



Minnesota Pollution Control Agency

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June 26, 2012

TO: INTERESTED PARTIES

RE: 3M Hazardous Waste Incinerator Facility-Approval of Findings of Fact, Conclusions of Law, and Order to Deny Request for a Contested Case Hearing, and to Reissue the Hazardous Waste permit No. MND006172969 and Air Emission Permit No. 1630025-002

On June 26, 2012, the Minnesota Pollution Control Agency (MPCA) Citizens' Board voted to approve the Findings of Fact, Conclusions of Law, and Order approving the issuance of the Hazardous Waste permit No. MND006172969 and Air Emission Permit No. 1630025-002 to the 3M Hazardous Waste Incinerator Facility, Cottage Grove, Minnesota. The Findings of Fact, Conclusions of Law, and Order document concludes that the criteria in Minn. R. 7000.1900 for ordering a contested case hearing has not been met and the decision to issue the Hazardous Waste and Air Emission Permits satisfied the requirements of Minnesota rules and federal law.

We appreciate the time and effort of those who submitted comments on the Hazardous Waste and Air Emission Permits for the 3M Hazardous Waste Incinerator Facility.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Linc Stine", is positioned above the printed name.

John Linc Stine
Commissioner

JLS/GK:rm

**STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY**

**IN THE MATTER OF A PETITION FOR A CONTESTED CASE HEARING ON
AND THE PROPOSED REISSUANCE OF HAZARDOUS WASTE PERMIT NO.
MND006172969 AND AIR EMISSION PERMIT NO. 16300025-002
FOR THE 3M HAZARDOUS WASTE INCINERATOR IN COTTAGE GROVE,
WASHINGTON COUNTY, MINNESOTA**

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

FINDINGS OF FACT

The above-entitled matter came before the Minnesota Pollution Control Agency (MPCA) Citizens' Board at a regular meeting held in St. Paul, Minnesota on June 26, 2012. Based on the MPCA staff review, comments and information received during the comment period, and other information in the record of the MPCA, the MPCA hereby makes the following Findings of Fact, Conclusions of Law, and Order:

FACILITY PERMIT HISTORY

Overview

1. The Facility is located at 10746 Innovation Road, Cottage Grove, Minnesota (Facility). This Facility is both owned and operated by 3M Company, which produces a wide variety of products including adhesives, tapes, resins, chemicals, polymeric films and extrusions, abrasive products, and hollow glass bead extenders. 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). 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.
2. Hazardous waste is shipped to the Facility by semi-trailers in 55-gallon steel drums, totes, plastic and fiber drums, pails, boxes, bags, cylinders, portable tanks, and by tanker trucks. The types of containerized hazardous wastes received include bulk organic and aqueous liquids and bulk solids; containerized solids, sludges, gases, and organic and aqueous liquids; and pumpable sludges.
3. Located at the Facility are indoor and outdoor container storage areas, indoor and outdoor tank storage areas, a containment building, a rotary kiln incinerator, and two miscellaneous hazardous waste management units (the Komar shredder and the Decontamination Area). These units provide storage and/or management of hazardous and non hazardous wastes.
4. The incinerator was built in 1971 to provide 3M with a method to treat and dispose of hazardous waste through incineration. A new incinerator was built in 2001 to come into compliance with new more stringent federal air quality standards and emission limits (Maximum Achievable Control Technology (MACT) standard), which became effective in 2003 and the old incinerator was decommissioned. The current hazardous waste and air emission permits were issued in 2005.

Permitting History

5. Operation of a rotary kiln incinerator, associated air pollution control equipment, container storage areas, tank storage areas, a containment building, and two miscellaneous units are addressed by both Hazardous Waste Permit No. MND006172969 and Air Emission Permit No. 16300025-002, issued by the MPCA. The hazardous waste permit incorporates applicable provisions of Minn. Stat. chs. 115 and 116, Minn. R. 7001.0010 to 7001.0730, and Minn. R. 7045.0020 to 7045.1400.
6. Portions of the Facility are subject to the following Minnesota Standards of Performance: Minn. R. 7011.0515 Standards of Performance for New Indirect Heating Equipment; Minn. R. 7011.0610 Visible Emission Restrictions for New Facilities; Minn. R. 7011.1505 Standards of Performance for Storage Vessels; Minn. R. 7011.2300 Standards of Performance for Stationary Internal Combustion Engines; Minn. R. 7011.9990 Volatile Hazardous Air Pollutants.
7. Portions of the Facility are subject to the National Emission Standards for Hazardous Air Pollutants (NESHAPs) under 40 CFR pt. 63, also known as MACT Standards. Under the Part 63 NESHAPs, the 3M Cottage Grove complex is a single, major source.
8. The incinerator portion of the Facility is subject to the MACT Standard under Subpart EEE, for Hazardous Waste Combustors. The MACT standard establishes standards for chlorinated dioxins and furans; mercury; particulate matter (as a surrogate for antimony, cobalt, manganese, nickel, and selenium); semi-volatile metals (lead and cadmium); low volatile metals (arsenic, beryllium, and chromium); and hydrogen chloride and chlorine gas (combined). The rule also establishes standards for carbon monoxide, hydrocarbons, and destruction and removal efficiency (DRE) as surrogates in lieu of individual standards for nondioxin/furan organic hazardous air pollutants.
9. Other portions of the Facility are subject to following MACT standards: Subpart DD, for Off-Site Waste and Recovery Operations; Subpart OO, for Tanks; Subpart PP, for Containers; Subpart ZZZZ for Stationary Reciprocating Internal Combustion Engines; and 40 CFR Part 61, Subpart V for Equipment Leaks.
10. An applicability determination was conducted during the November 2000 permitting process. It was determined that New Source Review (NSR) did not apply to the change made at the Facility, and the Facility remained a non-major source for NSR purposes. The air quality permit has established "synthetic minor" limits that apply to the Facility as Title I Conditions ensuring that it remains non-major, and not subject to NSR. The source is located in an area that is in attainment for all criteria pollutants. Because the Facility was non-major, the 250-Tons per Year (TPY) thresholds are those that apply in determining if the change itself was major.
11. The original Hazardous Waste Storage and Treatment Facility Permit (Hazardous Waste Permit) for the Facility was issued in June 1989. The MPCA issued the permit in September 1995. In November 2000, the MPCA issued a major modification to the Hazardous Waste Permit to combine it with the Air Emission Permit. In June 2005, the MPCA reissued the permits as a separate Air Emission Permit and a Hazardous Waste Permit. The MPAC received the current applications to reissue these permits in August and December 2009 respectively.

12. The Facility is currently operating under Air Emission Permit No. 16300025-001 and Hazardous Waste Permit MND006172969. The MPCA staff prepared a draft Air Emission Permit (Permit No. 16300025-002) and a draft Hazardous Waste Permit (EPA ID No. MND006172969) and placed them on public notice on March 7, 2012. The MPCA staff held a public information meeting for interested parties on April 10, 2012, for both permits, at the Cottage Grove Middle School. The public notice period ended on April 23, 2012, for both permits.

Environmental Review

13. On May 22, 2012, the Minnesota Pollution Control Agency Citizens' Board (MPCA Board) voted to approve the Findings of Fact, Conclusions of Law, and Order to deny a petition requesting the preparation of an Environmental Assessment Worksheet (EAW) on the 3M Hazardous Waste Incinerator, Cottage Grove, Washington County, Minnesota. This decision completed the process for the consideration of a Petition for an Environmental Assessment Worksheet (EAW_ under the Minnesota Environmental Quality Board Rules, Minn. R. ch. 4410. Because the petition for an EAW was denied, the MPCA can now consider the proposed reissuance of the Hazardous Waste Permit and the Air Emission Permit. Minn. Stat. S 116D.04, subd. 2b; Minn. R. 4410.3100, subp. 1.

Compliance/Enforcement History

14. As a permitted facility, the 3M incinerator is inspected for compliance with its permit by state or federal officials at least once every two years and by Washington County officials at least once each year. In addition, state permit engineers visit the Facility at least once every five years as part of the permitting process and state and federal stack test experts are at the Facility at least every five years during stack testing. Since reissuance of the Hazardous Waste Permit in 2005, there have been approximately 12 separate compliance inspections conducted by State, Federal or Washington County officials. In addition to the regularly scheduled inspections, the 3M facility is inspected in response to complaints.
15. Violations were observed on four of these inspections relating to 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. Many of these issues are similar to those commonly observed at other hazardous waste facilities, and none of these actions had the direct potential to affect human health or the environment. The MPCA finds that 3M compliance history at this Facility is not egregious and does not demonstrate a pattern of noncompliance.
16. The incineration unit began operating in 1971. In the 1980's and 1990's the incinerator and air pollution controls system had compliance issues. Partially in response to these compliance issues and to come into compliance with new federal air quality MACT standards, 3M installed a new kiln and associated air pollution control system in 2000 and began operating in 2001.

PROPOSED PERMITS

Proposed Reissuance with Changes

17. The current hazardous waste and air emission permits were issued in 2005. Early in 2009, 3M submitted applications to modify the hazardous waste and air emission permits. 3M is proposing to accept high British thermal unit (BTU) hazardous wastes from sources outside of 3M to reduce the need to use natural gas to maintain operating temperatures in the incinerator. 3M has identified sources of hazardous wastes with fuel value similar to the 3M hazardous waste that it treated in larger quantities until about 2006 when pollution prevention efforts and economic factors began to reduce the amount of hazardous waste generated by 3M.
18. The MPCA requested that 3M also consider accepting law enforcement controlled substance Waste. This has been a problematic and costly waste to dispose of for the law enforcement agencies across the state, and the 3M permit already allowed it to accept hazardous waste with RCRA waste codes that include controlled substance wastes. These materials could include confiscated legal or illegal pharmaceuticals or drugs. 3M agreed to accept and treat law enforcement waste as a service to the state. Incineration of law enforcement controlled substance waste is allowed under state and federal rules.
19. The Facility's proposed Air Emission 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 pumpable low-volatile metals, where there was none in the Facility's existing air emission permit. The Facility's proposed Air Emission Permit also contains air emissions limits (page A-22 and A-23). The proposed permit does not increase any of these limits, but reduces the Facility's air emission limits, due to the replacement MACT standards, for total particulate matter, lead, cadmium, arsenic, beryllium, chromium, hydrochloric acid, and chlorine gas; and reduces mercury emission limits due to MPCA negotiations with 3M. The proposed Air Emission Permit will not result in any physical changes at the Facility.
20. The actual emissions from this Facility under the proposed Air Emission Permit will not differ from the actual emissions from the Facility in the recent past, when 3M generated more hazardous waste. In recent years actual air emissions have declined because 3M has been using natural gas to supplement the hazardous waste treated in the incinerator and compensate for the lower BTU values of its incoming hazardous waste. The MPCA finds that the lower actual 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 actual emissions under the current Air Emission Permit, before the waste volume decreased.
21. The technical support document (TSD) for the Facility's proposed Air Emission Permit contains a correction to the Facility's limited potential to emit calculation for volatile organic compounds (VOCs). The TSD for the current Air Emission Permit incorrectly lists the Facility's VOCs limited potential to emit at 10.3 tons/year. The TSD for the draft Air Emission Permit correctly lists the Facility's limited potential to emit (PTE) at 40.2 tons/year. A limited PTE is not a permit limit per

- se. It is the maximum calculated emissions that a facility could have if the facility were operated at maximum permitted operating rates, air flows, and emission limits. The MPCA finds that correction of errors in a permit or TSD is consistent with the purpose of reissuing.
22. The Facility's proposed Air Emission Permit contains a number of requirements that work together to limit emissions. These requirements include waste feedrate limits for various types of waste treated 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.
23. Law enforcement controlled substance waste will not be subject to a processing limit, but the volume of controlled substance waste burned is expected to be less than 1/100th of 1 percent of the Facility's total waste, as calculated based on law enforcement estimates. Given the small amount of controlled substance waste, the type of material incinerated, the high heat, and the quality of the control equipment used to limit emissions, the MPCA finds that there is little to no likelihood of negative environmental or human health impacts from incinerating law enforcement waste at the 3M Facility.
24. 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 restrict 3M with regard to the types of non-3M waste that can be accepted. As proposed, 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). 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). 3M is prohibited from accepting payment or other compensation for treatment of wastes generated by non-3M sources. Law enforcement waste is restricted to listed Controlled Substances as defined in 21 CFR pt. 1308. The proposed Hazardous Waste Permit will not result in a physical modification to the Facility.

Community Involvement in Process Prior to Issuance of Draft Permit for Public Comment

25. In 2009, 3M submitted a minor modification application for the Hazardous Waste Permit and an administrative permit amendment application for the Air Emission Permit to authorize 3M to accept non-3M hazardous wastes to supplement 3M-generated hazardous wastes treated at the Facility. The MPCA could likely have modified the permits pursuant to these applications, as submitted, because no changes to any permitted limits or waste codes were necessary. MPCA staff determined that because of public interest in the permits, and to promote transparency and inclusiveness, the proposed changes would be processed as major permit amendments using the public notice and comment process.
26. In the fall of 2009, at the request of the city, MPCA staff suspended work on the draft permits to allow the City of Cottage Grove to form an Environmental Task Force to study the issues surrounding the incinerator and provide input on the proposed changes to the permits. The Task Force provided a list of recommendations to the MPCA, including limits on the amount of non-3M

waste to be accepted, restrictions on non-3M waste to five waste codes, only waste from Minnesota law enforcement agencies, and a request that MPCA conduct more unannounced inspections of the Facility. MPCA included all of the Task Force recommendations in the draft hazardous waste permit, except for the request for more frequent inspections because the MPCA does not specify MPCA inspection schedules in facility permits.

Also as a result of Task Force recommendations The City of Cottage Grove retained Short Elliott Hendrickson, Inc. (SEH) to conduct ambient air monitoring at a location near the 3M Cottage Grove ("3M") facility. SEH conducted the ambient monitoring for the 12-month period from October 2010 through September, 2011. The purpose of the monitoring was to measure annual concentrations of select metals and volatile organic compounds (VOC) near the incinerator operated at the 3M facility. The monitoring was conducted prior to this permit change to determine current conditions and the monitoring is proposed to continue for an additional two years after permit issuance so that any impacts of any changes can be assessed. SEH concluded that monitoring showed, for the compounds monitored, the air quality in Cottage Grove meets Minnesota health benchmarks and state ambient air quality standards. Also, the first year's ambient monitoring results are generally comparable with background ambient air concentrations measured throughout the Twin Cities.

27. The MPCA staff again suspended its work on the permits in the spring of 2010 as MPCA worked with U.S. Environmental Protection Agency (EPA) Region V officials on technical issues in the permits. For two years MPCA staff worked with EPA to improve the Waste Analysis Plan to better identify waste coming to the Facility with better sampling, testing and verification methods using EPA's latest waste analysis guidance. EPA also worked with MPCA to draft a requirement in the hazardous waste permit to require an updated Human Health Risk Assessment (HHRA) to include EPA's updated risk assessment guidance. A HHRA was conducted in 2004, which concluded that "routine emissions from this facility do not pose an acute health hazard to the public." Because EPA had updated its risk assessment guidance in 2005, the EPA recommended that the MPCA include a requirement in the 3M hazardous waste permit to update the 2004 HHRA. The permit also requires that if an updated HHRA shows that potential unacceptable human health risks exist due to emissions from the 3M incinerator, the Commissioner will modify the permit to address the risk using the appropriate permit modification procedures.

PUBLIC NOTICE OF PERMITS AND PUBLIC COMMENTS

The MPCA staff prepared draft Hazardous Waste and Air Emission Permits.

28. The MPCA notified the public of the draft permits and the public comment period. A public notice was published in the St. Paul Pioneer Press and the South Washington County Bulletin, and sent to other interested parties, on March 7, 2012. The MPCA complied with all of the public notice requirements of 7001.0100, subp. 3 and 5; Minn. R. 7001.0660.C. & D; and Minn. R. 7007.0850, subp. 2. In addition, the Draft Hazardous Waste and Air Quality permits were made available for review on the MPCA Web site at www.pca.mn.us on March 7, 2012.
29. The MPCA finds that all public notice requirements for the Hazardous Waste and Air Emission permits were satisfied.

30. The MPCA held a public informational meeting in Cottage Grove on April 10, 2012, and approximately 100 people attended the meeting.
31. The public comment period ended on April 23, 2012. During the 45-day comment period, the MPCA received 107 comment letters from citizens and government agencies. Approximately 91 oppose the permits and about 16 support them.
32. The MPCA prepared responses to all comments received during the 45-day public comment period. The MPCA responses to comments received are attached and hereby incorporated by reference as Appendix B to these findings.
33. The main concern expressed by citizens is that the proposal to allow 3M to accept non-3M hazardous waste would significantly increase emissions of toxic air pollutants. Calculations by MPCA staff show that the increase in actual emissions from the treatment of non-3M waste compared to the current burning of natural gas would be very small and would be below the threshold which defines when a modification to an air emission permit would be significant and would require a permit modification as defined by Minn. R. 7007.1250, however changes in actual emissions are not considered under State and Part 70 permitting thresholds.
34. As a result of treating non-3M hazardous wastes, there will be no increase in actual emissions compared to the emissions seen up to 2006 prior to the drop in 3M solvent generation and the increased natural gas usage. Actual emissions are currently well below permitted limits, and actual emissions will remain well below permitted limits with this proposed change.
35. The MPCA finds that emissions from 3M's treatment of non-3M hazardous wastes is within the emission limits of 3M's permit and does not pose an unreasonable or unacceptable increase in emissions.
36. The MPCA received a number of other comments on the permits including the following comments: 3M would save money by accepting non-3M hazardous waste and would profit at the expense of human health or the environment; the permit changes and the new limits are a step in the wrong direction; MPCA should require 3M to do a risk assessment of the incinerator; residents of Cottage Grove are inordinately affected by pollution from 3M and other sources, and that Cottage Grove is one of the highest polluted areas or the highest cancer rates in the metropolitan area and that this project will add to this problem; 3M has affected the groundwater in the past and that property values have been affected; the facility should not have been built close to the community; the facility has a poor compliance history; and there are not enough inspections of the facility.
37. These comments and the MPCA's response to each of them are discussed in the Response to Comments (Appendix B).
38. As a response to comments received, the following changes were incorporated into the permits:
39. A discussion of the updated VOC calculations and updated dioxin emission limit were addressed in the Response to Comments (Appendix B), Response to Comments 3-1.5 and 3-1.5.1 and added to

the Technical Support Document (TSD) of the Air Emission Permit in greater detail to add further clarification.

40. Additional requirements Compliance Assurance Monitoring (CAM) requirements were added to the Air Emission Permit and are discussed in Response to Comments (Appendix B), Response to Comments 8-3 and 8-4.
41. This Insignificant Activities list in the Air Emission Permit was updated to include Truck Cleaning as an insignificant activity as discussed in Response to Comments (Appendix B), Response to Comments 3-11.0.
42. The Hazardous Waste permit was updated to include specifications for the non-3M waste which include a minimum BTU value of 8000 Btu/lb, a maximum ash content of 15 percent by weight, a maximum chlorine content of 15 percent by weight, and the waste is further defined as bulk waste used to supplement 3M waste as an alternative to natural gas and fuel oil; as discussed in Response to Comments (Appendix B), Response to Comments 3-1.3.

REQUEST FOR A CONTESTED CASE HEARING

43. The Coalition of Concerned Cottage Grove Citizens submitted a petition for a contested case hearing on the Hazardous Waste and Air Emission Permits on April 23, 2012.

EVALUATION OF THE REQUEST FOR A CONTESTED CASE HEARING

44. The MPCA must determine if a request for a contested case hearing meets certain criteria specified in Minn. R. ch. 7000. Minn. R. 7000.1800, subp. 1 requires that the petition must be timely under subp.1 and under subp. 2.A. must include:
 1. a statement of reasons or proposed findings supporting a board or commissioner decision to hold a contested case hearing pursuant to the criteria in part 7000.1900, subpart 1; and
 2. a statement of the issues proposed to be addressed by a contested case hearing and the specific relief requested or resolution of the matter.
45. Minn. R. 7000.1800, subp. 2.B. provides that to the extent known, the petition for a contested case may also include a proposed list of prospective witnesses to be called with a brief description of proposed testimony or a summary of evidence that would be presented at a hearing, a proposed list of publications, references, or studies to be introduced and relied upon at a hearing; and an estimate of the times required for the petitioner to present the matter at a hearing.
46. The MPCA notes that while the information specified in Minn. R. 7000,1800, subp. 2.B. is not required in a contested case hearing petition, it is information that is helpful to the agency as it considers whether a hearing will aid the agency in making a final decision on a matter.
47. The MPCA finds that the Coalition's petition for a contested case hearing was timely.
48. The petition does not include proposed findings to support a decision to hold a contested case hearing, but it includes an explanation of the Coalitions objections to and questions about the

proposed 3M permits. It is difficult to identify the specific, material facts that the Coalition disputes in the petition. The petition also includes a list of the MPCA actions that the Coalition seeks, although the requested actions are generalized in nature and making it difficult to identify how the Coalition proposes that a dispute concerning a material issue of fact should be resolved.

49. The criteria on which the MPCA evaluates a petition for a contested case hearing are specified in Minn. R. 7000.1900, subp. 1, which states:

Subpart 1. Board or commissioner decision to hold contested case hearing.

The board or commissioner must grant the petition to hold a contested case hearing or order upon its own motion that a contested case hearing be held if it finds that:

- A. there is a material issue of fact in dispute concerning the matter pending before the board or commissioner;
- B. the board or commissioner has the jurisdiction to make a determination on the disputed material issue of fact; and
- C. there is a reasonable basis underlying the disputed material issue of fact or facts such that the holding of a contested case hearing would allow the introduction of information that would aid the board or commissioner in resolving the disputed facts in making a final decision on the matter.

All three criteria must be satisfied for the MPCA to grant a petition for a contested case hearing.

50. In order to satisfy the first standards of this test, Minn. R. 7000.1900, subp. 1(A), the hearing requester must show there is a material issue of fact in dispute. A fact is material if its resolution will affect the outcome of the case. O'Malley v. Ulland Brothers, 540 N.W.2d 889, 892 (Minn. 1996)
51. As for the second standard, Minn. R. 7000.1900, subp. 1(B), the requester must show that the MPCA has jurisdiction or authority to make a determination on the material factual issues. "Agencies are not permitted to act outside the jurisdictional boundaries of their enabling act." Cable Communications Board v. Nor-West Cable, 356 N.W.2d 658, 668 (Minn. 1984). Therefore, each issue in the contested case request has to be such that it is within the MPCA's authority to resolve.
52. Finally, under Minn. R. 7000.1900, subp. 1(C), the requester has the burden of demonstrating the existence of material facts that would aid the [MPCA] before the requester is entitled to a contested case hearing. Matter of Solid Waste Permit for the NSP Red Wing Ash Disposal Facility, 421 N.W.2d 398, 404 (Minn. Ct. App. 1988). To do so, at the very least, the requester has to provide the MPCA with specific expert names and indicate what specific new facts an expert might testify to at a contested case hearing. The Minnesota Supreme Court has recognized that to meet this standard, "(i)t is simply not enough to raise questions or pose alternatives without some showing that evidence can be produced which is contrary to the action proposed by the (MPCA)." In the Matter of Amendment No. 4 to Air Emission Facility Permit, 454 N.W.2d 427, 430 (Minn. 1990).
53. The MPCA evaluated the request for a contested case hearing by examining each of the issues raised in the Coalition's Petition, Appendix C, to determine if each of the three required criteria in Minn. R. 7000.1900, subp. 1 is met.

THE MPCA FINDINGS WITH RESPECT TO EACH OF THESE CRITERIA

54. Petition Issue 1 – “The Technical Support Document for the 2012 Incinerator draft air permit is only ten pages and offers little clear explanation of how the provisions in the permit were arrived at.
- The MPCA staff have at times been unable to clearly explain how numbers in the permit were calculated. For example, the VOC “Total Facility Potential to Emit” changed from 10.3 tons per year in the 2005 permit to 40.2 in the 2012 permit. Staff have stated that they “think” the difference is due to the use of different molecular weights in converting from concentrations by volume to mass flow, but have been unable to explain in detail. This level of uncertainty is not acceptable and an evidentiary record needs to be developed.
- Similarly, the concentration of “dioxins” in the incinerator off-gas is doubled in the 2012 draft air permit, without clear explanation.”
55. The change in the current Technical Support Document (TSD) with respect to the VOC total facility potential to emit were made to correct an error in calculation that was made in a previous air permit. The reasons for the past calculation error are more fully explained in the Response to Comments (Appendix B), Response to Comment 3-1.5. The change in the dioxin numbers in the permit were made to clarify the dioxin limit and are more fully explained in the Response to Comments (Appendix B), Response to Comment 3-1.5.1. The Coalition misinterpreted the original limit. The limit itself did not change.
56. The Coalition presented questions concerning the limited VOC potential-to-emit and the dioxin emission limit. Similar questions were raised in other comments submitted during the public comment period and MPCA staff responded to the questions in the Response to Comments (Appendix B). Neither of these questions disputes a material issue of fact concerning either the VOC limited potential-to-emit or the dioxin limit. The Coalition has simply misunderstood the VOC correction in the TSD and the dioxin limit in the permit.
57. In addition, the correction to the VOC limited potential-to-emit in the TSD and the clarification to the dioxin limit in the permit do not actually change the terms of the permit. As a result, the questions are not material to the permit terms and conditions.
58. The MPCA finds that the petition does not satisfy criterion A of Minn. R. 7000.1900, subp. 1.
59. Petition Issue 2 – “The 2005 RCRA permit at page 26 states that “The Permittee shall maintain, calibrate and operate a THC ...[total hydrocarbons] ... monitor.” The 2012 draft apparently contains no such requirement. At page A-22 of the 2012 draft air permit there is mention of continuous monitoring of THC, but an explicit requirement for a continuous monitor for THC is not apparent in that permit either. Information is conflicting about whether the Incinerator even has the long-required THC monitor. This requires clarification on the record.”
60. First, the 2005 hazardous waste (RCRA) permit does not contain this language; however it is contained in the hazardous waste permit from 2000. Therefore, the proposed hazardous waste permit is not changed from the existing permit with regard to a THC monitor.
61. At one time, 3M operated both a THC monitor and a carbon monoxide (CO) monitor in the incinerator stack. 3M found that the THC monitor experienced regular, ongoing technical issues

- that interfered with obtaining good data. When the MACT standards went into effect, the more reliable CO monitor was used, and the THC monitor was decommissioned as allowed under the MACT standard.
62. In addition, the hazardous waste MACT became effective in 2003 and has at all times allowed operation of one or the other monitor and never required operation of both monitors. 3M continues to operate the CO monitor. Past experience with the THC monitor on this system shows that operation of a THC monitor would not yield accurate, useful data. This issue is more fully discussed in the Response to Comments (Appendix B), Response to Comment 3-2.1.
63. The MPCA finds that the petition by its language asks for clarification on the record, which has been provided through the Response to Comments. The MPCA finds that the Coalition's request for clarification is not a dispute concerning material issue of act and does not satisfy Criterion A of Minn. R. 7000.1900, subp 1.
64. Petition issue 3 – "Air permit emissions in the 2012 draft permit are set irrationally, without apparent reference to the actual performance of the facility. For example, the sulfur dioxide limit is set at 279 times the 2008 "actual emissions." This is illogical and provides little protection to the public from even gross deviations from normal operation. The Nitrogen Oxides (NO_x) limit is set at 3.37 times the 2008 reported actual emissions. The carbon monoxide limit is set at 21 times the reported actual 2008 emissions. The lead limit is set at 12.5 times the reported 2008 actual emissions. The mercury limit is set at over ten times the 2008 reported actual emissions. The "Hazardous Air Pollutant" limits appear to also be set at about an order of magnitude over the actual emissions, but data are lacking. Permit limits should be set at some reasonable increment over actual emissions, such that significant excess emissions will trigger notice and corrective action."
65. The MPCA agrees that the Facility's actual Sulfur dioxide (SO₂), NO_x, Carbon Monoxide (CO), and Lead emissions are below its permitted emission limits. However, the limits in the permit were set based on requirements in applicable rules and statutes, such as the Prevention of Significant Deterioration (PSD) thresholds and/or MACT limits. As MPCA staff explain in the Response to Comments (Appendix B), Response to Comment 1-14, the 3M Incinerator is a small emission source. There is little to be gained from imposing stricter emission limits on a small source, since the margin between limits and actual emissions is smaller than that for larger emission sources.
66. As also explained in Response to Comment 1-14, the permits include other permit limits that ensure compliance with emissions and that will trigger corrective actions before violating permit limits.
67. The MPCA finds there is no dispute that actual emissions from the Facility are well below its permitted limits. The MPCA further finds that the Coalition's objection concerns a policy question of whether it is appropriate to establish emission limits well above actual emissions. This is not a factual question that is suitable for a contested case hearing and the petition does not satisfy criterion A of Minn. R. 7000.1900, subp. 1.
68. Petition Issue 4 – "It appears that starting with 2005, the permits have had significant amounts of text and definition removed and replaced with primarily data and tables. The majority of the

information now lies in the permit applications, and is not included in the body of the permit. The 3M solid waste application was posted on the MPCA link the permitting action. It is not clear if the permit application is an enforceable document and how this relates to the actual permit."

69. The Response to Comments (Appendix B), Response to Comment 3-0.3 clarifies that the hazardous waste permit provides that the permit application is an enforceable part of the permit. The application for the air quality permit is not an enforceable document. The MPCA finds that since the petition asks only for clarification, there is not a material fact in dispute and the petition as to this point does not satisfy criterion A of Minn. R. 7000.1900, subp. 1.
70. Petition issue 5 – "The 3M permit application only lists natural gas and #2 fuel oil as supplemental fuels. Specifications exist for Natural Gas and #2 Fuel Oil. But 3M seeks to burn additional hazardous waste, in place of natural gas, as *de-facto* supplemental fuels. If non-3M Fuel Grade Liquid Hazardous Waste is to be used as an auxiliary fuel, a specification and definition is needed."
71. Although 3M did not accept and treat non-3M waste under prior hazardous waste permits, there was nothing in the prior permits or in the hazardous waste rules that would have prevented 3M from accepting and treating non-3M hazardous waste. In its current permit application, 3M proposed to take hazardous waste with high BTU value from sources outside of 3M to supplement the treatment of its own hazardous waste and reduce the use of natural gas to maintain operating temperatures in the incinerator. The non-3M hazardous waste falls within the same hazardous waste codes and the incinerator is capable of treating them.
72. Despite the Coalition's interest in characterizing the non 3M hazardous waste as an "auxiliary fuel," in fact, by definition it is hazardous waste. In addition, there are serious regulatory and legal implications to characterizing hazardous waste as fuel. The MPCA is unwilling to identify the non-3M hazardous wastes as fuel that could have other regulatory and legal consequences. The petition does not dispute that the non-3M hazardous wastes are covered by the existing hazardous waste codes that limit the wastes 3M may treat at the Facility. These codes already define the materials.
73. Further, 3M has agreed to include three additional specifications for the non-3M hazardous wastes it will accept and treat. The non 3M waste must have a minimum Btu value of 8,000 Btu/lb, a maximum ash content of 15 percent and a maximum chlorine content of 15 percent.
74. The MPCA finds there is no dispute concerning the applicability of hazardous waste codes to the non 3M waste that will be accepted and treated at the Facility. The MPCA finds that attempting to assign fossil fuel-type specifications to hazardous waste treated at the Facility is not relevant to the proposed permit and that holding a contested case hearing on the issue would not allow the introduction of information that would aid this Board in making a final decision on the proposed permits. The MPCA finds that the petition has not satisfied Criteria A., B. and C. of Minn. R. 7000.1900, subp. 1 as to this point.
75. Petition Issue 6 – "3M claims that it will increase profits by \$2,000,000 per year by reducing the amount of natural gas used at the 3M Cottage Grove Hazardous Waste Incinerator. The Coalition has noted that claimed savings, illogically, have increased as the price of natural gas has decreased. The Coalition does not agree that savings or additional profits for 3M justify additional emissions in the community from the burning of additional hazardous waste. However, if the MPCA does agree,

and bases permitting decisions to some degree on this assertion, that the claims need to be substantiated on the record.”

76. Cost savings has never been used in any of the MPCA’s permitting decisions or permit requirements, including the 3M permit. For further discussion on this point, see MPCA Response to Comments (Appendix B), Response to Comment 1-1. Since the Coalition’s point is that cost savings should not be a factor, there is no dispute regarding any cost savings 3M might realize from the proposed change. In addition, since Permittee’s cost savings is not considered in the MPCA’s permitting decisions, holding a contested case hearing on whether 3M will realize cost savings will not aid this Board in making its final decision.
77. The MPCA finds that Minn. R. 7000.1900, subp. 1, Items A and C are not satisfied as to the cost savings issue.
78. Petition Issue 7 – “At the April 10, 2012 MPCA “public informational meeting” it was stated by the MPCA that the additional non-3M hazardous waste to be burned would only result in one or two more trucks a day. However, the Coalition’s calculations, working from data in the draft permits, suggests up to approximately six tank trucks a day. These are significant differences and need to be resolved on the record.”
79. The question of truck traffic is not relevant to either the hazardous waste or air emission permit. No permit conditions, including emission calculations, were based on truck traffic, nor were they required to be. Fugitive emissions from mobile sources such as trucks are not required to be included in determining permit applicability under either the MPCA’s operating permit program (Title V or Part 70) or the PSD program. The Response to Comments (Appendix B), Response to Comment 3-11.0 includes a more complete explanation of this point.
80. The MPCA finds that because truck traffic does not affect the type of permit or any permit terms or conditions for the 3M Facility, holding a contested case hearing on the amount of truck traffic at the Facility would not aid this Board in making its final decision and criterion C. of Minn. R. 7000.1900, subp. 1 is not satisfied.
81. Permit Issue 8 – “During the same meeting it was stated by the MPCA that this proposal will help meet the EPA RCRA goals and implied that the current method of disposal of the proposed non-3M hazardous waste was not adequate. However, the Coalition understands that this waste is generated in Wisconsin and presently burned in Missouri. The benefit of moving this additional waste-burning into Minnesota is unclear and the record needs development.”
82. The source of where the non-3M hazardous waste is generated is not a relevant fact under the permit. There is no requirement that either the Permittee or the MPCA establish a benefit to be realized by a proposed permit before it may be issued. As long as the waste meets the conditions of the permit - e.g. that it is within the identified waste codes, has the minimum BTU value and meets the ash and chlorine content, -- 3M can accept and treat it under the permit.
83. The MPCA finds that the petition states a concern that MPCA should identify a benefit to treating non 3M hazardous waste in Minnesota rather than treating it elsewhere, but does not raise a

- factual dispute concerning a material term or condition of the permit. The petition as to this point does not satisfy the criteria of Minn. R. 7000.1900, subp. 1, Items A and C.
84. Petition issue 9 – “MPCA “public informational meetings” are not “on the record” and MPCA staff have spoken rather casually and two such meetings about the Incinerator. “On the record,” evidentiary proceedings are need in this matter to establish facts and restore public confidence.”
85. The MPCA finds, that the format of the public informational meeting was to provide the public with information and not a meeting to be included in the record. The point of the presentation was to state the EPA RCRA goals and to state how the project meets those goals. The MPCA agrees that public informational meetings are informal and therefore it was announced that the formal comment procedure was specified during the meeting to inform the attendees that written comments needed to be received by the end of the comment period. The petition as to this point does not satisfy the criteria of Minn. R. 7000.1900, subp. 1, Items A and C.
86. Petition issue 10 – “The RCRA statute, like corresponding Minnesota statutes, identify waste minimization as the primary goal and it is hard to understand how by burning this waste for free creates an incentive for the waste generators to spend time or money on waste minimization. It is not clear that MPCA staff have made any serious efforts to encourage or require waste minimization at 3M before supporting expanded waste-burning. To the contrary, it appears that claimed 3M waste reductions are being used as an excuse to approve increased burning of non-3M wastes. The is a perversion, or inversion, of the intent.”
87. As a waste generator, 3M is required by Minn. R. 7045.0262 to certify that it has undertaken efforts to minimize the amount of hazardous waste it generates. Other generators of hazardous waste are required to do the same. The existence of a hazardous waste treatment facility has no bearing on the responsibility of hazardous waste generators to meet their waste minimization obligations under state and federal law.
88. As a factual matter, the proposed permits do not authorize an increase in hazardous waste throughput. The throughput limit remains unchanged from the existing permit.
89. The MPCA finds that the RCRA obligation for hazardous waste generators to minimize waste generation is not relevant to the permits for waste treatment that are under consideration. There is no applicable requirement for a hazardous waste treatment facility to minimize the waste it treats.
90. The MPCA finds that with respect to hazardous waste minimization and increased treatment, the petition fails to meet Items A. and C. of Minn. R. 7000.1900, subp. 1.
91. Petition Issue 11 – “Residents have been repeatedly told that the increased burning of hazardous waste, supposedly in place of natural gas, will result in no increase in “Potential to Emit.” Residents should be aware of the actual emissions increases associated with the proposed increases in waste-burning and the health and environmental implications of the same.

Since almost all fuels would be expected to have higher emissions than natural gas, and since no improvements in emission control systems are proposed, increased emissions are presumable.”

92. The MPCA staff has stated, throughout the process, their knowledge of expected increases in actual emissions compared to the current actual emissions while burning natural gas. These increases are expected to be very small and are unlikely to exceed actual emissions levels from 2006 and prior years.
93. The MPCA finds that the petition requests information, but does not dispute the MPCA's information regarding expected increases in actual emissions compared to actual emissions while the Facility has burned natural gas. The MPCA finds that the petition on this point does not satisfy criteria A. and C. of Minn. R. 7000.1900, subp. 1.
94. Petition Issue 12 – "The air permit states the secondary combustion burners have been removed and the burner inlets welded shut. The 3M application, as recently as January 25, 2012 lists a waste lance in the Secondary Combustion Chamber as a feedstream. In table A, feed rate limits, the Secondary Combustion Chamber has a process throughput rate of 300 lbs per hour. This conflicting information requires resolution on the record."
95. As more fully explained in the Response to Comments (Appendix B), Response to Comment 3-3.0, the secondary combustion burner and the waste lance are not the same piece of equipment. While the secondary combustion burner has indeed been removed, the waste lance remains for feeding specific types of wastes. For clarification, the public comments, the Response to Comments and the proceeding before this Board are "on the record."
96. The MPCA finds that the petition fails to meet criteria A. and C. with regard to its concern about the secondary combustion burner and the waste lance.
97. Petition Issue 13 – "The draft permit proposes to allow the burning of "law enforcement wastes." These apparently are to be exempted from requirements for analysis (waste characterization) and it is not clear whether the overall feed rate limits apply to them. This creates unacceptable uncertainties and raises questions about how emissions would be calculated for Toxic Release Inventory (EPCRA) purposes."
98. Law enforcement wastes are included in the overall feedrate limits. Although law enforcement waste is exempted from the waste analysis plan requirements, there are requirements in the permit for how law enforcement waste must be managed. EPA waste analysis experts helped draft the language for the updated waste analysis plan and agreed that law enforcement controlled substance waste should be exempted because of the very small volume of this type of waste (less than 1/100th of 1 percent of the total waste) that will be brought to the Facility and because the wastes are expected to be fully destroyed in the incinerator. The permit contains a requirement for 3M to develop a procedure, for review and approval by the MPCA, for acceptance and management of law enforcement waste. The reasons for the exemption of law enforcement waste from analysis are more fully explained in the Response to Comments (Appendix B), Response to Comment 3-4.0 & 3-4.1.
99. The MPCA finds that there is not dispute concerning law enforcement wastes. The petition questioned whether law enforcement wastes are included in the overall feed rate limit and they are. The petition correctly stated that law enforcement waste is exempted from waste analysis requirements. The Coalition's statement that the exemption is "unacceptable" does not state a

- dispute over a material fact concerning law enforcement waste; it states disagreement with the MPCA's decision to exempt the waste from waste analysis. A contested case hearing to debate the MPCA's proposed decision would not aid this Board in making its final decision. The petition does not meet criteria A. and C. of Minn. R. 7000.1900, subp. 1.
100. Petition Issue 14 – "The permits allow for the storage of over 3,000,000 gallons of hazardous waste. It appears that up to 2,332,000 gallons could be stored in over fifty thousand drums. Over ninety loaded tank trucks could be on the site at one time. There is little if any discussion of the fire/explosion/chemical release hazard posed by this large potential inventory of hazardous wastes, or how community residents are to be protected from these hazards. Vague references to 3M internal documents are not adequate and the record in this needs to be developed in evidentiary proceedings. For example: In the event of a major incident has an analysis been completed to show how big an area would be impacted in the Worst Case Scenario? Is there a plan for community notification? With the advent of cell phones, some homes no longer have land lines. Is there a plan on how to communicate the need to evacuate a large portion of the community? What is the estimated time to complete the notification and what percentage of the target group is estimated to be contacted? When was the last time that a shelter-in-place exercise took place in the community? Do Businesses, Residents, Schools, and Churches know how to do this? Is there any documentation? Adequate community protection needs to be publicly documented."
101. The MPCA hazardous waste rules spell out the requirements that a hazardous waste facility must comply with to plan for emergencies. Minn. R. 7045.0462- 7045.0468 require a facility to have plans and procedures in place to address emergencies. Minn. R. 7045.0466 requires the facility to develop a contingency plan to minimize hazards to human health and the environment from fires, explosions, or any releases of hazardous waste or hazardous constituents. The plan must describe the arrangements that the facility has made with local police, fire departments, hospitals, and emergency responders to coordinate emergency services. The hazardous waste permit requires the development of such emergency plans and procedures to comply with this requirement. Emergency preparedness is more fully described in the Response to Comments (Appendix B), Response to Comment 3-5.0.
102. The petition poses several questions concerning community emergency preparedness. First, raising questions is not a dispute of a material fact. Second, to the extent that these questions are not addressed by the hazardous waste rules, they are beyond the jurisdiction of the MPCA. Local resources, such as police and fire, may address community emergency preparedness. The MPCA finds that questions concerning community emergency preparedness do not meet any of the criteria in Minn. R. 7000.1900, subp. 1.
103. Petition Issue 15 – "It is not clear that the MPCA has evaluated the adequacy of the specified operating conditions for destruction of Perfluorinated compounds (PFCs), although members of the Coalition believe that PFCs inevitably will be burned, as 3M has made wide use of this class of compounds. Testimony on this point is needed. Information in the technical literature from Canada and Norway raises questions about whether the minimum combustion temperature proposed in the draft permit(s) is adequate to ensure destruction of PFCs. Nor is it clear that monitoring and performance testing would detect failures of adequate destruction of these compounds. The record requires development in this area."

104. A literature search was performed by the MPCA to look at thermal destruction of PFCs and related substances. Thermal degradation studies have been performed by the University of Dayton Research Institute, many for the purposes of supporting the Hazardous Waste MACT. One study titled "Laboratory-Scale Thermal Degradation of Perfluoro-Octanyl Sulfonate and Related Substances" by Takahiro Yamada and Philip Taylor, was prepared in response to a request from 3M to address destruction of PFCs and related substances in an incinerator. This study concluded that temperatures of 900 degree Celsius (~1650 degrees Fahrenheit) demonstrated high levels of destruction. This study also concluded that there was no quantifiable amount of PFCs and related substances generated from the combustion process. Additional information on PFC destruction can be found in Response to Comments (Appendix B), Response to Comment 3-9.0.
105. Different studies have identified different minimum combustion temperatures for adequate destruction of PFCs, although all of the identified temperatures are within a reasonable range of each other. The MPCA finds that the studies performed by the University of Dayton Research Institute used to support the Hazardous Waste MACT and that identify a 900 degrees Celsius/1650 degrees Fahrenheit combustion temperature are reliable and present a reasonable choice for the Facility. The MPCA finds that the petition does not satisfy criterion C. of Minn. R. 7000.1900, subp. 1.
106. Petition Issue 16 – "Coalition members believe that waste tanker truck cleaning must be occurring on site but are unable to find references to this in the present or the draft permits. The Coalition has been lead to believe that 3M already handles around 500 tankers a year. The proposed burning of "outside" (non3M) wastes, using the worst case numbers from the draft permits, could generate another 2000 trucks per year, potentially yielding a great increase in fugitive emissions from truck cleaning. It is unclear whether any fugitive emissions from truck cleaning are now being reported. A record needs to be developed in this matter."
107. Tanker truck cleaning does occur at the Facility. The activity is more fully described in the Response to Comments (Appendix B), Response to Comment 3-11.0. 3M evaluated potential fugitive emissions from the activity and MPCA staff reviewed the evaluation. The evaluation shows that tanker truck cleaning qualifies as an insignificant activity. As a result, tanker truck cleaning and associated emissions calculations has been added to the insignificant activities list in the air emission permit.
108. The MPCA finds that the question raised in the petition concerning tanker truck cleaning has been resolved through the addition of the activity to the air emission permit's insignificant activity list. As a result, the petition does not satisfy Item C. of Minn. R. 7000.1900, subp. 1.
109. Petition Issue 17 – "The permit(s) call for 3M to complete or update a Human Health Risk Assessment, but this is to happen after, not before, updated permits are issued. There appear to be no provisions for public participation, public review, or even public disclosure of the results of such an assessment. Residents believe that the updated assessment must be completed before, not after, additional waste-burning is authorized by the MPCA. The Health Risk Assessment should be carried out as part of Environmental Review so that public involvement will occur."
110. A Human Health Risk Assessment (HHRA) was performed for the facility in 2004, the results concluded that "routine emissions from this facility do not pose an acute health hazard to the

public,” see Response to Comments (Appendix B), Response to Comment 1-4. Although EPA staff reviewing the permit said that normally if a Risk Assessment has shown acceptable risk, EPA would not require an updated risk assessment. However, EPA recommended that 3M update the risk assessment because the guidance for completing a risk assessment had been updated and because of the level of public concern. As a result, the permit requires 3M to perform an updated HHRA. The results of the HHRA are public information and would be available to the public.

111. The MPCA finds that the petition objects to completion of the HHRA after permit issuance and a preference that it be completed as part of environmental review. The MPCA determined in a separate decision on May 22, 2012, that environmental review for the two proposed permits was not required. The MPCA finds that the Coalition’s preference that the HHRA be completed before non-3M hazardous waste is treated at the Facility is not a dispute over a material fact and it would not aid this Board to hold a contested case hearing on the Coalition’s preference as to the timing of the HHRA. The petition fails to meet criteria A. and C. of Minn. R. 7000.1900, subp. 1.
112. Petition issue 18 – “Remarkably, the only hazardous waste incinerator in Minnesota has never been subjected to Environmental Review pursuant to the Minnesota Environmental Policy Act. This longstanding defect must be corrected before any expanded waste-burning or other potentially emissions-increasing activities are allowed. The Coalition has petitioned for environmental review.”
113. On May 22, 2012, the MPCA 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 completed the process for the consideration whether an EAW should be prepared for the proposed hazardous waste and air emission permits.
114. The MPCA finds that this question has already been resolved and the decision on a petition for environmental review is not suited to a contested case hearing. Judicial review of the decision is available under Minn. Stat. § 116D.04, subd. 10. The MPCA finds that the petition on the question of whether environmental review should be completed for the proposed permits fails to meet criteria A. and C. of Minn. R. 7000.1900, subp. 1.
115. Petition Issue 19 – “Under the Minnesota Environmental Policy Act, the MPCA must act diligently to preserve the environment through careful analysis and issuance of permits:

116D.02, Subd. 2

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;*
- (2) assure for all people of the state safe, healthful, productive, and aesthetically and culturally pleasing surroundings;*
- (3) discourage ecologically unsound aspects of population, economic and technological growth, and develop and implement a policy such that growth occurs only in an environmentally acceptable manner;*
- (6) develop and implement land use and environmental policies, plans, and standards for the state as a whole and for major regions thereof through a coordinated program of planning and land use control;*

(8) establish and maintain statewide environmental information systems sufficient to gauge environmental conditions;

(9) practice thrift in the use of energy and maximize the use of energy efficient systems for the utilization of energy, and minimize the environmental impact from energy production and use;

(11) reduce wasteful practices which generate solid wastes;

(13) conserve natural resources and minimize environmental impact by encouraging extension of product lifetime, by reducing the number of unnecessary and wasteful materials practices, and by recycling materials to conserve both materials and energy;

(14) improve management of renewable resources in a manner compatible with environmental protection;

(16) reduce the deleterious impact on air and water quality from all sources...

(19) encourage advanced waste treatment in abating water pollution.

116D.03, Subd. 2

(8) undertake, contract for or fund such research as is needed in order to determine and clarify effects by known or suspected pollutants which may be detrimental to human health or to the environment, as well as to evaluate the feasibility, safety and environmental effects of various methods of dealing with pollutants.

The Draft permit, based on the issues raised above, does not meet the requirements of the MEPA. The mere fact that the draft permits, deconstructed, appear to comply in detail with various Federal and Minnesota requirements, does not mean that, taken as a whole, they meet the purpose intent of the laws. However, the Coalition does not agree, or concede, that the permits are compliant."

116. This comment appears to express the Coalition's general disagreement that the permits meet applicable requirements. The petition with respect to this comment does not, however, identify any specific respect in which the permits fail to include or meet applicable requirements. In fact, the petition appears to agree that the permits comply in detail with federal and state requirements. The MPCA finds that the petition as to the Coalition's general disagreement that the hazardous waste and air emission permits, taken as a whole, do not meet applicable requirements fails to satisfy criteria A. and C. of Minn. R. 7000.1900, subp. 1. The petition fails to identify any specific material fact that it disputes and a contested case hearing on the Coalition's general disagreement with the permits would not aid the MPCA in making its final decision.
117. The MPCA finds that none of the issues presented in the Coalition's petition for a contested case hearing satisfies the criteria of Minn. R. 7000.1900. The petition is denied.

FINAL DETERMINATION ON ISSUANCE OF THE PERMIT

118. The MPCA's decision to issue the proposed permit is governed by its permit rule, Minn. R. 7007.0100, which provides:

Subpart 1. **Preconditions for issuance.** The agency shall issue a permit or permit amendment, or reissue a permit only if it determines that all of the following conditions have been met:

- A. The agency has received a complete application for a permit, permit amendment, or permit reissuance, except that a complete application need not be received before issuance of a general permit under part 7007.1100, subpart 4.
- B. The agency has complied with the public participation procedures for permit issuance if required by part 7007.0850.
- C. The agency has complied with the procedures for notifying and responding to affected states, if required by part 7007.0900.
- D. If the administrator's review is required by part 7007.0950, the administrator has received a copy of the permit and any notices required and has not objected to issuance of the permit within the time period specified, or the administrator has objected by the objection has been resolved to the administrator's satisfaction.
- E. The conditions of the permit provide for compliance with all applicable requirements and the requirements of parts 7007.0100 to 7007.1850, or include a schedule to achieve such compliance.
- F. The permit does not reflect a variance from any federally enforceable applicable requirement or requirement of parts 7007.0100 to 7007.1850.
- G. The agency anticipates that the applicant will, with respect to the stationary source and activity to be permitted, comply with all conditions of the permit.
- H. All applicable provisions of Minnesota Statutes, chapter 116D, and the rules adopted under Minnesota Statutes, chapter 116D, have been fulfilled.

Subp. 2. **Grounds for denial.** The following constitute grounds for the agency to refuse to issue a new or modified permit, or to refuse permit reissuance:

- A. The agency is unable to make any of the determinations required under subpart 1.
- B. There exists at the stationary source to be permitted unresolved noncompliance with applicable state or federal pollution control statutes or rules administered by the agency, or conditions of a previous or existing air emission permit, and the applicant will not undertake a schedule of compliance to resolve the noncompliance.
- C. An applicant has failed to disclose fully all facts relevant to the stationary source or activity to be permitted, or the applicant has knowingly submitted false or misleading information to the agency.
- D. The permitted facility or activity would endanger human health or the environment and the danger cannot be removed by an amendment to the permit.
- E. With respect to the stationary source or activity to be permitted, the applicant has not complied with the requirement to pay fees under chapter 7002.
- F. With respect to the stationary source of activity to be permitted, the applicant has failed to pay a penalty owed pursuant to court order, consent decree, stipulation agreement,

schedule of compliance, or an order issued under Minnesota Statutes, section 116.072.

- G. The applicant has failed to prepare a pollution prevention plan or submit a pollution prevention progress report to the commissioner as required by Minnesota Statutes, sections 115D.07 and 115D.08.

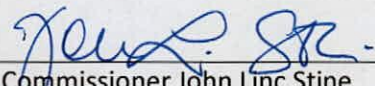
CONCLUSIONS OF LAW

119. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.
120. The MPCA has jurisdiction over this matter.
121. Due adequate, and timely public notice of the proposed permit as given in accordance with Minn. R. 7007.0850, 7007.0900 and 7007.0950.
122. The conditions under which the MPCA is authorized to issue this permit set forth in Minn. R. 7007.1000 have been met, and no condition for the denial of the permit is present. Proper operation of the project in accordance with the conditions of the permit issued by this order will achieve compliance with applicable state and federal air pollution control statutes and rules and the conditions of the permit.

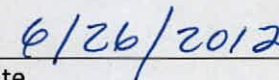
ORDER

The Minnesota Pollution Control Agency approves the reissuance of the Hazardous Waste and Air Quality Permits for the 3M Hazardous Waste Corporate Incinerator.

IT IS SO ORDERED



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



Date