge.

2006: MPCA promises to limit sulfate to reduce methylmercury.

2011: EPA provides MPCA with \$1 million for TMDL study to reduce mercury in St. Louis River.

Jan. 2013: DNR tells MPCA its study with mining \$\$ may conflict.

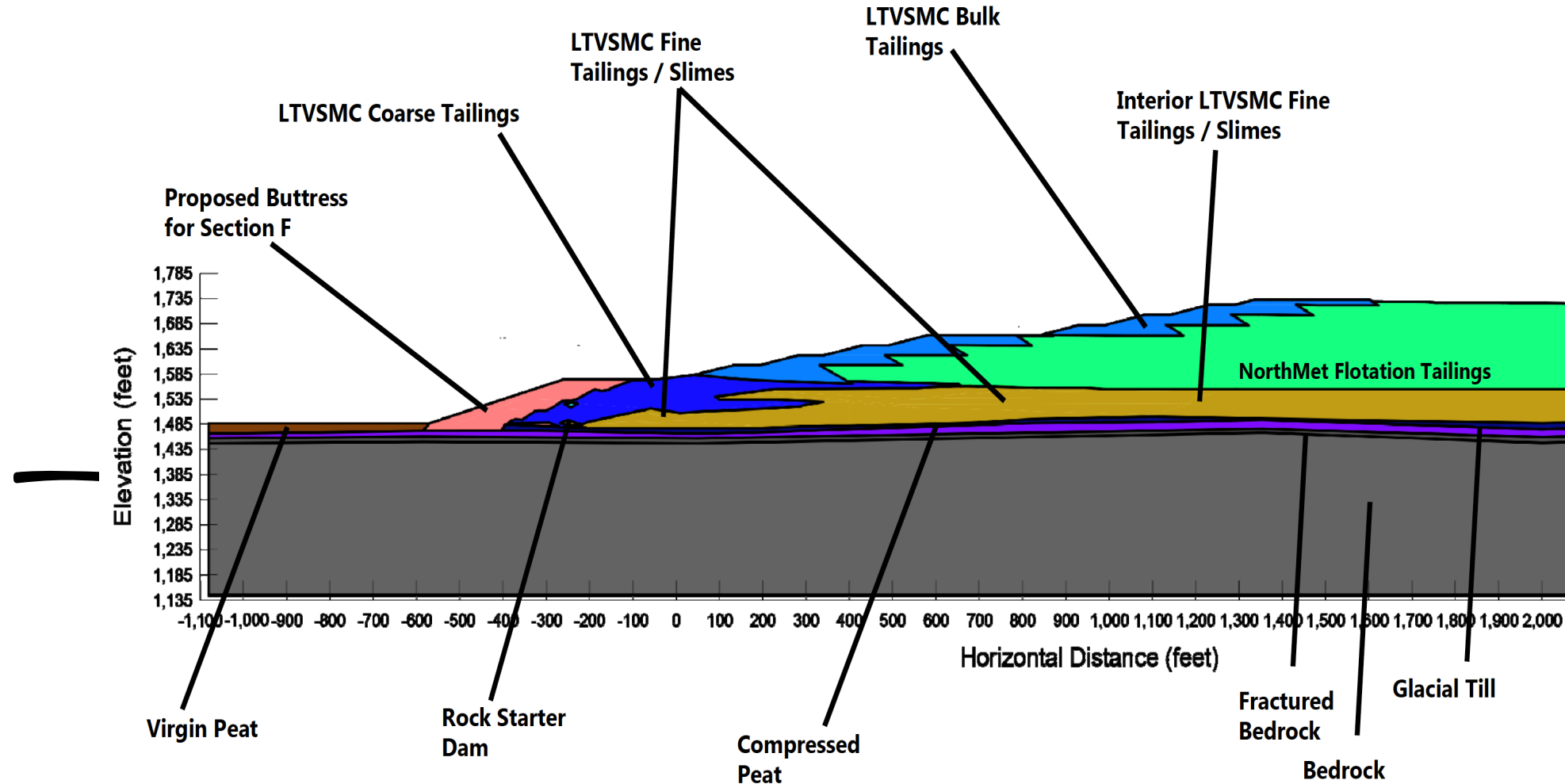
Feb. 2013: MPCA derails St. Louis River study previously approved.



Groups representing more than 30,000 doctors and nurses called for a Health Impact Assessment before PolyMet permits were issued. These requests were denied.



DNR Consultant: **“The FTB [tailings] plan gives me severe indigestion because a lake on top of a pile of sand is inherently unstable, and irresponsible.”**





Park Rapids municipal water polluted with nitrates; replaced with deeper well; water rates rise in town. 2014

- RD Offut farms pay \$140/year for water/well
- Straight River designated trout stream – polluted
- Private wells unsafe to drink – “not a public concern”
- DNR has yet to do “cumulative impacts” study – seeking public funding...



Of the 50k acres of potato fields in Minnesota, 98% are sprayed with harmful fungicides that drift to neighboring communities.

Take action >> <http://bit.ly/ToxicTaters>
Tell McDonald's to buy toxic-free taters!

IV. Source of the Problem: political pressure



- People's House? Or...
- Special Interest Home?
- Covid-19 makes it worse
- Citizen's United,
“Money=Speech” hurt, but
the Capture begins when
public attention drifts...

The legislature has created conflicts of interest:

Mission of the Department of Health: “Protect, maintain and improve the health of all Minnesotans.”

- **Department of Agriculture** promotes agriculture and regulates fertilizers and pesticides...even in cities!
- **Department of Health** does not pursue their mission when health concerns relate to mining (mercury) or agriculture (e-coli, nitrates.)
- **Department of Natural Resources** both promotes and regulates mining and forestry.
- Wildlife, natural resources and recreation are promoted – but not protected.





Water: Regulation is divided among many agencies... designed to avoid responsibility?

- MPCA – polluting discharges
- DNR – water “appropriation”
- DNR – fisheries and aquatic life
- Health – drinking water standards
- BWSR – watershed planning, most wetlands
- SWCDs/WMDs – local water management
- Drainage Authorities – public drainage systems
- No One – private tile and private drainage systems

Minnesota Agency leadership through multiple administrations of ALL political parties have lost sight of the public interest.



Minnesota Legislature pressures MPCA:

- Eliminated Citizen Board after EIS order for large dairy barn
- Required to speed through permitting regardless of complexity
- Must analyze costs of regulations to polluters – well beyond federal requirements
- Illegally ordered NOT to apply protective federal water quality standard (sulfates)
- Appropriators regularly threaten/withhold agency budget. (Lead tackle education grant, Clean Cars rules*.)

The resulting weak permits the MPCA issues actually provide a legal liability shield for polluters. (eg PolyMet water quality permit – no numeric limits. “Pollute and report.”)

Over the last decade, while the Attorney General's budget and staffing have been slashed...

More than \$7 million in public funds have been spent on private attorneys from a firm associated with the mining industry to advise DNR and MPCA on PolyMet permitting and litigation.



"The attorney general's office is staffed with public servants with careers worth of experience representing our state agencies and who understand that the ultimate client is the people of Minnesota. Holland & Hart represents mining companies as they buy and sell each other and as they seek to acquire regulatory approvals for their projects."

– Thom Haines, Assistant Carver County Attorney

MinnPost Jan 24, 2020

The 2021 Legislature continues to pressure state agencies on behalf of corporate interests...

- SF 566 - weakens MPCA permits for manure management for the largest factory farms.
- SF 622 - converts permission to use public groundwater into a property right. Makes proving well interference almost impossible.
- SF 639 - blocks DNR & MPCA from implementing updated science in permit renewals, much more.



- "Senate GOP leader says MPCA commissioner could face removal over proposed clean-car rule."

Minnesota Reformer, Jan 22, 2021

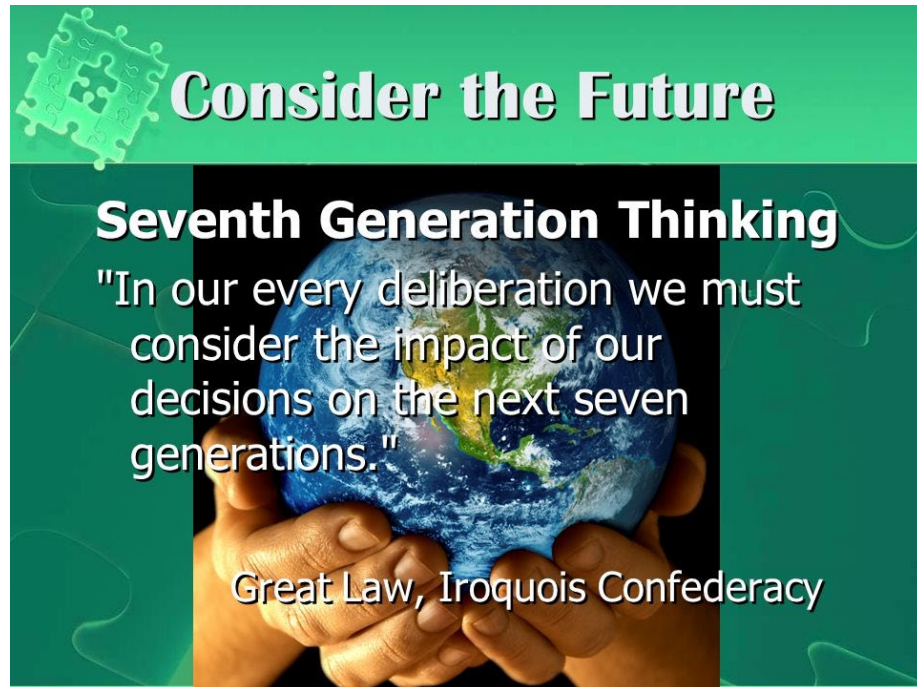
- Senate removed Commissioners Kelley (Commerce) and Leppink (Labor and Industry) during 2020
- Senate holding out on confirmation of DNR, MPCA Commissioners more than a year = leverage.

The image features a large American flag on the left side, waving in the wind. On the right side, the dome of the United States Capitol building is visible, set against a bright, hazy sky. The text "U. Restoring Democracy" is overlaid in the center, written in a white, cursive-style font.

U. Restoring Democracy

V. Restoring Democracy

Respecting the Rights and Interests of Others



i. Public Actions: putting the public FIRST

- Enforce existing pollution laws equally for all industries: protect human health and the environment: provide funding for more agency staff to do so.
- Reorganize MPCA as a "pollution prevention agency" with an empowered Citizen Board
- Separate mineral and timber promotion duties from DNR
- Separate pesticide regulation responsibilities from the Department of Agriculture
- Empower Department of Health to pursue its mission
- Simplify water regulation to provide clear accountability
 - reform drainage entitlement.
- Pass SF 65 - limiting to 60 days Senate consent power (up or down)
- Override Citizens United; \$\$ are not Speech, Corporations are not People!

Let's Look at that Clean Car Rule

- Existing authority to join MN with a dozen other states to require higher “fleet efficiency” to reduce air pollution = more electric vehicle options for Minnesotans. (Governor Walz public election pledge)

versus

- Koch Brother\$ influence on Republican party. Koch Brothers sell oil, not electricity...



Decades, Polluters Knew I
nicals Were Dangerous Bu
Risks From Public

1950

3M mice study reveals that PFAS builds up in blood.

[Download Document](#)

1956

University study finds that PFAS binds to proteins in hu



Powerful Corporations Can Still Choose to Act in the Public Interest...

As the evidence accumulated over decades, 3M decided to settle PFAS lawsuits and provided funding to communities to address polluted waters.

Public Image is important!



V. Restoring Democracy

ii. Personal Actions: join with others

- INFORM yourself about “Regulatory Capture” – it riddles all levels and all agencies in our government: local, state, federal.
- EDUCATE your friends and neighbors so they see the problem, too.
- Contact elected officials. Name the problem. Tell them you want Government that works in the Public Interest!
- Donate and get involved in good government groups like the League of Women Voters.



Democracy: After 245 years, still worth it!