



Minnesota Pollution Control Agency

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May 23, 2012

TO: INTERESTED PARTIES

RE: 3M Hazardous Waste Incinerator

On May 22, 2012, the Minnesota Pollution Control Agency Citizens' Board voted to approve the Findings of Fact, Conclusions of Law, and Order to deny the petition requesting the preparation of an Environmental Assessment Worksheet (EAW) on the 3M Hazardous Waste Incinerator, Cottage Grove, Washington County, Minnesota. This decision completes the process for the consideration of a Petition for an EAW under the revised Minnesota Environmental Quality Board Rules, Minn. R. ch. 4410. Final governmental actions to grant a permit or approval for the project may now be made.

These documents can be reviewed at the following locations: the MPCA offices in St. Paul; and the Minneapolis Public Library at 300 Nicollet Mall, Minneapolis. The document can be viewed on our MPCA website at <http://www.pca.state.mn.us/news/eaw/index.html>. Requests for copies of these documents may be made by contacting the St. Paul office at 651-757-2101.

Sincerely,

A handwritten signature in black ink, appearing to read "John Linc Stine".

John Linc Stine
Commissioner

JLS:mbo

**STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY**

**IN THE MATTER OF THE DECISION ON THE
PETITION TO PREPARE AN ENVIRONMENTAL ASSESSMENT
WORKSHEET FOR THE
3M HAZARDOUS WASTE INCINERATOR FACILITY
COTTAGE GROVE
WASHINGTON COUNTY, MINNESOTA**

**FINDINGS OF FACT
CONCLUSIONS OF LAW
AND ORDER**

FINDINGS OF FACT

Pursuant to Minn. R. 4410.1100, the Minnesota Pollution Control Agency (MPCA) received a petition, transmitted through the Minnesota Environmental Quality Board (EQB), requesting the preparation of an Environmental Assessment Worksheet (EAW) on the MPCA's proposal to reissue permits to 3M for the operation of its existing hazardous waste incinerator in Cottage Grove, Washington County, Minnesota, with conditions that would allow 3M to burn some waste that is not generated by 3M. Evidence submitted by the petitioners and 3M and information contained in MPCA files has been reviewed pursuant to Minn. R. 4410.1100 to determine whether the reissuance of the proposed permits should be the subject of environmental review in the form of an EAW. Based on this record, the MPCA makes the following Findings of Fact, Conclusions of Law, and Order.

Description of 3M's Proposal

Facility Description

1. The 3M Cottage Grove Hazardous Waste Incinerator (Facility) is located at 10746 Innovation Road, Cottage Grove, Minnesota. The Facility was constructed in 1971. This Facility is both owned and operated by 3M, which produces a wide variety of products including adhesives, tapes, resins, chemicals, polymeric films and extrusions, abrasive products, and hollow glass bead extenders.
2. The Facility provides treatment (incineration) and storage of hazardous waste generated by 3M's operating divisions throughout North America. The system consists of a rotary kiln and a secondary combustion chamber (SCC).
3. Pollution control at the Facility is achieved with several flue gas treatment devices. The incinerator exhaust gases are saturated and cooled in the quench chamber. Flue gases then pass through a sub-cooling tower and filtering module. Final pollution control is provided by a wet electrostatic precipitator. Flue gases are pulled through the system with an induced draft fan and exhausted through a 165-foot stack to the atmosphere.
4. Also located at this Facility are indoor and outdoor container storage areas, outdoor tank storage areas, a containment building for bulk solids storage, a tanker truck unloading area, outdoor trailer storage, and indoor and outdoor material handling areas. No hazardous waste is disposed at this Facility.

5. Hazardous and other waste is shipped to the Facility via semi-trailers in 55-gallon steel drums, totes, plastic and fiber drums, pails, boxes, bags, portable tanks, and tanker trucks. The types of containerized wastes received include solids, gases in cylinders, pumpable sludges, organic liquids, and aqueous liquids.
6. The Facility's rotary kiln is 40 feet long, has a shell diameter of 14 feet 9 inches and is designed as a primary combustion chamber. The SCC is 60 feet high and has a shell diameter of 20 feet. The SCC provides additional residence time to combust off-gases of organic wastes. An emergency vent stack is provided at the roof of the SCC.

Permit History

7. The original Hazardous Waste Storage and Treatment Facility Permit (Hazardous Waste Permit) for the Facility was issued in June 1989. The permit was reissued in September 1995. In November 2000, the MPCA issued a major modification to the original Hazardous Waste permit to combine it with the Air Emissions Permit. In June 2005, the MPCA reissued the permits as separate Air Emissions and Hazardous Waste permits. The current applications to reissuance these permits were received in August and December 2009.
8. MPCA staff prepared a draft Hazardous Waste Permit (EPA ID No. MND006172969) and placed it on public notice on March 7, 2012. MPCA staff held a public information meeting for interested parties on April 10, 2012, at the Cottage Grove Middle School.
9. The Facility is currently operating under Air Emissions Permit No. 16300025-001 (Air Emissions Permit). MPCA staff prepared a draft Air Emissions Permit (Permit No. 16300025-002) and placed it on public notice on March 7, 2012. MPCA staff held a public information meeting for interested parties on April 10, 2012, at the Cottage Grove Middle School.

Proposed Changes to Permits

10. 3M has proposed some changes to its operating permits (Air Emissions Permit and Hazardous Waste Permit) for its Facility to allow it to accept high British thermal unit (Btu) waste at its incinerator that is not generated by 3M facilities. In addition, the permits would be changed to authorize 3M to incinerate controlled substances from law enforcement agencies. Controlled substances are limited to those chemicals and materials identified as listed controlled substances in 21 CFR Part 1308. Acceptance of the non-3M high Btu waste would reduce the amount of fossil fuel (i.e., natural gas) that 3M currently burns to maintain its incinerator at the required operating temperature.¹

¹ These permits are unrelated to an earlier proposal by the MPCA to re-issue an NPDES/SDS Permit to 3M for its wastewater treatment system. The NPDES/SDS Permit is not a part of this permitting activity.

Air permit changes

11. The proposed Air Emissions Permit will not result in any physical changes at the Facility.
12. The Facility's proposed Air Emissions Permit contains limits on the amount of waste that the Facility is allowed to introduce into its incinerator kiln (page A-23). The proposed permit does not increase any of these limits, but does reduce the Facility's feedrate limits for mercury, lead, cadmium, arsenic, beryllium, chromium, chlorine, pumpable waste, and ash. The proposed permit also imposes a limit on low-volatile metals, where there was none in the Facility's existing Air Emissions Permit.
13. The Facility's proposed Air Emissions Permit also contains air emissions limits (page A-22 and A-23). The proposed permit does not increase any of these limits, but does reduce the Facility's air emission limits for total particulate matter, mercury, lead, cadmium, arsenic, beryllium, chromium, hydrochloric acid, and chlorine gas.
14. The actual emissions from this Facility under the proposed Air Emissions Permit will not differ from the actual emissions from the Facility in the past, when 3M generated more hazardous waste. In recent years, actual air emissions have been lower because 3M has been using natural gas as fuel to compensate for the lower Btu values of its incoming hazardous waste. The MPCA finds that the current lower emissions as a result of increased natural gas usage does not mean that it is appropriate to characterize the emissions that will occur under this permit as a change in actual emissions. The actual emissions expected under the proposed permit will be substantially similar to the emissions under the prior air emissions permit, before the waste volume decreased.
15. The technical support document (TSD) for the Facility's proposed Air Emissions Permit contains a correction to the Facility's limited potential to emit calculation for volatile organic compounds (VOCs). The TSD for the current Air Emissions Permit incorrectly lists the Facility's VOCs limited potential to emit at 10 tons/year. The TSD for the draft Air Emissions Permit correctly lists the Facility's limited potential to emit (PTE) at 40 tons/year. A limited PTE is not a permit limit per se, but is instead the maximum calculated emissions that a facility would have if the facility was operated at maximum permitted operating rates, air flows, and emission limits.
16. The Facility's proposed Air Emissions Permit contains a number of requirements that work together to limit emissions. These requirements include waste feedrate limits for various types of waste managed at the Facility, air flow limits, minimum temperature requirements, air pollutant emission limits (e.g. dioxins/furans, mercury, semi-volatile metals, low-volatile metals, carbon monoxide, hydrocarbons, hydrochloric acid, total particulate matter, sulfur dioxide, nitrogen oxides, VOCs, beryllium, etc.), and the requirement to operate specified air pollution control equipment, as well as other operating requirements.
17. 3M will be subject to a permit condition that will limit the Facility to processing a maximum of 400,000 Million Btu (MM Btu) per year of non-3M waste to limit traffic from non-3M waste. Controlled substances will not be subject to a processing limit, but the volume of controlled substances burned is expected to be less than 1/10th of 1 percent of the Facility's total waste, as indicated in the Facility's permit application.

Hazardous Waste Permit Changes

18. The proposed Hazardous Waste Permit will not result in a physical modification to the Facility.
19. The Facility's Hazardous Waste Permit governs the types of waste 3M can accept. 3M's current Hazardous Waste Permit contains restrictions (i.e., acceptable waste codes), which limit the types of waste that the Facility can accept and process (contained in Appendix II of the permit). In the proposed permit, the MPCA will further restrict 3M with regard to the types of non-3M waste that can be accepted. If issued, the permit will restrict non-3M waste to the five waste codes associated with high Btu waste (i.e., D001, F001, F002, F003, and F005). Law enforcement waste is restricted to the listed Controlled Substances. 3M will also be limited to processing a maximum of 400,000 MM Btu per year of hazardous wastes from non-3M sources (excluding Controlled Substance waste).

Procedural History

20. On April 9, 2012, the EQB received a petition for the preparation of an EAW on the reissuance of the proposed permits, pursuant to Minn. R. 4410.1100.
21. The EQB determined the MPCA was the responsible governmental unit (RGU). The petition was forwarded to the MPCA on April 16, 2012.
22. On April 17, 2012, the MPCA mailed a letter to the petitioners' representatives and the proposer, informing them that interested parties may request that the MPCA Citizens' Board make the decision on the EAW petition, and that a member of the Citizens' Board had to make such a request within 10 working days after the date of the letter. The MPCA Commissioner decided to have the Citizens' Board to hear the petition.
23. The MPCA finds that the proposed permitting action does not meet the thresholds for a mandatory EAW for any category in Minn. R. 4410.4300 or a mandatory Environmental Impact Statement (EIS) for any category in Minn. R. 4410.4400.

Potential for Significant Environmental Effects and Criteria for EAW Decision

24. In accordance with Minn. R. 4410.1100, subp. 6, the MPCA must grant the petition and order the preparation of an EAW if the evidence presented by the petitioners, proposers, and other persons or information otherwise known to the MPCA demonstrates that because of the nature or location of a proposed project, the project may have the potential for significant environmental effects. The MPCA must deny the petition if the evidence presented fails to demonstrate that the project may have the potential for significant environmental effects.
25. As a preliminary question, the MPCA must find that this permitting action constitutes a "project" for which environmental review applies. Minn. R. 4410.0200, subp. 65 defines "project" to mean "a governmental action, the results of which would cause physical manipulation of the environment,

directly or indirectly. The determination of whether a project requires environmental documents shall be made by reference to the physical activity to be undertaken and not to the governmental process of approving the project."

26. Under this definition, the fact that the MPCA is issuing permits does not automatically mean that the activity being permitted constitutes a project. Rather, the MPCA must look to whether the governmental action will cause physical manipulation of the environment, directly or indirectly. Courts have indicated that a change in the "nature of the use" can be a project. *Minnesotans for Responsible Recreation v. Department of Natural Resources* 651 N.W.2d 533, 540 (Minn. App., 2002.).
27. If the MPCA concludes that the permitting action does cause such physical manipulation of the environment and is, therefore, a "project," then the MPCA must determine if the project is in a mandatory category for environmental review, or if discretionary environmental review of the project is appropriate, or if the project is exempt from environmental review.
28. Minn. R. 4410.4600, subp. 2, Item D provides that a project is exempt from environmental review if the project is substantially completed and environmental review would not influence remaining construction. To the extent that the petition seeks review of the existing incinerator, it is clear that environmental review would not influence its operation.
29. If the governmental action concerns a "project" and if the "project" is not exempt, an EAW should be prepared if "a governmental unit with approval authority over a proposed project determines pursuant to the petition process set forth in part 4410.1100 that, because of the nature or location of a proposed project, the project may have the potential for significant environmental effects." Minn. R. 4410.1000, subp. 3b.
30. As noted above, the MPCA previously concluded that reissuance of permits to this Facility would not result in the triggering of a mandatory category. The MPCA re-affirms that finding.
31. The MPCA finds that the proposed permits that are the subject of the petition do not involve the physical manipulation of the environment for the following reasons. First, these permits involve an incinerator that, in its current form, has been in operation for approximately 12 years and no new construction is involved. The physical Facility is not changing. The air pollution control equipment is not changing. The permitted emissions and feedrate limits included in these proposed permits are not increasing, and in many cases are decreasing (see items 12 and 13 above). The hazardous waste storage is not changing. In short, the MPCA finds that the proposed permits do not result in any change in the "nature of the use" of the facility.
32. The only potentially significant change authorized under these permits is in regard to sources of waste for the incinerator. The MPCA finds that a change in the sources of the waste does not constitute physical manipulation of the environment.
33. Petitioners have stated that actual emissions will change as a result of the permitting action.

34. The MPCA disagrees with the Petitioners that there will be a change in the actual emissions from this Facility. The actual emissions from this Facility under these proposed permits will not differ from the actual emissions from the Facility in the past, when 3M generated more high-Btu hazardous waste and burned it at this Facility. The MPCA finds that the fact that 3M generated fewer air emissions by using more natural gas as fuel in recent years, due to low availability of high-Btu hazardous waste volumes, does not mean that it is appropriate to characterize the actual emissions that will occur under these proposed permits as a change in actual emissions. The MPCA finds that the actual emissions from this Facility will not be changed by the issuance of these permits.
35. To the extent that this is a project subject to environmental review, the MPCA finds that it is exempt under Minn. R. 4410.4600, subp.2, Item D. The MPCA notes that the permits authorize no new construction, such that environmental review could impact the development of the Facility.
36. The petition contends that when the 3M incinerator was replaced with a new system in 2001, environmental review should have been carried out, but 3M successfully convinced the MPCA that it was not necessary.
37. The MPCA finds that it made a determination, in a letter to 3M dated July 2, 1997 (Exhibit 1 of petition), that the proposed kiln replacement was not subject to mandatory environmental review.
38. The MPCA finds that its July 2, 1997, environmental review determination was reasonable and appropriate and that the project proposed at that time was subsequently permitted and implemented.
39. Petitioners allege that the permitting action is a "connected action" with the original construction of the incinerator and, thus, the MPCA must base its determination on the potential for environmental impacts on the impacts from the incinerator itself, and not confine its examination to changes that might result from the reissuance of the permits.
40. The MPCA disagrees with Petitioners' contention that the current permitting action is a "connected action" with the original construction (or the more recent reconstruction) of the incinerator. As a result, the MPCA will base its determination on the potential for significant impacts from changes that may occur as the result of the current permitting actions, not past actions related to the establishment of this Facility.
41. The MPCA finds that a connected action is defined in Minn. R. 4410.0200, subp. 9c. as follows:

Two projects are "connected actions" if a responsible governmental unit determines they are related in any of the following ways:

 - A. One project would directly induce the other;
 - B. One project is a prerequisite for the other and the prerequisite project is not justified by itself; or
 - C. neither project is justified by itself.

42. As previously noted, the MPCA finds that this permitting action does not meet the definition of "project" in Minn. R. 4410.0200, subp. 65.
43. The MPCA finds that, even if the proposed reissuance of these permits constituted a project under Minnesota Rules definition, it would not be a connected action because it does not meet the definition of a connected action.
44. With respect to criteria A, the MPCA finds that the 2001 incinerator kiln replacement did not directly induce the current permit proposed changes. 3M is proposing changes in the permits to allow non-3M waste to be burned because the Btu value of its waste has been decreasing in response to its reduction in the use of VOCs and it would like more high Btu waste to use as fuel for its incinerator.
45. With respect to criteria B, the MPCA finds that, even if 3M did not replace its existing incinerator in 2001, it would have still experienced a reduction in the Btu value of the waste coming to its Facility and, therefore, would still be requesting the proposed permits.
46. With respect to criteria C, 3M's replacement of its incinerator kiln was justified by itself and it was not dependent on receiving additional sources of high Btu hazardous waste. The existing incinerator kiln has been operating for over 10 years without the need for changes allowed under the proposed permits.
47. The MPCA finds that the action to reissue the proposed permits is not a connected action with respect to the 2001 kiln replacement project.

**Concerns Raised in the Petition Regarding
the Potential for Significant Environmental Effects**

48. Although the MPCA has concluded that environmental review is not appropriate because the proposed permits cannot properly be classified as a "project" or because (to the extent the petitioners seek review of the existing facility) it is an action that is otherwise "exempt" under Minn. R. ch. 4410, the MPCA has examined the issues raised by Petitioners with regard to the potential for environmental impacts and makes the following findings.
49. The petition expressed concerns regarding the permits reissuance in the following areas:
 - Air emissions
 - Hazardous waste
 - Wastewater
 - Other
50. The criteria for ordering the preparation of an EAW in response to a petition are specified in Minn. R. 4410.1100, subp. 6, which states:

The RGU shall order the preparation of an EAW if the evidence presented by the petitioners, proposers, and other persons or otherwise known to the RGU demonstrates that, because of the nature or location of the proposed project, the project may have the potential for significant environmental effects. The RGU shall deny the petition if the evidence presented fails to demonstrate the project may have the potential for significant environmental effects. In considering the evidence, the RGU must take into account the factors listed in part 4410.1700, subpart 7.

51. Minn. R. 4410.1700, subp. 7 states the following:

In deciding whether a project has the potential for significant environmental effects, the following factors shall be considered:

- A. type, extent, and reversibility of environmental effects;
- B. cumulative potential effects. The RGU shall consider the following factors: whether the cumulative potential effect is significant; whether the contribution from the project is significant when viewed in connection with other contributions to the cumulative potential effect; the degree to which the project complies with approved mitigation measures specifically designed to address the cumulative potential effect; and the efforts of the proposer to minimize the contributions from the project;
- C. the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority. The RGU may rely only on mitigation measures that are specific and that can be reasonably expected to effectively mitigate the identified environmental impacts of the project; and
- D. the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs.

52. The MPCA evaluated the issues raised by and the evidence in the petition to determine whether--if it is indeed a "project" for purposes of environmental review--the proposed permits may have the potential for significant environmental effects, and whether an EAW should be ordered as requested by the petition.

Air Emissions

53. The petitioners contend that air emissions from increased truck traffic could have significant health impacts and need to be evaluated in a health risk analysis. Petitioners allege that, if the lowest acceptable Btu waste is brought to the Facility, as many as 2,000 tank trucks would be added to the traffic going to the Facility as a result of the authorization to accept waste generated by non-3M facilities up to a certain Btu value.

54. The MPCA disagrees with the calculations in the Petition. The assumption that only the lowest acceptable Btu waste would be brought to the Facility is not realistic, especially when 3M is seeking the highest Btu waste. The MPCA finds that, realistically, the non-3M waste would add only one to three trucks per day entering the 3M Facility site. The entire 3M Chemolite Cottage Grove complex currently accepts about 125 trucks per day.
55. The MPCA finds that an increase in truck traffic from 125 to 128 trucks per day is not significant, does not warrant a health risk analysis, and does not have the potential for significant environmental effects.
56. The petitioners contend that the proposed permits would allow increases in VOC emissions. Petitioners compare technical support documents from 2005 and 2012 to assert that the current proposed Air Emissions permit would allow an increase from 10.3 tons/year of VOCs to 40.2 tons/year VOCs.
57. The MPCA finds that the proposed Air Emissions Permit will not allow an increase in any of the Facility's permitted waste feedrate limits or air emission limits, including VOCs.
58. The change in the VOCs described by petitioners is not due to any change in air emissions limits, but is instead a result of the correction of a previous calculation error. Appendix 4 of the Facility's current Air Emissions Permit, issued in 2005, contains emissions calculations (contained in Form EC-01). This form indicates that the incinerator's stack/vent (SV 010) has a VOC PTE of 0.13 tons/year. This PTE value was calculated based on a VOC emission factor of 0.32 ppm, which came from data from the Facility's continuous emissions monitors (CEMS). Other forms in Appendix 4 list other sources of VOC emissions data, but do not document how the 10.3 tons/year value was calculated. The limited PTE for VOC, listed in the Facility's draft Air Emissions Permit, is based on its permitted limited VOC emission rate of 20 parts per million (ppm). This calculation assumed a VOC molecular weight of 84.06 grams per mole. The main difference in calculation methodology between the two air emission permits is that the limited PTE for the 2012 permit was calculated using permit limits and the limited PTE for the 2005 permit was incorrectly calculated using actual CEMS data.
59. The MPCA finds that the VOC limit in the Facility's current (i.e., 2005) Air Emissions Permit is 20 ppm dry, as total hydrocarbons (THC), corrected to 7 percent oxygen.
60. The MPCA finds that the VOC limit in the Facility's proposed Air Emissions Permit is 20 ppm dry, as THC, corrected to 7 percent oxygen.
61. The MPCA finds that the proposed Air Emissions Permit will not allow an increase in the Facility's VOC limit.
62. The MPCA acknowledges that the proposed Hazardous Waste Permit will allow 3M to burn hazardous waste from non-3M sources, which will return the Facility's actual VOC emissions to previous levels. However, if viewed as an "increase," this change will increase VOC emissions by less than 0.05 tons/year, which is an increase of approximately 0.1 percent compared to current VOC emissions using natural gas.

63. The MPCA finds that the changes allowed under the proposed permits will not result in significant environmental effects from VOC emissions.
64. The petitioners contend that the Facility's PTE for sulfur dioxide (SO₂) is too high and should be lowered because the Facility's actual SO₂ emissions are far below the Facility's permitted limit.
65. The MPCA agrees that the Facility's actual SO₂ emissions are far below its PTE value. However, the MPCA finds that there is no regulatory basis to require a more stringent SO₂ PTE in the Facility's proposed Air Emissions Permit.
66. The MPCA finds that the PTE for SO₂ in the Facility's Air Emissions Permit is one that the 3M has voluntarily taken to ensure the status of the Facility as a synthetic minor source under the Prevention of Significant Deterioration regulations. The Facility's SO₂ emissions are actually controlled by enforceable SO₂ limits in the Facility's Air Emissions Permit, as well as its operating limits (e.g. hazardous waste feedrate limits).
67. The MPCA finds that the Facility is in compliance with its Air Emissions Permit SO₂ emission limits.
68. The MPCA finds that the changes authorized under the proposed permits may result in an increase of approximately 0.08 tons per year in actual SO₂ emissions if the change is viewed in relation to the most recent emissions from the Facility and not in view of past actual emissions. As noted above, the MPCA finds that the change is not properly characterized as an "increase."
69. Even if viewed as an increase, the MPCA finds that the permit reissuance will not result in the potential for significant environmental effects from the Facility's SO₂ emissions because the increase has no potential to impact public health or the environment.
70. The petitioners contend that the proposed Air Emissions Permit will double the Facility's dioxin/furan permit limits, from 0.2 to 0.4 nanograms per dry standard cubic meter (ng/dscm), on a toxics equivalent basis. The petitioners further contend that the failure of the MPCA to disclose the proposed doubling of the dioxin emission limit is concerning and, frankly, suggestive of bad faith.
71. The MPCA finds that the Facility's dioxin/furan emission limit (0.40 ng/dscm) is specified in the Facility's proposed Air Emissions Permit (see page A-22 of Permit No. 16300025-2).
72. The MPCA finds that the Facility's dioxin/furan emissions limit has not changed from the applicable dioxin/furan limit specified in the Facility's current Air Emissions Permit (see page A-26 of Permit No. 16300025-001).
73. The MPCA finds that the petitioners may be confused because the Facility's current Air Emissions Permit states that the dioxin/furan limit is either 0.20 or 0.40 ng/dscm, depending on the type of pollution control equipment that the Facility operates. The Facility's current Air Emissions Permit indicates that if the Facility uses wet pollution control equipment, then 0.40 ng/dscm is the applicable dioxin/furan limit. The Facility's proposed Air Emissions Permit clarifies the issue by directly stating that the Facility's dioxin/furan emission limit is 0.40 ng/dscm.

74. The MPCA finds that there is no potential for significant environmental effects from an increase in the Facility's allowable dioxin/furan limit, since there is not an increase in the Facility's dioxin/furan limit.
75. The petitioners contend that incinerator's emissions are less predictable than other sources and, therefore, expose citizens to hazards not encountered elsewhere in the state. The petitioners contend that 3M avoided complying with "new source" requirements for new incinerators when it replaced its incinerator in 2001.
76. The MPCA finds that a "new source," as referenced by the petitioners, is defined by the 40 CFR 63.1206(a)(1)(ii)(B) (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors) which is a federal rule establishing Maximum Achievable Control Technology (MACT) for hazardous waste combustors. The rule as revised is applicable to new sources, and defines a new source as a source that commenced construction or reconstruction after April 20, 2004.
77. The MPCA finds that 3M began construction on its replacement incinerator kiln in the late 1990s, and construction was completed in 2001.
78. The MPCA finds that the Facility is not a "new source" under MACT standards.
79. The MPCA finds that there is no reason to believe that, just because the Facility is not subject to the new MACT standards, that there is a potential for significant environmental effects from the proposed permits. The Facility is subject to the MACT standard for existing facilities (40 CFR 63.1219 (a)). This MACT standard was developed by the U.S. Environmental Protection Agency (EPA) to ensure that issues particular to hazardous waste incineration, such as variability of the waste stream, are addressed.
80. The MPCA finds that the Facility's existing and proposed Hazardous Waste Permit and Air Emissions Permit contain limits on the amount and type of waste that the Facility can accept, air emissions limits, requirements to operate pollution control equipment, conduct air emission testing, monitor stack emissions with CEMS, and record and report on the Facility's air emissions.
81. The MPCA finds that the Facility's actual air emissions will not increase beyond the Facility's historical actual emissions levels.
82. The MPCA finds that the Facility's proposed permits contain requirements of all applicable state and federal regulations, are adequately protective to ensure that these permitting actions do not have the potential for significant environmental effects, regardless of the applicability of the revised MACT standards applicable to new hazardous waste incinerators.
83. The petitioners contend that in considering the cumulative effects of emissions resulting from the 3M incinerator and other existing sources of air pollutants in the area (for example, other 3M sources and the Flint Hills Refinery), a more robust consideration of cumulative impacts should be required.

84. Minn. R. 4410.0200, subp. 11a. defines cumulative potential effects to mean:

the effect on the environment that results from the incremental effects of a project in addition to other projects in the environmentally relevant area that might reasonably be expected to affect the same environmental resources, including future projects actually planned or for which a basis of expectation has been laid, regardless of what person undertakes the other projects or what jurisdictions have authority over the projects. Significant cumulative potential effects can result from individually minor projects taking place over a period of time.

The rule further notes that:

[i]n analyzing the contributions of past projects to cumulative potential effects, it is sufficient to consider the current aggregate effects of past actions. It is not required to list or analyze the impacts of individual past actions, unless such information is necessary to describe the cumulative potential effects. In determining if a basis of expectation has been laid for a project, an RGU must determine whether a project is reasonably likely to occur. . .

85. The MPCA finds that the emissions related to the proposed permits will be unchanged from previous authorized emissions and will not generate an additional incremental effect and that, as a result, it is fair to conclude that the proposed reissuance of these permits does not have the potential for significant effects as the result of a cumulative potential effect. The MPCA finds that the contribution from the "project" is not significant when viewed in connection with other contributions to the cumulative potential effect. Nevertheless, the MPCA has looked at available information on potential health effects related to ambient air quality in Cottage Grove to see if there is any evidence in the MPCA's files that would support a conclusion that cumulative health impacts related to ambient air quality in Cottage Grove are significantly different compared to other areas of the state.
86. The MPCA has established a network of air monitoring stations to gather baseline ambient air toxics concentration data at various locations throughout the state. These baseline measurements are intended to characterize ambient air concentrations of specific air toxics in rural, urban, and suburban locations in Minnesota from all air emissions sources. The MPCA's monitoring efforts were not designed to provide specific information on the cumulative impact of air toxics in a specific geographical area; however, the data provide information that can be used to represent background conditions in a screening level analysis evaluating cumulative impacts.
87. In the petition, the petitioners identify concerns about other point source industrial facilities in the Cottage Grove area. However, the MPCA has determined that ambient air quality is affected by emissions from three primary source categories: point sources, area sources, and mobile sources. Point sources are typically large stationary sources (e.g., power plants, refineries and this proposed project). Area sources are also often stationary, but are generally smaller sources of emissions, such as dry cleaners, gasoline service stations, residential furnaces, and fireplaces. Mobile sources include cars and trucks used on the road and non-road sources, such as lawn and garden equipment, recreational equipment (e.g., boats and ATVs), construction equipment, aircraft, and locomotives.

MPCA's 2005 emissions inventory shows that mobile sources contributed roughly 64 percent of the total mass of air toxics emissions to the air in Minnesota, area sources contributed approximately 22 percent, and point sources approximately 14 percent.

88. The MPCA has also summarized ambient monitoring data collected from 2005 to 2007. Data from the nine monitoring stations located in cities with intermediate population densities (Apple Valley, Chaska, Rosemount, Newport, St Paul Park, and Duluth) were averaged to represent air concentrations in other cities with intermediate population densities that do not have monitoring stations. Cottage Grove falls in the intermediate population density range. The MPCA estimated risks from these monitoring locations by comparing measured concentrations of potentially carcinogenic pollutants to respective inhalation health benchmark concentrations and summing the resulting ratios. The average total cancer risk from the nine monitoring locations was approximately 40 in 1,000,000. This is within the EPA's excess cancer risk goal range of 1 in 1,000,000 to 100 in 1,000,000. The average chronic non-cancer risk ratios from the nine monitoring locations were summed in a similar manner. The total of the non-cancer risk ratios based on monitoring data was approximately one. MPCA's non-cancer guideline for a single facility contribution is also one.
89. As a further comparison, the results from intermediate population density areas representing Cottage Grove were compared with results from data collected from monitors in cities with high population density (six monitors are located in the Twin Cities metropolitan area) and with data collected in rural Minnesota. The estimated intermediate city cancer risk (4 in 100,000) for cities like Cottage Grove is lower than that estimated for more densely populated urban areas (approximately 5 in 100,000) but is higher than the rural cancer risk estimate (2 in 100,000). The average non-cancer risk ratio for intermediate population density communities (approximately one) is estimated to be the same as the non-cancer risk ratio for urban areas (also approximately one) and higher than the rural estimate (0.6).
90. To further determine whether there was evidence supporting the need for additional cumulative risk assessment in relation to the proposed permits, the MPCA used a statewide risk modeling screening tool (MNRiskS) to compare modeled risks of nine suburban communities (Blaine, Burnsville, Cottage Grove, Crystal, Eagan, Eden Prairie, Fridley, Hugo, and Plymouth). Cottage Grove modeling results were the second lowest for both cancer and non-cancer risks based on maximal and mid-range estimates. For this reason, the MPCA finds that the evidence does not demonstrate the need for additional health risk assessment related to the contribution of this Facility to cumulative environmental effects.
91. In drawing this conclusion, the MPCA also relied on the fact that a Human Health Risk Assessment (HHRA) was completed for the Facility in 2004. The HHRA was prepared by 3M according to EPA guidance and modeling methods. The 2004 HHRA determined that that the Facility did not pose unacceptable health risks to the public.
92. Although the 2004 HHRA only addressed the modeled risk from the Facility itself, the MPCA believes that the 2004 HHRA results are representative of the risks associated with the proposed permit reissuance because:

- The 2004 HHRA was based on the Facility's current kiln (incinerator) design and air pollution control equipment, which are not changing;
- The 2004 HHRA was based on the Facility's worst-case hazardous waste input assumptions. The 2004 HHRA was based on the Facility incinerating the same types of waste that would be allowed under the reissued permits;
- The Facility's permitted limit on the quantity of hazardous waste that it can incinerate has not increased since the 2004 HHRA.

93. The MPCA finds that there is no evidence to indicate that the level of public health risk from the Facility will increase above the acceptable risk level calculated with the 2004 HHRA as a result of the proposed permits.
94. The MPCA has included a requirement in the Facility's draft Hazardous Waste Permit to conduct an updated HHRA during the permit term. This requirement was added in response to citizens' concerns regarding the proposed permit. Petitioners raise an issue in the petition with regard to this requirement, and assert that the update should be done before the proposed permits are reissued.
95. The MPCA finds that it is not necessary to update the HHRA before the proposed permits are issued because the MPCA is confident that the proposed permits will have no impact on the outcome of the risk assessment because emissions are not changing. The updating is unrelated to the proposed permits. If the updated HHRA were to yield different results, any changes in permit provisions deemed necessary and appropriate could be incorporated in the future as a permit modification or as part of the normal permit reissuance cycle.
96. The petitioners contend that the 3M incinerator emits air pollutants known to cause death, cancer, heart disease, asthma, bronchitis, strokes, heart attacks, birth defects, reduced intelligence, and many other serious illnesses. The further assert that, no safe level can be established for many of these pollutants. The petitioners point out that air quality regulation does not eliminate the risk of health impacts. The petitioners also point out that there are a variety of pollution issues affecting the Cottage Grove area.
97. The MPCA cannot order environmental review of a particular Facility on the basis of general concerns with regard to the fact that industrial activities result in emissions, although the MPCA shares the petitioners' general concerns about these pollutants. As a regulatory agency, the MPCA cannot require a facility to restrict its emissions on the basis of general concerns, but only on the basis of statute or rule or on the basis of specific information unique to the Facility in question. The MPCA finds that the Facility is subject to an Air Emissions Permit that contains hazardous waste feedrate limits, air emissions limits, requirements to operate air pollution control equipment, requirements for monitoring and testing of air emissions, and recordkeeping and reporting on those emissions. The MPCA believes that these specific measures will be adequate to mitigate health impacts related to this incinerator.
98. The MPCA finds that the Facility's proposed Air Emissions Permit contains all applicable state and federal air permit limits and that the Facility is in compliance with its Air Emissions Permit. The Air Emissions Permit will provide adequate mitigation of any health impacts that might be predicted to occur as the result of the amended permits.

99. The MPCA finds that the proposed Air Emissions Permit does not have the potential for significant environmental effects as a result of cumulative impacts.
100. The petitioners contend that air emissions during startup, shutdown, and malfunctions are not limited by permit and are not usually reported. Thus, the real emissions are higher than the reported emissions. The petitioners suggest that this may have the potential for significant environmental effects.
101. The MPCA finds that the Facility is currently subject to Air Emissions Permit provisions that include the requirement to comply with its air emission limits at all times, including during periods of startup, shutdown, and malfunction (SSM).
102. The MPCA finds that the Facility's proposed Air Emissions Permit (pages A-25 through A-27) also describes the actions that the Facility must take in order to deal with SSM events (e.g., automatic waste feed cutoff, ducting the air emissions through the pollution control equipment, and maintaining required combustion temperatures with supplemental fossil fuels).
103. The MPCA finds that the Facility's proposed Air Emissions Permit contains adequate provisions in order to minimize air emissions during SSM conditions.
104. The MPCA finds that there is no potential for significant environmental effects from SSM conditions. The MPCA also notes that these permit conditions have not changed in the proposed Air Emissions Permit.
105. The petitioners contend that the number of new chemicals commercially available has increased since the Clean Air Act (CAA) was written and that state and federal regulatory authorities are not keeping up to protect human health. Petitioners are specifically concerned about "nano-particles" and that nano-particles are not regulated under the CAA or by the state of Minnesota. The petitioners argue that 3M may be using "cutting edge" chemicals and that the threat posed by the new chemicals should be examined in an EAW.
106. The MPCA finds that the Facility is restricted to accepting waste from specified waste codes. Although industry creates new chemicals on an ongoing basis, these chemicals fall into defined waste code categories. The Facility will not be allowed to accept any wastes that do not fall into already acceptable and defined waste code categories, regardless of whether the chemicals are new or not.
107. The MPCA agrees with petitioners that nano-particles and other new chemicals are not currently regulated by the state or federal government. Nano-particles and their health effects in particular are an area of emerging science, and EPA is studying this issue.
108. The MPCA finds no evidence that the permits reissuance with modifications would result in the emission of any nano-particles or other new chemicals, or that the release of such particles could have the potential for significant environmental effects. As noted above, the MPCA cannot order environmental review on the basis of a general concern.

Hazardous Waste

109. The petitioners contend that the proposed Hazardous Waste Permit would allow the Facility to accept Controlled Substance waste from Minnesota law enforcement agencies without specified limits for type and amount, and that this lack of meaningful limits should cause the proposed permits to be subject to environmental review. The petition also contends that Controlled Substance wastes are exempt from analysis and are not in compliance with Resource Conservation and Recovery Act (RCRA) requirements.
110. The MPCA finds that 3M worked with the MPCA and the EPA regarding the proper procedures for handling Controlled Substance wastes. Due to the nature of these types of materials, personnel at the Facility will not be allowed to open or sample the containers prior to disposal for safety and security reasons.
111. The MPCA finds that the Facility developed a Waste Analysis Plan (WAP), which was approved by the MPCA and the EPA, for the proposed Controlled Substance wastes. The Facility is required by its proposed Hazardous Waste Permit to follow the procedures in the WAP, in order to ensure that this material is safely managed. The WAP is included as an enforceable provision of the Facility's proposed Hazardous Waste Permit.
112. The MPCA finds that the Facility has developed an adequate plan for handling the proposed Controlled Substance waste.
113. The MPCA disagrees that the proposed draft Hazardous Waste Permit fails to set meaningful limits on the Controlled Substance waste. The MPCA finds that the Facility's draft Hazardous Waste Permit restricts the Facility to only accepting and processing Controlled Substances as defined in 21 CFR Part 1308. This is a specific list of substances that would be allowed to be accepted, and this list does not include substances that are generally hazardous, such as meth lab wastes. The MPCA disagrees with the petitioners' contention that the potential for "immediate precursors" of various drugs to be added to the list means that "meth lab waste" and other hazardous substances will be classified as "controlled substances" and disposed at the Facility. Meth lab waste does not have any street value, and would not be an "immediate precursor" of a drug on the list. As a result, there would be no reason for such waste to be classified as a Controlled Substance that requires secure disposal. Although petitioners express concern that the draft Hazardous Waste Permit requires 3M to develop procedures for Controlled Substance Waste after issuance of the permit, it is reasonable for MPCA to require 3M to work with the law enforcement agencies after the permit is approved allowing the drugs to be accepted, and not before.
114. While the MPCA agrees that the Facility's draft Hazardous Waste Permit does not contain specific limits on the amount of law enforcement waste that 3M can accept and process, according to the Facility's Air Emissions Permit application, Controlled Substance waste will comprise less than one tenth of one percent of all waste managed at the Facility. The MPCA finds that this amount of waste does not have the potential to result in any significant changes to the Facility's air emissions.

115. The MPCA finds that the waste from Minnesota law enforcement agencies would have a much higher destruction efficiency than other chemicals. In addition, the law enforcement wastes will be less than 0.1 percent of the feedstock accepted and destroyed at the facility. The nature of the law enforcement wastes, coupled with its very small portion of the feedstock and the very high destruction rates, means that there is virtually no possibility that the law enforcement waste will affect emissions in any significant way.
116. The MPCA finds that the Facility's proposed Air Emissions Permit does contain hazardous waste throughput limits, and that these limits would apply to the proposed Controlled Substance waste, as well as to all waste processed by the Facility. The MPCA finds that the Facility's proposed Air Emissions Permit contains the same air emissions limits, whether the Facility is processing controlled substance waste, or any other waste that it is permitted to accept.
117. The MPCA finds that the Facility's proposed Air Emissions Permit and its proposed Hazardous Waste Permit contain the necessary mitigation requirements to ensure that the proposed controlled substance waste would not have the potential for significant environmental effects.
118. The MPCA finds that the Facility's proposed Hazardous Waste Permit, including its WAP, is adequate and in compliance with RCRA requirements.
119. The petitioners assert that the proposal to allow 3M to accept non-3M waste requires environmental review, due to petitioners' concerns that this non-3M waste might include glycerol and other substances that are difficult to burn or that might have impurities that would result in toxic byproducts such as acrolein.
120. The MPCA disagrees and finds that the permit conditions under which the MPCA proposed to allow 3M to accept non-3M wastes will adequately ensure that the non-3M waste is appropriately characterized before burning
121. As noted above, the MPCA finds that the Facility is subject to a WAP in its proposed Hazardous Waste Permit, which is an enforceable part of the permit. The MPCA worked extensively with the EPA to develop a Waste Analysis Plan for the Facility that is much more restrictive than the WAP currently in effect. This plan will require 3M to increase its sampling and analysis frequency of all sources of waste and requires that each bulk load of non-3M waste be sampled and analyzed prior to acceptance to ensure its treatability. The WAP also takes a more conservative approach to reporting analytical results than the current WAP by ensuring that non-detection of a specific constituent will be reported as half of the non-detection levels and not zero.
122. The Petition contends that the permit is unclear on what is intended with respect to the type and amount of outside waste allowed to be burned at the Facility.
123. The MPCA finds that the Facility's proposed Hazardous Waste Permit (page 5, Part II.B. Authorized Hazardous Waste Management) states exactly what types of waste that the Facility would be allowed to process. The proposed permit language reads:

The Permittee is also authorized to manage, under the conditions of this Permit, bulk hazardous wastes with fuel value from non-3M sources within the United States that have one of the following waste codes: D001, F001, F002, F003, F005. 3M is limited to processing a maximum of 400,000 Million BTUs per year of hazardous wastes from non-3M sources. 3M is prohibited from accepting payment or other compensation for management of wastes generated by non-3M sources.

The proposed permit goes on to state that:

The Permittee is also authorized to manage, under the conditions of this Permit, controlled substance wastes, as defined in 21 CFR Part 1308, from Minnesota law enforcement agencies that have been sized or collected as a result of law enforcement activities.

124. The MPCA also finds that the Facility's proposed Air Emissions Permit contains limits on the total amount of hazardous waste that the Facility can process. This limit applies to the proposed non-3M waste and the proposed Controlled Substance waste.
125. The MPCA finds that the proposed Hazardous Waste Permit and the proposed Air Emissions Permit are clear on the amount of hazardous waste that the Facility may process.
126. The MPCA finds that, although the non-3M waste may not exactly have the same makeup as waste already generated by 3M, they are very similar in nature and they are all allowed under current waste codes in the Facility's Hazardous Waste Permit. The proposed Hazardous Waste Permit does not expand the currently allowed acceptable waste codes.
127. The MPCA finds no evidence to support the idea that the proposed non-3M waste will be any more difficult to incinerate than waste generated by 3M. 3M conducted a trial burn in 2004 to determine how well the incinerator performed. The trial burn was to demonstrate that, as a highly controlled hazardous waste facility, this Facility is capable of destroying the most difficult to destroy materials.
128. Controlled Substance wastes are generally comprised of materials that are much easier to destroy. As a result, the Facility's demonstrated ability to destroy the more stable compounds, as shown by its previous trial burns, is evidence that the Facility will also be able to destroy the Controlled Substance waste.
129. The MPCA finds that the Facility's proposed Hazardous Waste Permit contains adequate measures to ensure that only allowable types of non-3M waste are accepted and processed by the Facility. The MPCA has no evidence which supports a finding of any potential for significant environmental effects from the acceptance of permitted non-3M waste at the Facility.
130. The MPCA finds that the proposed Air Emissions Permit contains adequate measures to ensure that the Facility does not have the potential for significant environmental effects from the combustion of the proposed non-3M waste.

131. In addition to these controls, the MPCA finds that 3M is proposing to accept a limit, in its proposed Hazardous Waste Permit, which would restrict the Facility to processing a maximum of 400,000 MM Btu of non-3M waste (excluding Controlled Substance waste)
132. The MPCA finds that the Facility's proposed permits do not have the potential for significant environmental effects from processing non-3M waste, and will mitigate impacts (if any) that might be associated with the acceptance of that waste.
133. The petition contends that the emergency planning has not been adequately implemented for the incinerator and that environmental review should be conducted as a result.
134. The MPCA finds that that Part IV of the Facility's proposed Hazardous Waste Permit contains emergency planning procedures and contingency planning including preparedness and prevention, emergency coordinators, response to spills and releases, notifications, containment measures, and post emergency cleanup and reporting.
135. The MPCA finds that the proposed Hazardous Waste Permit adequately addresses emergency planning concerns regarding the Facility and that there is no potential for significant environmental effects from the hazardous waste accepted by the Facility.

Wastewater

136. The Petition contends that the Facility is incorrectly classified as an "Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) Facility" rather than a "Commercial Hazardous Waste Combustor." The petition further contends that if the Facility was correctly classified, it would be subject to stricter limits.
137. The MPCA finds that during the draft National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) Permit development process, the MPCA and EPA Region 5 staff evaluated whether or not discharges from the Facility are subject to the Commercial Hazardous Waste Combustor effluent guidelines (40 CFR 444). Both agencies agreed that discharges from the 3M Cottage Grove incinerator operations are specifically exempted from regulation under this effluent limitation guideline.
138. The MPCA finds that, although the Facility's wastewater discharges from incinerator operations are specifically exempted from regulation under this effluent limitation guideline, MPCA staff did evaluate all analytes listed in 40 CFR 444.
139. The MPCA finds that the results of that analysis show that none of the parameters/analytes listed in 40 CFR 444.13 had reasonable potential to cause or contribute to a water quality exceedance.
140. The MPCA finds that the Facility is correctly classified as an OCPSF Facility.
141. The MPCA finds that the proposed permits will not affect the NPDES/SDS Permit conditions.

142. The Petition contends that the proposed waste-burning increase would probably cause at least proportional increases in many of the negative impacts of the Facility including water emissions.
143. The MPCA finds that since the Facility's permitted waste type and quantity are not changing, that the nature and characteristics of the incinerator's scrubber wastewater will not change significantly and no NPDES/SDS Permit modification is necessary to implement 3M's proposal to incinerate non-3M waste.
144. The MPCA finds that the Facility's scrubber wastewater discharges are limited by its NPDES/SDS Permit.
145. The MPCA finds that the Facility is not requesting an increase in its wastewater treatment plant capacity or its effluent limits, contained in its draft NPDES/SDS Permit.
146. The MPCA finds that the Facility has been able to meet its NPDES/SDS effluent levels when it operated at higher hazardous waste processing rates in the past.
147. The MPCA finds that the proposed permit's reissuance with modifications does not have a reasonable potential for significant environmental effects from the Facility's wastewater discharge because they will not change the wastewater discharge from historic levels.
148. The MPCA finds that the draft NPDES/SDS Permit is not being modified, as related to the proposed Air Emissions Permit and Hazardous Waste Permit, which are the subject of these permitting actions.

Expired permits

149. The petition raises concerns over the fact that the current permits are "expired."
150. The MPCA finds that it is true that the Facility's current Air Emissions Permit and Hazardous Waste Permit are expired; however, under applicable Minnesota permitting rules, a facility can continue to operate under an expired permit so long as timely applied for reissuance and remains in compliance with the expired permit. See Minn. R. 7001.0160 and Minn. R. 7007.0450.
151. The MPCA finds that the Facility's Hazardous Waste Permit expired on June 30, 2010, and 3M submitted its application for permit reissuance on December 18, 2009.
152. The MPCA finds that the Facility's Air Emissions Permit expired on February 14, 2010, and 3M submitted its application for permit reissuance on August 18, 2009.
153. The MPCA finds that the Facility is in compliance with its requirement to apply for permit reissuance in a timely manner and that fact that the permits are technically expired is not a basis for requiring environmental review.

154. The MPCA finds that the Facility's proposed Air Emissions Permit and draft Hazardous Waste Permit contain all applicable requirements, and that the requirements ensure that the Facility does not have the potential for significant environmental effects.

Public involvement

155. The petitioners contend that none of the proposed increases in emissions at the Facility has been disclosed in a straightforward manner to the public by the MPCA and the public is disgusted.
156. The MPCA finds that the permits for the Facility were placed on public notice as required by Minnesota rules.
157. The MPCA finds that the MPCA provided the public an opportunity to comment on the Facility's proposed permits through written comments and through face-to-face public meetings.
158. The MPCA finds that it has disclosed the proposed changes in the Facility's permits through publication in the *State Register*, posting the permits on MPCA's webpage, hosting public meetings, and answering citizen questions via e-mail and telephone.

Cottage Grove agreements:

159. The petitioners contend that the proposed burning of outside material is a violation of agreements between the Facility and the Village of Cottage Grove.
160. The MPCA finds that it is unaware of any such agreement and has found no evidence that it exists.
161. The MPCA further finds that even if an agreement did exist, the MPCA's permits would not supersede any local ordinances or contracts. The city of Cottage Grove remains free to enforce any agreements that it might have with 3M concerning this Facility.

Tanker Truck cleanouts:

162. The petitioners contend that they are concerned about tanker trucks being cleaned out on the Cottage Grove site and want more information.
163. The MPCA finds that the flushing is subject to the requirements of the Facility's current Air Emissions Permit and current Hazardous Waste Permit and that these requirements are not changing with the proposed permits. As a result, the MPCA concludes that the continuation of this activity under the proposed permits does not pose the potential for significant environmental impacts.

3M compliance record:

164. The petitioner contends that the Facility has a poor compliance record.

165. The MPCA does not agree that the Facility has a poor compliance record, although it does have some enforcement history. The MPCA finds that its ongoing inspection and enforcement program is adequate to ensure that the Facility will remain in substantial compliance with its operating permits.
166. With regard to the Facility's Hazardous Waste Permit compliance history, the MPCA notes that 3M is inspected for compliance with its permit conditions by state or federal officials at least once every two years and by Washington County officials at least once per year. Also, state permit engineers visit the site at least once every five years during the permitting process and state and federal stack test experts are on site at least every five years during stack testing. Since reissuance of the Facility's Hazardous Waste Permit in 2005, there have been about twelve separate compliance inspections conducted by state, federal or Washington County officials. Violations were observed on four of these inspections, dealing with storage and labeling of hazardous waste containers, manifest paperwork, contract employee training, and financial assurance. These violations were cited in a Letter of Warning, issued in 2007, and an Administrative Penalty Order, containing an \$8,600 penalty in 2009. After each enforcement action, 3M returned to compliance.
167. The MPCA takes any violation of regulations governing hazardous waste management seriously. However, the MPCA finds that 3M has improved its practices and that, given the overall volume of waste handled, these violations do not support the conclusion that the Facility requires further study through environmental review.
168. With regard to the Facility's Air Emissions Permit compliance history, the last air enforcement actions that the Facility had were those taken in the late 1990s, as cited in the Petition. There have been no other enforcement actions taken since then. The Facility has been inspected four times since 2003 and no enforcement resulted from any of those inspections. Dates of those inspections are June 29, 2004, June 6, 2006, June 17, 2008, and September 9, 2010. The Facility is due to be inspected by MPCA again in 2012. Small percentages of deviations have been reported in the Facility's deviation reports; however, no percentages were above levels of concern, such that an enforcement action would be initiated by the MPCA. The MPCA notes that the petitioner's graphs show a vertical axis that represents a significantly small percentage and/or small increments of increase. This does show that the percentages have changed, and makes it appear that the level of deviations could be on an upward trajectory. However, the MPCA finds that the level of change or variability remains at levels that do not warrant enforcement response at this time.
169. The MPCA finds that the Facility is currently in compliance with its Air Emissions Permit, Hazardous Waste Permit, and its NPDES/SDS Permit based on inspections and a review of the Facility's compliance reports that 3M is required to submit to the MPCA on an ongoing basis.
170. The MPCA finds that the Facility's compliance record does not suggest that its continued operation under the proposed permits would have the potential for significant environmental effects. If compliance becomes a problem, the MPCA has the authority to force 3M to return to compliance. As a result, any impacts from noncompliance must be viewed as "reversible" and thus not properly the subject for environmental review.

Other

171. The petition raises the issue of whether 3M will actually save money by reducing its use of natural gas, which lately has dropped in price. The petitioners imply that the proposed permit changes to allow non-3M waste to be burned may not be justified.
172. The MPCA finds that the financial aspects of the need for the proposed permit changes do not justify environmental review, and notes that the EAW process does not include an analysis of the financial ramifications of a project. If a project is subject to the EIS process, then the financial aspects of a project may be analyzed.
173. The MPCA finds that the proposed permits are not subject to a mandatory EIS category.
174. The MPCA finds that there is not the potential for significant environmental effects from the Facility's financial gain or loss from the use of less natural gas versus non-3M high Btu waste. The MPCA assumes that if natural gas is cheaper to burn, 3M may continue to burn it in lieu of dealing with deliveries of hazardous materials from outside sources.
175. The petition contends that the MPCA cancer risk benchmark of 1 in 100,000 is unacceptable.
176. The MPCA finds that its cancer risk guideline is 1 in 100,000 for an entire facility. The MPCA finds that this value is consistent with the EPA's cancer risk range of 1 in 10,000 to 1 in 1,000,000 and the Minnesota Department of Health's cancer risk value of 1 in 100,000.
177. The MPCA finds that its cancer risk guideline is appropriate.
178. The petition contends the Facility's draft permits and technical support documents do not provide any evaluation of 3M's pollution prevention/waste minimization submissions.
179. The MPCA finds that the Facility's current Hazardous Waste Permit does not contain pollution prevention requirements.

The MPCA finds that the Facility's proposed draft Hazardous Waste Permit contains pollution prevention requirements, including the requirement to submit an annual report which indicates that 3M has a program in place to reduce the volume and toxicity of waste and pollution to the maximum degree economically practicable, and that the method used to manage waste and pollution minimizes present and future threats to human health and the environment.

180. The MPCA finds that Facility's proposed new requirement to certify its pollution prevention activities does not have the potential for significant environmental effects.

CONCLUSIONS OF LAW

181. Pursuant to Minn. R. 4410.1100, subp. 5, the MPCA was designated the RGU to act on the petition to prepare an EAW.
182. Minn. R. 4410.1100, subp. 6 requires the RGU to order the preparation of an EAW if the evidence presented by petitions, proposers, and other persons demonstrates that, because of the nature or location of a proposed project, it may have the potential for significant environmental effects.
183. The MPCA concludes that the action that it is proposing to reissue and change the permits as proposed, authorizing the continued operation of the Facility, does not constitute a "project" because the nature of the Facility's use is not changing from its existing use. The MPCA concludes that proposed permit provisions allowing 3M to incinerate some non-3M waste and Controlled Substances do not constitute a significant change in the present use of the Facility and will not result in any physical changes to the environment given the conditions in the proposed permits.
184. The MPCA also concludes if that the action to reissue the permits as proposed constitutes a "project" that might be subject to environmental review, that project is exempt pursuant to Minn. R. 4410.4600, subp. 2, item D because no new construction is being authorized that might be affected by environmental review. To the extent that petitioners seek review of the emissions and other issues related to the existing facility, the MPCA finds that the existing facility is exempt from environmental review.
185. Finally, if the permitting action proposed is a "Project," the MPCA concludes that, based on the nature and location of the proposed project and the associated impacts, the project does not have the potential for significant environmental effects. Therefore, the criteria for ordering the preparation of an EAW pursuant to Minn. R. 4410.1100, subp. 6 are not met.
186. The MPCA finds that Petitioners have expressed general concerns about the risks associated with an existing Facility and the way it is currently regulated under applicable laws and the permits that reflect those laws, but have failed to submit material evidence showing that there may be the potential for significant environmental effects as a result of its continued operation under conditions which are the same or substantially similar to those applicable to its past operation.
187. Based on the above findings, the MPCA concludes that the preparation of an EAW should not be ordered on the proposal to process non-3M waste in the city of Cottage Grove, Washington County, Minnesota.
188. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

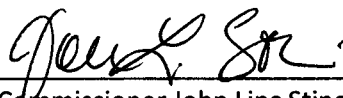
In the Matter of the Decision on the Petition
To Prepare an Environmental Assessment Worksheet
For the 3M Hazardous Waste Incinerator
Cottage Grove, Washington County, Minnesota

Findings of Fact
Conclusions of Law
And Order

ORDER

The Minnesota Pollution Control Agency (MPCA) has determined that Petitioners have failed to show that there may be the potential for significant environmental effects resulting from the issuance of the proposed permits for the Facility and that the MPCA has no justification to order the preparation of an Environmental Assessment Worksheet. Pursuant to Minn. R. 4410.1100, subp. 6, the MPCA must deny the petition.

IT IS SO ORDERED



Commissioner John Linc Stine
Chair, Citizens' Board
Minnesota Pollution Control Agency

5/23/12

Date