MINNESOTA POLLUTION CONTROL AGENCY

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DATE: February 7, 2023

TO: INTERESTED PARTIES

RE: Dem-Con Landfill SW-290 Expansion - EIS need Decision

The Minnesota Pollution Control Agency (MPCA) has approved the Findings of Fact, Conclusions of Law, and Order for a Negative Declaration (FOF) on the need for an Environmental Impact Statement on the Dem-Con Landfill SW-290 Expansion. The FOF document concludes that this project does not have the potential for significant environmental effects. The decision for a Negative Declaration completes the state environmental review process under Environmental Quality Board rules, Minn. R. ch. 4410. Final governmental decisions on permits or approvals for the project may now be made.

The MPCA appreciates comments submitted on the Environmental Assessment Worksheet (EAW). The comments were considered by MPCA staff during the environmental review process and responses to these comments are provided in the FOF.

Interested parties can review the FOF and the EAW documents at the following locations: the MPCA offices in St. Paul; and the Hennepin County Library at 300 Nicollet Mall, Minneapolis. Interested parties can also view the documents on MPCA's website at: https://www.pca.state.mn.us/regulations/projects-under-mpca-review. Please contact the MPCA's St. Paul office at 651-757-2098 for copies of these documents.

MINNESOTA POLLUTION CONTROL AGENCY

IN THE MATTER OF THE DECISION ON THE NEED FOR AN ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSED DEM-CON LANDFILL SW-290 EXPANSION LOUISVILLE TOWNSHIP SCOTT COUNTY, MINNESOTA

FINDINGS OF FACT CONCLUSIONS OF LAW AND ORDER

FINDINGS OF FACT

Pursuant to Minn. ch. 4410, the Minnesota Pollution Control Agency (MPCA) staff prepared and distributed an Environmental Assessment Worksheet (EAW) for the proposed Dem-Con Landfill SW-290 Expansion (Project). Based on the MPCA staff environmental review, the EAW, 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.

Project Description

1. The Dem-Con Landfill SW-290 is an existing Class III Demolition Landfill (Landfill) in Louisville Township, Scott County, Minnesota. Dem-Con Landfill, LLC (Dem-Con) is seeking a horizontal expansion onto 241 acres directly south of the existing Landfill (Project) adding 36,247, 942 cubic yards (cy) of airspace to the Landfill for a total design capacity of 55,300,384 cy of airspace. The 241-acre expansion area is an active limestone quarry that is nearing completion and preparing for final reclamation activities and end use development.

2. In December, 2021, Dem-Con submitted a permit amendment application to Solid Waste Facility Permit SW-290.

Procedural History

3. An EAW is a brief document designed to provide the basic facts necessary for the Responsible Governmental Unit (RGU) to determine whether an Environmental Impact Statement (EIS) is required for a proposed project or to initiate the scoping process for an EIS (Minn. R. 4410.0200, subp. 24). The MPCA is the RGU for this Project.

4. Pursuant to Minn. R. 4410.1000, subp. 3(C), on January 3, 2022, the proposer submitted a discretionary (*voluntary*) draft EAW to the MPCA. Subsequently, an EAW on the Project was prepared by MPCA staff for publication. The MPCA provided public notice of the Project as follows:
   A. The Environmental Quality Board (EQB) published the notice of availability of the EAW for public comment in the *EQB Monitor* on November 15, 2022, as required by Minn. R. 4410.1500.
   B. The EAW was available for review on the MPCA website at: https://mpca.commentinput.com/comment/search.
   C. The MPCA provided a news release to media in Scott and Carver Counties, Minnesota, and other state-wide interested parties, on November 15, 2022.

5. During the 30-day comment period on the EAW ending on December 15, 2022, the MPCA received comments from the US Army Corp of Engineers, Minnesota Department of Transportation, State Historic Preservation Office, Scott County, Metropolitan Council, Minnesota Department of Natural Resources, Shakopee Mdewakanton Sioux Community, and one comment from a private citizen.

6. On December 29, 2022, the MPCA requested approval from the EQB for a 15-day extension of the decision-making process on the need for an EIS for the Project in accordance with Minn. R. 4410.1700, subp. 2(B). The EQB granted approval of the extension on January 11, 2023.

7. The list of comments received during the 30-day public comment period are included as Appendix A to these Findings. The MPCA prepared written responses to the comments received during the 30-day public comment period. These responses are included as Appendix B to these Findings.

Criteria for Determining the Potential for Significant Environmental Effects

8. The MPCA shall base its decision on the need for an EIS on the information gathered during the EAW process and the comments received on the EAW (Minn. R. 4410.1700, subp. 3). The MPCA must order an EIS for projects that have the potential for significant environmental effects. (Minn. R. 4410.1700, subp. 1). In deciding whether a project has the potential for significant environmental effects, the MPCA must compare the impacts that may be reasonably expected to occur from the Project with the criteria set forth in Minn. R. 4410.1700, subp. 7. These criteria are:

   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.
   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.

The MPCA Findings with Respect to Each of These Criteria Are Set Forth Below

Type, Extent, and Reversibility of Environmental Effects

9. The first criterion that the MPCA must consider when determining if a project has the potential for significant environmental effects is the "type, extent, and reversibility of environmental effects" Minn. R. 4410.1700, subp. 7(A). The MPCA findings with respect to this criterion are set forth below.

10. The types of impacts that may reasonably be expected to occur from the Project include the following:

    - water quality impacts related to stormwater runoff
    - groundwater impacts related to infiltration of leachate
    - human health impacts related to groundwater impacts from PFAS

11. Written comments received during the comment period raised additional issues, as follows:

    - impact to Traditional Cultural Properties (TCPs)
    - impacts to groundwater from increased precipitation in the climate change forecasts
    - impacts to air quality from fugitive dust

12. With respect to the extent and reversibility of impacts that are reasonably expected to occur from the Project, the MPCA makes the following findings.

Water quality impacts related to stormwater runoff

13. Public waters within one-mile of the Project include the Minnesota River, Gifford Lake (Public Water 70-118P), Louisville Swamp (Public Waters 70-209P and 70-210P), Picha Creek, and Sand Creek.

14. No regulated wetlands were identified in the Project area.

15. **Table 12-1: Impaired Waters within one mile of Project**

Impaired Water	Impairments	Impaired Use	Location
Picha Creek	Fish bioassessments	Aquatic Life	1 mile crossgradient, south of Project
Sand Creek	Chloride, E. coli., Fish bioassessments, Nutrients, Turbidity, Benthic macroinvertebrate bioassessments	Aquatic Life, Aquatic Recreation,	0.94 miles downgradient, west of Project
Minnesota River High Island to Carver Creek	Fecal coliform, Mercury in fish tissue, Mercury in Water Column, Turbidity, PCB in fish tissue,	Aquatic Life, Aquatic Recreation, Aquatic Consumption	0.63 miles downgradient, west of Project
Minnesota River Carver Creek to RM 22	Mercury in fish tissue, Mercury in Water Column, Turbidity, Nutrients, PCB in fish tissue,	Aquatic Life, Aquatic Consumption	1 mile downgradient, west of Project

16. The Landfill currently operates under a National Pollution Discharge Elimination System/State Disposal System (NPDES/SDS) Industrial Stormwater Permit (ISW Permit) issued by the MPCA. The ISW Permit will be updated to reflect the Project. Under the ISW Permit, Dem-Con is required to update its site specific Stormwater Pollution Prevention Plan (SWPPP), which identifies potential pollution sources at the Project, outlines operating procedures for material handling activities and inspections, and describes controls and best management practices (BMPs) the County will use to minimize pollutants in stormwater runoff.

17. The Project will control peak rates of runoff for the 2, 10, and 100 year 24-hour rainfall events to pre-settlement conditions.

18. The MPCA expects that quality of runoff from the Project will not significantly change if managed in accordance with the Solid Waste Permit and ISW Permit.

19. There are three distinct drainage areas across the Project area, the northern regional, central, and southern drainage areas.

20. In the northern portion of the Project area, regional stormwater drainage originating in the bluff area runs into and through the northern portion of the Project. Permanent stormwater management ponds were constructed on the east side of US Highway 169 in conjunction with the 2020 construction of the frontage road (Louisville Road) system. A regional hydrologic model was developed by the County that incorporates these improvements.

21. In the central drainage area, mining has reduced the grade in most of the drainage area. Most of this drainage area originally drained to the west, but now most of the area drains internally. A small

portion of the central drainage area along the setback of the mine drains to the US Highway 169 right of way.

22. The southern drainage area originally drained to the south. Most of this drainage area north of 145th Street flows to a box culvert under 145th Street. The portion of property south of 145th Street sheet flows to the south. A small portion of the drainage area flows to the US Highway 169 right of way. Stormwater runoff from the southern drainage area on site generally flows to the southwest towards a large culvert that runs under 145th Street just to the west of the Project Boundary and into a landlocked basin.

23. The northern regional drainage area will be maintained and is outside of the landfill footprint. The central and southern drainage areas will continue to discharge to the west and south.

24. A stormwater management system has been designed that includes stormwater treatment, rate control, and volume control to mitigate these impacts. Permanent best management practices including sedimentation basins for pre-treatment and infiltration ponds for water quality treatment and volume control have been designed to manage stormwater runoff from the landfill. Stormwater falling on the active landfill operations is managed to reduce pollutant loads by applying intermediate cover on inactive areas, using berms and swales to divert runoff away from active fill areas and to prevent runoff that does contact fill material from leaving the active cell. Flow interruption berms are constructed on top of the final cover system to interrupt flow across the slopes of the final cover and direct water to the perimeter ditch system, increasing the stability of the final cover system and reducing erosion potential.

25. The MPCA finds that information presented in the EAW and other information in the environmental review record are adequate to assess potential impacts to the quality of water related to stormwater runoff that are reasonably expected to occur from the Project.

26. The MPCA finds the Project, as proposed, does not have the potential for significant environmental effects based on the type, extent and reversibility of impacts related to water quality impacts related to stormwater runoff, which are reasonably expected to occur.

<u>Groundwater impacts related to infiltration of leachate</u>

27. The Facility generates wastewater in the form of landfill leachate. Leachate is liquid collected from the landfill liner system that is generated when precipitation falls on and percolates through waste or when moisture is released from waste through decomposition or consolidation.

28. Dem-Con has implemented several landfill design elements to reduce the volume of leachate generated and to prevent leachate that is generated from impacting the groundwater. Leachate reduction measures include:

    - The use of cover materials over exposed waste;
    - Limiting the size of active fill area;
    - Use of diversion berms, swales, and grading to prevent stormwater from running into an active fill area;
    - Installing a final cap on completed fill area; and
    - Final grades designed to shed precipitation off the fill area.

29. The MPCA MSW permit includes conditions and measures to prevent leachate generated from impacting groundwater including:

    - Installation of a landfill liner and leachate collection system; and
    - Routine groundwater monitoring.

30. Several measures to increase protection of the groundwater have been implemented over the life of the Landfill. These include:

    - The installation of a liner and leachate collection system in the northern fill area as part of initial phase construction.
    - Installation of a liner and leachate collection system over in-place demolition fill materials in the central fill area. The liner acts as a liner for future filling in this portion of the landfill and acts as an essentially impermeable cover over the underlying in place demolition waste.
    - Construction of an enhanced final cover system over completed unlined portions of the southern landfill in 2019. The enhanced final cover system will be used over all portions of the landfill as they are brought to final grade and consists of a six-inch buffer layer overlain by a 40-mil LLDPE liner, a drainage geocomposite, 18 inches of rooting material and six inches of topsoil layer. This system significantly reduces the amount of precipitation that can enter the landfill and generate leachate. This system is particularly effective at protecting groundwater over the unlined portions of the original demolition landfill.

31. The MPCA finds that information presented in the EAW and other information in the environmental review record are adequate to assess potential impacts to the quality of groundwater impacts related to infiltration of leachate that are reasonably expected to occur from the Project.

32. The MPCA finds the Project, as proposed, does not have the potential for significant environmental effects based on the type, extent and reversibility of impacts related to groundwater impacts related to infiltration of leachate, which are reasonably expected to occur.

<u>Human health impacts related to groundwater impacts from per- and polyfluoroalkyl substances (PFAS)</u>

33. The MPCA recently conducted additional monitoring at the Louisville Landfill, northwest of the Project (Figure 4), for emerging contaminants of concern including PFAS at closed landfills across the state.

34. According to the MPCA[1] PFAS contamination was found in 97 percent of assessed closed landfills across the state of Minnesota, including the Louisville Landfill.

35. The MPCA, along with other state agencies, released Minnesota's PFAS Blueprint – a strategic, coordinated approach to protect families and communities from PFAS.

36. With the discovery of PFAS contamination in groundwater, the MPCA will expand its water monitoring to ensure drinking water is monitored and the full extent and magnitude of the contamination is known.

37. In March of 2022, the MPCA developed a PFAS Monitoring Plan.[2] The PFAS Monitoring Plan addresses PFAS monitoring at several different types of industries including Solid Waste Facilities. To implement the PFAS Monitoring Plan at Minnesota's solid waste facilities, the MPCA is requesting all landfills voluntarily sample groundwater monitoring wells for PFAS over the next two years (Wave 1 facilities).

38. MPCA developed two waves of testing based on facility and risk characteristics, including landfill design and operation, groundwater contamination associated with the facility, and potential

[1] https://www.pca.state.mn.us/news-and-stories/nearly-60-closed-landfills-in-41-counties-have-pfas-contamination-in-groundwater-that-exceeds-the

[2] March 2022, PFAS Monitoring Plan, Minnesota Pollution Control Agency. Available online at: https://www.pca.state.mn.us/sites/default/files/p-gen1-22b.pdf

downgradient drinking water receptors. Based on this prioritization of facilities, the MPCA assigned the Dem-Con Landfill to the second wave.

39. The landfill design elements and permit conditions identified in findings 27, 28, and 29 will prevent PFAS in the waste from getting into the groundwater.

40. The MPCA has not yet sent out monitoring requests to Wave 2 facilities. It is anticipated that Wave 2 facilities will monitor for PFAS in 2024.

41. The MPCA finds that information presented in the EAW and other information in the environmental review record are adequate to assess potential impacts to the quality of human health impacts related to groundwater impacts from PFAS that are reasonably expected to occur from the Project.

42. The MPCA finds the Project, as proposed, does not have the potential for significant environmental effects based on the type, extent and reversibility of impacts related to human health impacts related to groundwater impacts from PFAS, which are reasonably expected to occur.

Public Comments on impacts related to Traditional Cultural Properties (TCPs)

43. Work was coordinated with the Office of the State Archaeologist (OSA) to evaluate the potential for significant impacts to cultural resources. The cultural resources investigation was completed prior to Scott County recently issuing a permit for mining the undisturbed southern 1/3 of the expansion area. Cultural resources were not identified on the expansion area property.

44. The State Historic Preservation Office (SHPO) concluded that there are no properties listed in the National or State Registers of Historic Places, and no known or suspected archaeological properties in the area that will be affected by this project.

45. A Phase 1 Cultural Resources Investigation was conducted in 2011 and updated in 2015, which noted the presence of several burial mound sites some distance from the Dem-Con Landfill Expansion Area.

46. Dem-Con has contacted both the OSA and Minnesota Indian Affairs Council (MIAC) to determine if any new cultural resource information is available that may impact the Project. Dem-Con will continue to consult with OSA and MIAC on any updated information they may have regarding cultural resources in the area.

47. Dem-Con in consultation with OSA and MIAC, Dem-Con will develop an Inadvertent Discovery Plan.

48. The MPCA finds that information presented in the EAW and other information in the environmental review record is adequate to address the concerns related to impacts to TCPs. The impacts on TCPs that are reasonably expected to occur from the proposed Project have been considered during the review process and methods to prevent significant adverse impacts have been developed.

Public Comments on impacts to groundwater from increased precipitation in the climate change forecasts

49. The impact of Minnesota Climate trends including anticipated changes in groundwater levels was considered in Section 7b, Table 7b of the EAW and discussed further in response to comments 7-2, 8-1, 8-3, and 8-7

50. As mitigation, the base of the liner has been designed to maintain a separation from the current groundwater elevations by a minimum of five feet which can accommodate a rise in groundwater elevations should they occur. If a rise in groundwater levels exceeds the separation distance provided, which is over ten feet at some locations of the liner) that portion of the liner will develop

an inward gradient. When an inward-directed hydrostatic head difference is maintained, it limits the outward coupled flux of the leachate and continues to be protective of the regional groundwater aquifer.

51. The MPCA finds that the Project, as it is proposed, does not have the potential for significant environmental effects based on the type, extent, and reversibility of impacts related to anticipated changes to groundwater levels due to increased precipitation in climate change forecasts that are reasonably expected to occur from the Project.

Public comments on impacts to air quality from fugitive dust

52. Fugitive dust will be controlled at the landfill by utilizing a paved main access road used to transport demolition materials to the Site, (the access road to the expansion area will also be paved). Watering unpaved portions of internal haul roads and creating topographic barriers by establishing a screening berm along the outer edge of active fill areas. Stockpiles of materials to be used for future liner or cover construction will be stabilized by establishing temporary vegetative cover and perimeter berms will be seeded and mulched to minimize fugitive dust.

    The MPCA finds that the Project, as it is proposed, does not have the potential for significant environmental effects based on the type, extent, and reversibility of impacts related to fugitive dust that are reasonably expected to occur from the Project.

Cumulative Potential Effects

52. The second criterion that the MPCA must consider when determining if a project has the potential for significant environmental effects is the "cumulative potential effects." In making this determination, the MPCA must consider "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 effects; and the efforts of the proposer to minimize the contributions from the project." Minn. R. 4410.1700 subp. 7 (B). The MPCA findings with respect to this criterion are set forth below.

53. The EAW, public comments, and MPCA follow-up evaluation did not disclose any related or anticipated future projects that may interact with this Project in such a way as to result in significant cumulative potential environmental effects.

54. The EAW addressed the following areas for cumulative potential effects for the proposed Project:

- Traffic
- Groundwater
- PFAS in groundwater

Traffic

55. Cumulative potential effects related to traffic were discussed and reviewed by MPCA in part 20.b of the EAW.

56. Traffic patterns and generation rates from the mining activity, which will be concurrent in the southern portion of the Project with landfilling activity in the northern portion of the Project was included in the traffic review.

57. Aggregate hauling utilizes a separate existing access point off Red Rock Drive to eliminate conflict with landfill traffic. The right-in/right-out access off US Highway 169 in the northern portion of the

Project will be used on a limited basis by both Bryan Rock and Dem-Con for reclamation and construction related activity. This traffic was also accounted for in the traffic review.

58. Cumulative effects analysis also included traffic generated from the nearby Minnesota Renaissance Festival, Sever's Festivals, and the proposed Shakopee Mdewakanton Sioux Community (SMSC) organics composting facility off TH 41 near Dem-Con Drive.

59. The festivals typically operate during the weekend when landfill traffic is at a minimum and most trips occur in the morning when the festival traffic is at its lightest. The mining operation typically stops hauling by late morning during the Renaissance Festival's days of operation to avoid congestion created by festival traffic.

60. The SMSC site is still in planning stages, but a traffic review prepared by Bolton and Menk, dated June 2021 indicates that the project is proposing traffic improvements (northbound and southbound left-turn lanes) at their entrance, which is northwest of Dem-Con Drive. These recommended improvements are expected to mitigate any conflicts associated with additional traffic from the Project.

61. Therefore, the MPCA finds that the Project is not expected to contribute significantly to adverse cumulative potential effects on Traffic.

Groundwater

62. Cumulative potential effects related to groundwater were discussed in Part 12.a.ii. of the EAW. Findings 27 through 32 are incorporated herein as part of MPCA's cumulative potential effects evaluation for impacts to groundwater.

63. The MPCA finds the information presented in the EAW and other information in the environmental review record does not demonstrate that the Project has the potential for significant environmental effects to groundwater based on significant cumulative potential effects because: the Project will incorporate a leachate collection system, has an existing groundwater monitoring network, the groundwater monitoring network will be expanded as the landfill is developed.

PFAS in groundwater

64. Cumulative potential effects related to groundwater were discussed in Part 12.a.ii. of the EAW. Findings 27 through 42 are incorporated herein as part of MPCA's cumulative potential effects evaluation for PFAS.

65. The MPCA finds the information presented in the EAW and other in the environmental review record does not demonstrate that the Project has the potential for significant environmental effects from PFAS to groundwater based on significant cumulative potential effects because: the Project will incorporate a leachate collection system, the site will be part of Wave 2 of the PFAS Monitoring Plan, the Project will comply with the ongoing development of regulatory authority related to PFAS.

Cumulative Effects – Summary

66. Based on information on the Project obtained from information presented in the EAW, and consideration of potential effects due to related or anticipated future projects, the MPCA does not expect significant cumulative effects from this Project.

67. The MPCA finds the Project, as proposed, does not have the potential for significant environmental effects related to cumulative potential effects that are reasonably expected to occur.

The Extent to Which the Environmental Effects Are Subject to Mitigation by Ongoing Public Regulatory Authority

68. The third criterion that the MPCA must consider when determining if a project has the potential for significant environmental effects is "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." Minn. R. 4410.1700, subp. 7(C). The MPCA findings with respect to this criterion are set forth below.

69. The following permits or approvals will be required for the Project:

Table 9: Permit and approvals

Unit of Government	Permit or Approval Required
MPCA	Amendment to Solid Waste Facility Permit SW-290 (Demolition Debris Land Disposal Facility Permit)
	NPDES/SDS (Industrial Stormwater Multi Sector General Permit)
Minnesota Department of Health (MDH)	Well Sealing (as needed)
	Well Construction Permit
	Monitoring Well Permit
Minnesota Department of Transportation (MnDOT)	Drainage Permit
Metropolitan Council	Industrial Discharge Permit (Special Discharges) for leachate disposal
Scott County	Amendment to Conditional Use Permit (CUP)
	Annual Solid Waste License
	Septic system, building permits, etc.

70 Demolition Debris Land Disposal Facility Permit Demolition debris consists of concrete, brick, bituminous, masonry, untreated wood, glass, rock, plastic building parts, and trees. The project proposer is responsible for submitting engineering plans and for managing the facility in accordance to the final permit requirements which would regulate, among other things, prohibited materials, construction, operations, monitoring, closure, post-closure, and emergency/contingency action plans.

71. NPDES/SDS Multi-Sector Industrial Stormwater General permit (ISW permit) Certain dischargers of industrial stormwater must have an ISW permit. The purpose of the permit is to identify conditions under which industrial stormwater can be discharged so that the quality of surface waters, wetlands and groundwater is protected. The permit requires a stormwater pollution prevention plan (SWPPP) that provides details of best management practices to be implemented.

72. Well Sealing If the well is not in use and does not have a Water Well Maintenance Permit, or the well poses a threat to health or safety, Minnesota law requires that you must have the well sealed. Once fully sealed, the contractor is required to submit a Well and Boring Sealing Record to MDH.

73. Well Construction Permit In Minnesota, all wells must be installed by contractors licensed by the Minnesota Department of Health (MDH), except that an individual may construct a well for personal use on land owned or leased by that individual, and used by the individual for farming or agricultural purposes or for the individual's place of abode. In all cases, the well must be

constructed according to the requirements of Minnesota Statutes, chapter 103I, and Minnesota Rules, chapter 4725.

74. Drainage Permit Minn. S. 160.20 DRAINAGE Subdivision 1. Connecting drains to highway drains. When the course of natural drainage of any land runs to a highway, the owner of the land shall have the right to enter upon the highway for the purpose of connecting a drain or ditch with any drain or ditch constructed along or across the highway, but before making the connections, shall first obtain a written permit for the connections from the road authority having jurisdiction. The connections shall be made in accordance with specifications set forth in the permits. The road authority shall have power to prescribe and enforce reasonable rules and regulations with reference to the connections. The highway shall be left in as good condition in every way as it was before the connection was made.

75. Industrial Discharge Permit (Special Discharges) for leachate disposal Special Discharge Permits include: 1) landfill leachate (leachate generated at landfills that contain the following wastes: municipal solid waste, ash, demolition, or non-hazardous industrial waste); and 2) groundwater and surface water that has been contaminated by past improper disposal practices, leaks from underground tanks and pipelines, chemical spills, and landfills.

76. Monitoring Well Construction Permit The monitoring well construction permit includes application and construction requirements that would help prevent or minimize the potential for significant environmental effects. Casing and grout materials must be specified in the application. Monitoring wells that are sealed within 48 hours of construction do not require a permit.

77. County Conditional Use Permit. The proposer is required to obtain all required building and conditional use permits required by local units of government to ensure compliance with local ordinances. The conditional use permit will address local zoning, environmental, regulatory, and other requirements that are needed to avoid adverse effects on adjacent land uses.

78. Annual Solid Waste License It is unlawful for any person to establish, operate or maintain a solid waste disposal facility without first being licensed to do so by the County Board. The County Board may, at its discretion, issue a license for the operation of a solid waste disposal facility.

79. Septic system Any person who conducts site evaluations or designs, installs, alters, repairs, replaces, maintains, pumps, or inspects all or part of an SSTS in Scott County shall comply with the requirements of this Ordinance and the appropriate portions of Minn. R. chapters 7080 or 7081.

80. Building permits The Scott County Building Inspections Department is responsible for administering the Minnesota State Building Code.

81. The above-listed permits include general and specific requirements for mitigation of environmental effects of the Project. The MPCA finds that the environmental effects of the Project are subject to mitigation, as explained in these Findings and the EAW, by ongoing public regulatory authority.

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

82. The fourth criterion that the MPCA must consider is "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," Minn. R. 4410.1700, subp. 7(D). The MPCA Findings with respect to this criterion are set forth below.

83. Although not exhaustive, the MPCA reviewed the following documents as part of the environmental impact analysis for the proposed Project:

    i. Data presented in the EAW
    ii. U.S. Government's U.S. Greenhouse Gas Emissions and Sinks: 1990-2016 (2018)
    iii. MPCA's legislative report *Greenhouse Gas Emissions in Minnesota: 1990-2016* (2019)
    iv. MPCA's report *Greenhouse gas reduction potential of agricultural best management practices (2019)*
    v. The Center for Climate Strategies in Collaboration with Minnesota State Agencies' report
    vi. Minnesota Climate Strategies and Economic Opportunities (2016)
    vii. Permits and environmental review of similar projects

84. The MPCA also relies on information provided by Dem-Con, persons commenting on the EAW, staff experience, and other available information obtained by staff.

85. The environmental effects of the Project have been addressed by the design and permit development processes, and by ensuring conformance with regional and local plans. No elements of the Project pose the potential for significant environmental effects that are not addressed or mitigated by the requirements of the permits listed above or in the EAW.

86. Based on the environmental review, previous environmental studies by public agencies or the project proposer, and staff expertise and experience on similar projects, the MPCA finds that the environmental effects of the Project that are reasonably expected to occur can be anticipated and controlled.

87. The MPCA adopts the rationale stated in the attached Response to Comments (Appendix B) as the basis for response to any issues not specifically addressed in these Findings.

CONCLUSIONS OF LAW

88. The MPCA has jurisdiction in determining the need for an EIS for this Project. The EAW, the permit development process, and the evidence in the record are adequate to support a reasoned decision regarding the potential significant environmental effects that are reasonably expected to occur from this Project.

89. The MPCA identified areas for potential significant environmental effects. The Project design and permits ensure Dem-Con will take appropriate mitigation measures to address significant effects. The MPCA expects the Project to comply with all environmental rules, regulations, and standards.

90. Based on a comparison of the impacts that are reasonably expected to occur from the Project with the criteria established in Minn. R. 4410.1700 subp. 7, the Project does not have the potential for significant environmental effects.

91. An EIS is not required for the proposed Dem-Con Landfill SW-290 Expansion.

92. Any Findings that might properly be termed conclusions and any conclusions that might properly be termed Findings are hereby adopted as such.

ORDER

93. The Minnesota Pollution Control Agency determines that there are no potential significant environmental effects reasonably expected to occur from the Dem-Con Landfill SW-290 Expansion project and that there is no need for an Environmental Impact Statement.

Katrina Kessler

Katrina Kessler, Commissioner
Minnesota Pollution Control Agency

February 6, 2023
Date

APPENDIX A

Minnesota Pollution Control Agency

Dem-Con Landfill Expansion
EAW

LIST OF COMMENT LETTERS RECEIVED

1. Leonard Wabasha. Letter received November 15, 2022.
2. Rachel Gralnek. U.S. Army Corps of Engineers. Letter received November 29, 2022.
3. Cameron Muhic. Minnesota Department of Transportation. Letter received December 13, 2022.
4. Sarah J. Beimers. State Historic Preservation Office. Letter received December 14, 2022.
5. Jesse Krzenski. Scott County Environmental Services. Letter received December 15, 2022.
6. Steve Albrecht. Shakopee Mdewakanton Sioux Community. Letter received December 15, 2022.
7. Angela R. Torres. Metropolitan Council. Letter received December 15, 2022.
8. Melissa Collins. Department of Natural Resources. Letter received December 15, 2022.
9. Rachell Gralnek. US Army Corps of Engineers. Letter received December 27, 2022. (This letter was received after the close of the comment period.)

Leonard Wabasha

Have the significant cultural resources of the area been taken into consideration regarding the Dem-Con Landfill Expansion? Is this a question that the MPCA or Dem-Con can answer? Has the Office of the State Archaeologist or the Minnesota Indian Affairs Council been consulted regarding TCP's known to exist in the area?

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1323

11/29/2022

Regulatory File No. MVP-2022-02117-RLG

THIS IS NOT A PERMIT

Charles Peterson
MN Pollution Control Agency
520 Lafayette Road
Saint Paul, MN 55155

To: Charles Peterson:

We have received your submittal described below. You may contact the Project Manager with questions regarding the evaluation process. The Project Manager may request additional information necessary to evaluate your submittal.

File Number: MVP-2022-02117-RLG

Applicant: Bill Keegan

Project Name: Dem-Con Landfill SW-290

Project Location: Section 28 of Township 115 N, Range 23 W, Scott County, Minnesota (Latitude: 44.7464488013352; Longitude: -93.5906036793136)

Received Date: 11/16/2022

Project Manager: Rachel Gralnek
(651) 290-5276
Rachel.Gralnek@usace.army.mil

Additional information about the St. Paul District Regulatory Program can be found on our web site at http://www.mvp.usace.army.mil/missions/regulatory.

Please note that initiating work in waters of the United States prior to receiving Department of the Army authorization could constitute a violation of Federal law. If you have any questions, please contact the Project Manager.

Thank you.

U.S. Army Corps of Engineers
St. Paul District
Regulatory Branch

DEPARTMENT OF TRANSPORTATION

Metropolitan District
Waters Edge Building
1500 County Road B2 West
Roseville, MN 55113

December 13, 2022

Charles Peterson
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

Marty Schmitz
Scott County Planning Department
20 Fourth Avenue West
Shakopee, MN 55379

SUBJECT: MnDOT Review # **EAW22-019**
Dem-Con Companies
NW Quad US 169 & 145th Street
Louisville Township, Scott County

Dear Messrs. Peterson and Schmitz:

Thank you for the opportunity to review the **Dem-Con Companies EAW.** MnDOT has reviewed the documents and has the following comments:

Water Resources:
Table 9 should be modified to include a Drainage Permit from the Minnesota Department of Transportation.

This is to review any drainage impacts to the MnDOT Right-of-Way (ROW), as cross sections B-B and D-D in attachment 1 appear to show runoff crossing over the property boundary into the ROW, as well as the narrative commenting on a small portion of drainage entering the ROW in existing conditions. This will be required to ensure that current drainage rates to MnDOT right-of-way will not be increased. The actual HydroCAD models will need to be provided for review, not just project summaries.

The drainage permit application, including the information below, should be submitted online to: https://dotapp7.dot.state.mn.us/OLPA/

The following information must be submitted with the drainage permit application:

1) A grading plan showing existing and proposed contours.

2) Drainage area maps for the proposed project showing existing and proposed drainage areas. Any off-site areas that drain to the project area should also be included in the drainage area maps. The direction of flow for each drainage area must be indicated by arrows.
3) Drainage computations for pre and post construction conditions during the 2, 10, 50 and 100 year rain events.
4) Time of concentration calculations.
4) An electronic copy of any computer modeling used for the drainage computations.
5) See also the attached Drainage Permits Checklist for more information.

Once a drainage permit application is submitted, a thorough review will be completed and additional information may be requested.

For questions regards these comments, contact Jason Swenson, Metro Water Resources, at jason.swenson@state.mn.us or 651-234-7539.

Permits:
In addition to the Drainage permit mentioned above, any use of, or work within or affecting, MnDOT right of way will require a permit.

Permits can be applied for at this site: https://olpa.dot.state.mn.us/OLPA/.

Please direct questions regarding permit requirements to Buck Craig of MnDOT's Metro Permits Section at 651-775-0405 or Buck.Craig@state.mn.us.

Review Submittal Options
MnDOT's goal is to complete reviews within 30 calendar days. Review materials received electronically can be processed more rapidly. Do not submit files via a cloud service or SharePoint link. In order of preference, review materials may be submitted as:

1. Email documents and plans in PDF format to metrodevreviews.dot@state.mn.us. Attachments may not exceed 20 megabytes per email. Documents can be zipped as well. If multiple emails are necessary, number each message.

2. PDF file(s) uploaded to MnDOT's external shared internet workspace site at: https://mft.dot.state.mn.usmetrodevreviews.dot@state.mn.us. Contact MnDOT Planning development review staff at for uploading instructions, and send an email listing the file name(s) after the document(s) has/have been uploaded.

If you have any questions concerning this review, please contact me at (651) 234-7797.
.
Sincerely,

Cameron Muhic
Senior Planner

Copy sent via E-Mail:

Buck Craig, Permits
Jason Swenson, Water Resources
Almin Ramic, Traffic
Ryan Wilson, Area Manager
Mohamoud Mire, Area Coordinator
John Zehnder, Multimodal
Bethany Brandt-Sargent, Metropolitan Council
Lance Schowalter, Design
Ben Klismith, Right-of-Way
Alex Hogan, Traffic
Diane Langenbach, Area Engineer
Kimberly Zlimen, Transit
Jed Hanson, Metropolitan Council

DEPARTMENT OF ADMINISTRATION
STATE HISTORIC PRESERVATION OFFICE

December 14, 2022

Charles Peterson
Review Project Manager
Minnesota Pollution Control Agency
520 Lafayette Road North
St Paul, MN 55155

RE: EAW – Dem-Con Landfill SW-290 Expansion
T115 R23 S21 & S28, Louisville Twp, Scott County
SHPO Number: 2023-0323

Dear Charles Peterson:

Thank you for providing this office with a copy of the Environmental Assessment Worksheet (EAW) for the above-referenced project.

Based on our review of the project information, we conclude that there are **no properties** listed in the National or State Registers of Historic Places, and no known or suspected archaeological properties in the area that will be affected by this project.

However, according to the Office of the State Archaeologist's site inventory portal, there are several burial mound sites identified in the project vicinity. We recommend that you consult with the Office of the State Archaeologist (OSA) and the Minnesota Indian Affairs Council (MIAC) due to the presence of these sites, per Sec. 307.08 of the Minnesota Private Cemeteries Act.

Please note that this comment letter does not address the requirements of Section 106 of the National Historic Preservation Act of 1966 and 36 CFR § 800. If this project is considered for federal financial assistance, or requires a federal permit or license, then review and consultation with our office will need to be initiated by the lead federal agency. Be advised that comments and recommendations provided by our office for this state-level review may differ from findings and determinations made by the federal agency as part of review and consultation under Section 106.

Please contact Kelly Gragg-Johnson, Environmental Review Program Specialist, at 651-201-3285 or kelly.graggjohnson@state.mn.us if you have any questions regarding our review of this project.

Sincerely,

Sarah J. Beimers
Environmental Review Program Manager

SCOTT COUNTY
Environmental Services

GOVERNMENT CENTER · 200 FOURTH AVENUE WEST · SHAKOPEE, MN 55379-1220
(952) 496-8177 · Web www.scottcountymn.gov

December 15th, 2022

Charles Peterson
Resource Management and Assistance Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

Mr. Peterson:

Scott County has reviewed the draft Environmental Assessment Worksheet for the Dem-Con Landfill Expansion Project. Regarding matters for which Scott County has regulatory responsibility or other interests, we offer the following comments for your consideration.

Water Resources

- It is unclear in the document if the existing Dem-Con landfill is contributing to the elevated Manganese, Barium, Boron, Chloride, Sulfate, Nitrate and Nitrite, and Iron levels that are noted as elevated from quarterly monitoring. Clarification should be provided and any implications this may cause if the landfill is indeed contributing to these numbers.

Air

- It is unclear from the document if air monitoring is required? Please provide further information on requirements of any air monitoring during operation and post closure.

Sincerely,

Jesse Krzenski

Jesse Krzenski
Scott County Environmental Services
952-496-8361

Shakopee Mdewakanton Sioux Community

We have received additional information and clarifications from the applicant and have revised our comment letter accordingly. Please disregard the SMSC letter submitted on 12-14-22 and accept this letter as our comments.

Shakopee Mdewakanton Sioux Community

2330 SIOUX TRAIL NW• PRIOR LAKE, MINNESOTA 55372
TRIBAL OFFICE: 952.445.8900 • FAX: 952.233.4256

OFFICERS
Keith B. Anderson
Chainnan
Cole W. Miller
Vice-Chaim1an
Rebecca Crooks-Stratton
Secretary/Treasurer

December 15, 2022

Mr. Charles Peterson, Environmental Review Project Manager
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155

Re: Dem-Con Landfill Expansion EAW - Revised

Dear Mr. Peterson,

The Shakopee Mdewakanton Sioux Community (SMSC) is a federally recognized Indian tribal government. The SMSC has had its roots along the Minnesota River and for hundreds of years and as a neighbor to the existing landfill and proposed future site, we offer the following comments on the proposed horizontal expansion of the Dem-Con landfill in Louisville Township, Scott County, Minnesota.

Wildlife: It is our understanding that the project will occur on an active limestone quarry permitted by Scott County where approximately 2/3 of the quarry has been mined to date. The remaining 1/3 has limited habitat for wildlife and the dry plant prairie is ranked poor. No state or federally listed threatened or endangered plant or animal species were identified or expected to occur in the project area.

Water Resources: Although there are no WCA wetlands, and there will not be physical alteration of surface water, storm water will be generated during rain events. There is mention of stonnwater discharge "off-site" but a more thorough description of the direction, rate and volume will provide a better understanding of potential downstream impacts.

Historic/Cultural Properties: Cultural resources impo1iant to the SMSC and Dakota people have recently been discovered nearby in a similar geologic setting to this area. Has the Office of the State Archaeologist or the Minnesota Indian Affairs Council been consulted recently regarding TCP's known to exist in the area? The Summit Phas(,:: 1 report contains letters dating back to 2011 that may not contain updated information. The 2015 Phase 1 completed by Summit should be reviewed and updated as necessary based on new cultural resource information. Due to the recent findings nearby, it is essential that an unanticipated/unintended discovery plan is developed and utilized. The SMSC's Cultural Resources Director should also be consulted. Pottery and other tools are indicators that a historical Dakota settlement may be in the area, so diligence is imperative in the cultural resources review of the proposed area. Any inadvertent and accidental discovery of bones, tools or other indicators of cultural impo1iance should halt work immediately.

Thank you for this opportunity to provide comments. Please contact our Natural Resources Manager Scott Walz at scott.walz@shakopeedakota.org and Director of Cultural Resources Leonard Wabasha at leonard.wabasha@shakopeedakota.org if you have questions or need additional information.

Sincerely,

Steve Albrecht
Tribal Operations Administrator

METROPOLITAN
COUNCIL

December 15, 2022

Charles Peterson
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

RE: Minnesota Pollution Control Agency – Environmental Assessment Worksheet (EAW) – Dem-Con Landfill SW-290 Expansion
Metropolitan Council Review No. 22822-1
Metropolitan Council District No. 4

Dear Charles Peterson:

The Metropolitan Council received the EAW for the Dem-Con Landfill SW-290 Expansion project in Louisville Township on November 15, 2022. The EAW proposes a 241-acre southward expansion of the Dem-Con Landfill SW-290, an existing Class III Demolition Landfill.

The staff review finds that the EAW is complete and accurate with respect to regional concerns and does not raise major issues of consistency with Council policies. An EIS is not necessary for regional purposes.

We offer the following comments for your consideration.

Item 12 – Water Resources (*Joe Mulcahy, 651-602-1104; Lanya Ross, 651-602-1803*)
The primary concern with the proposed project is the proximity of the floor of the landfill to the water table in the expansion table. The EAW states a commitment to construct the base of the landfill liner a minimum of five feet above the groundwater table. Council staff urge the proposer to use the utmost caution to avoid groundwater contamination, especially when placing and grading subsoils over the floor and slopes of the quarry and when constructing the liner and leachate collection system.

Additionally, the project proposer should consider the impact of current Minnesota climate trends and anticipated changes in groundwater levels from changes in rainfall frequency, intensity, and amount. While this is not currently a requirement of the EAW, there is value in considering long-term water resource shifts, including groundwater, when making a large investment in a project that impacts groundwater and water supply risks far into the future.

This concludes the Council's review of the EAW. The Council will not take formal action on the EAW. If you have any questions or need further information, please contact Raya Esmaeili, Principal Reviewer, at 651-602-1616 or via email at raya.esmaeili@metc.state.mn.us.

Sincerely,

Angela R. Torres

Angela R. Torres, AICP, Senior Manager
Local Planning Assistance

CC: Tod Sherman, Development Reviews Coordinator, MnDOT - Metro Division
Deb Barber, Metropolitan Council District 4
Raya Esmaeili, Sector Representative/Principal Reviewer
Reviews Coordinator

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DEPARTMENT OF NATURAL RESOURCES

Division of Ecological and Water Resources
Region 3 Headquarters
1200 Warner Road
Saint Paul, MN 55106

Transmitted by Email

December 15, 2022

Charles Peterson
Resource Management and Assistance Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

Dear Charles Peterson,

Thank you for the opportunity to review the Dem-Con Landfill SW-290 Expansion Environmental Assessment Worksheet (EAW) located in Scott County. DNR has reviewed the document and respectfully submits the following comments for your consideration:

1. Page 10, Table 7b: Resource Category. The DNR appreciates the project design climate adaptations that address the potential for increased precipitation and a higher groundwater elevation in the future. It is unclear according to this section if the bottom of the liner will be placed at an elevation that anticipates higher groundwater levels in the future, or if leachate capacity is the primary adaptation to address this concern. Since the leachate system will need to be maintained indefinitely, placing the bottom liner at an elevation that keeps waste materials above projected future groundwater elevations will reduce the maintenance requirements of the leachate system after Dec-Con's obligation to the site has concluded.
2. Page 19, Geology; Page 32, Wastewater; Page 34, Stormwater. While karst features have not been identified within the project area, the site is mapped as a region prone to surface karst feature development. Groundwater mounding can occur beneath stormwater infiltration basins and septic system drainfields, and could pose a challenge in areas with karst conditions and shallow depth to groundwater.
3. Page 21, Soils and Topography. This section states that the final floor elevation of the quarry will be 2-5 feet above the regional water table, and that the liner thickness and grade will maintain at least a five-foot separation between the top of the liner and the seasonally high water table. What are the predicted future water table elevations in the area that were referenced in Table 7b, and will the liner depth be determined based on future water table levels or current conditions?

4. Page 22, Water Resources; Page 43, Rare Features. This section states that demolition landfills have little to no impact on migratory birds. This statement is inaccurate. It is a known issue that many types of landfills attract wildlife species, particularly cosmopolitan and scavenging species like mice, raccoon, coyotes, eagles and more. Another Twin Cities area landfill experienced issues recently when scavenging birds, like eagles, were attracted to biological waste within 24 hours of placement within the facility. This situation resulted in the mortality of individuals of a protected species. Situations like this highlight the need to monitor for the presence of protected wild animals using the site in order to protect them from inadvertent harm. We encourage this project to investigate integrated pest management strategies and raptor deterrent programs if it becomes evident that wildlife is attracted to the site.
5. Page 23, Groundwater. This section states that the depth to the water table varies from 2-20 feet below the floor of the quarry, while page 21 states that the final elevation of the quarry will be 2-5 feet above the seasonally high water table. Why is there a difference between these sections?
6. Page 23 Groundwater. How was the depth to the seasonally high water table determined? In the Appendices, Figures C5.1 through C5.8 reference the July 2015 Water Table, while the Hydrologic Assessment references monitoring well readings taken on 4/23/2015. The 2021 Groundwater Monitoring Report references several other points in time for groundwater levels, however most of those were taken in 2021 during historic drought conditions. It is unclear if consistent monitoring has been used to establish the seasonally high water table, which likely fluctuates substantially throughout the growing season and from year to year. It is important that an accurate elevation is identified to ensure that the liner is placed at a conservative elevation that will protect groundwater now and well into the future.
7. Page 26, Groundwater. How will liner longevity and effectives be impacted if the liner is consistently in contact with groundwater in the future?
8. Page 26, Groundwater. Are the fill and liner able to resist the lateral flow of groundwater across the pit/cells, or does this also generate leachate?
9. Page 27, Groundwater. Groundwater flows from the east towards wetlands and the Minnesota River. Therefore, we recommend enhancing the detection network closer to the landfill by increasing groundwater monitoring stations west of F.W -126 and F.W-127 along the southwest boundary of the landfill site (Figure 5 Monitoring Well Networks), as opposed to MW-16, MW-8, and the cluster near MW-11 that are in wetlands/along the Minnesota River.
10. Page 40, Contamination/Hazardous Materials/Wastes. Leachates from tires are known to affect egg survival in some species of fish. Out in the elements, tires also provide habitats for mosquitos that carry diseases like La Crosse Encephalitis. Therefore, we request that tires be placed in a covered and leakproof container.
11. Page 54, Dust and Odors. This section does not discuss the potential for fugitive dust and dust control measures. Windblown soil can cause wildlife impacts, and piles of soil/materials can become sinks for birds that nest in spoil piles. It is also unclear how fugitive dust from trucking waste materials to the site will be controlled.

Thank you for the opportunity to review this document, and please let me know if you have any questions.

Sincerely,

Melissa Collins
Regional Environmental Assessment Ecologist | Ecological and Water Resources
Minnesota Department of Natural Resources
1200 Warner Road
St. Paul, MN 55106
Phone: 651-259-5755
Email: melissa.collins@state.mn.us

CC: Bill Keegan, Dem-Con Companies

Equal Opportunity Employer

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
332 MINNESOTA STREET, SUITE E1500
ST. PAUL, MN 55101-1323

12/27/2022

Regulatory File No. MVP-2022-02117-RLG

Dem-Con Companies
C/o Bill Keegan
13020 Dem Con Drive
Shakopee, MN 55379-7200

Dear Bill Keegan:

This letter is in response to correspondence we received from Minnesota Pollution Control Agency regarding the Dem-Con Landfill SW-290. This letter contains our initial comments on this project for your consideration. The purpose of this letter is to inform you that based on the Environmental Assessment Worksheet: Dem-Con Landfill SW-290 Expansion for the project referenced above a Department of the Army (DA) permit would not be required for your proposed activity. In lieu of a specific response, please consider the following general information concerning our regulatory program that may apply to the proposed project.

If the proposal involves activity in navigable waters of the United States, it may be subject to the Corps of Engineers' jurisdiction under Section 10 of the Rivers and Harbors Act of 1899 (Section 10). Section 10 prohibits the construction, excavation, or deposition of materials in, over, or under navigable waters of the United States, or any work that would affect the course, location, condition, or capacity of those waters, unless the work has been authorized by a Department of the Army permit.

If the proposal involves discharge of dredged or fill material into waters of the United States, it may be subject to the Corps of Engineers' jurisdiction under Section 404 of the Clean Water Act (CWA Section 404). Waters of the United States include navigable waters, their tributaries, and adjacent wetlands (33 CFR § 328.3). CWA Section 301(a) prohibits discharges of dredged or fill material into waters of the United States, unless the work has been authorized by a Department of the Army permit under Section 404. Information about the Corps permitting process can be obtained online at http://www.mvp.usace.army.mil/regulatory.

The Corps evaluation of a Section 10 and/or a Section 404 permit application involves multiple analyses, including (1) evaluating the proposal's impacts in accordance with the National Environmental Policy Act (NEPA) (33 CFR part 325), (2) determining whether the proposal is contrary to the public interest (33 CFR § 320.4), and (3) in the case of a Section 404 permit, determining whether the proposal complies with the Section 404(b)(1) Guidelines (Guidelines) (40 CFR part 230).

If the proposal requires a Section 404 permit application, the Guidelines specifically require that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences" (40 CFR § 230.10(a)). Time and money spent on the proposal prior to applying

for a Section 404 permit cannot be factored into the Corps' decision whether there is a less damaging practicable alternative to the proposal.

If an application for a Corps permit has not yet been submitted, the project proposer may request a pre-application consultation meeting with the Corps to obtain information regarding the data, studies or other information that will be necessary for the permit evaluation process. A pre-application consultation meeting is strongly recommended if the proposal has substantial impacts to waters of the United States, or if it is a large or controversial project.

If you have any questions, please contact me in our St. Paul office at (651) 290-5276 or Rachel.Gralnek@usace.army.mil. In any correspondence or inquiries, please refer to the Regulatory file number shown above.

Sincerely,

Rachel Gralnek
Regulatory Specialist

cc:
Charles Peterson (MN Pollution Control Agency)
Alyssa Core (BWSR)
Troy Kuphal (LGU)

Minnesota Pollution Control Agency

Dem-Con Landfill SW-290 Expansion
Environmental Assessment Worksheet (EAW)

RESPONSES TO COMMENTS ON THE EAW

1. Comments by Leonard Wabasha. Letter received November 15, 2022.

Comment 1-1: Have the significant cultural resources of the area been taken into consideration regarding the Dem-Con Landfill Expansion? Is this a question that the MPCA or Dem-Con can answer?

Response: Significant cultural resources in the project area have been taken into consideration. A Phase 1 Cultural Resources Investigation was conducted for the expansion area and adjacent properties.

Comment 1-2: Has the Office of the State Archaeologist or the Minnesota Indian Affairs Council been consulted regarding TCP's known to exist in the area?

Response: Work was coordinated with the Office of the State Archaeologist. The cultural resources investigation was completed prior to Scott County recently issuing a permit for mining the then undisturbed southern 1/3 of the expansion area. Cultural resources were not identified on the expansion area property. Dem-Con has reached out to the OSA and MIAC for any more recently discovered cultural resources that may impact the Project. Dem-Con is working directly with SMSC and will prepare and provide an Inadvertent Discovery Plan that will address future mining across the remaining undisturbed southern 1/3 of Project area.

2. Comments by Rachel Gralnek, U.S. Army Corps of Engineers. Letter received November 29, 2022.

Comment 2-1: Please note that initiating work in waters of the United States prior to receiving Department of the Army authorization could constitute a violation of Federal law.

Response: Comment noted, no response necessary.

3. Comments by Cameron Muhic. Minnesota Department of Transportation. Letter received December 13, 2022.

Comment 3-1: Table 9 should be modified to include a Drainage Permit from the Minnesota Department of Transportation.

This is to review any drainage impacts to the MnDOT Right-of-Way (ROW), as cross sections B-B and D-D in attachment 1 appear to show runoff crossing over the property boundary into the ROW, as well as the narrative commenting on a small portion of drainage entering the ROW in existing conditions. This will be required to ensure that current drainage rates to MnDOT right-of-way will not be increased. The actual HydroCAD models will need to be provided for review, not just project summaries.

Response: Comment noted, and an EAW Errata Sheet has been prepared as Appendix C to the Findings of Fact Conclusions of Law and Order.

Comment 3-2: In addition to the Drainage permit mentioned above, any use of, or work within or affecting, MnDOT right of way will require a permit.
Permits can be applied for at this site: https://olpa.dot.state.mn.us/OLPA/.

Response: Comment noted, no response necessary.

4. <u>Comments by Sarah J. Beimers. State Historic Preservation Office. Letter received December 14, 2022.</u>

Comment 4-1: Based on our review of the project information, we conclude that there are **no properties** listed in the National or State Registers of Historic Places, and no known or suspected archaeological properties in the area that will be affected by this project.

Response: Comment noted, no response necessary.

Comment 4-2: However, according to the Office of the State Archaeologist's site inventory portal, there are several burial mound sites identified in the project vicinity. We recommend that you consult with the Office of the State Archaeologist (OSA) and the Minnesota Indian Affairs Council (MIAC) due to the presence of these sites, per Sec. 307.08 of the Minnesota Private Cemeteries Act.

Response: Dem-Con has contacted both the OSA and MIAC to determine if any new cultural resource information is available that may impact the Project. Dem-Con will continue to consult with OSA and MIAC on any updated information they may have regarding cultural resources in the area. Prior to permitting the mining operation in 2021, a Phase 1 Cultural Resources Investigation was conducted (2011 and updated in 2015), which noted the presence of several burial mound sites some distance from the Dem-Con Landfill Expansion Area. Also see response 6-3.

Comment 4-3: Please note that this comment letter does not address the requirements of Section 106 of the National Historic Preservation Act of 1966 and 36 CFR § 800. If this project is considered for federal financial assistance, or requires a federal permit or license, then review and consultation with our office will need to be initiated by the lead federal agency. Be advised that comments and recommendations provided by our office for this state-level review may differ from findings and determinations made by the federal agency as part of review and consultation under Section 106.

Response: Comment noted, no response necessary.

5. **<u>Comments by Jesse Krzenski. Scott County Environmental Services. Letter received on December 15, 2022.</u>**

Comment 5-1: It is unclear in the document if the existing Dem-Con landfill is contributing to the elevated Manganese, Barium, Boron, Chloride, Sulfate, Nitrate and Nitrite, and Iron levels that are noted as elevated from quarterly monitoring. Clarification should be provided and any implications this may cause if the landfill is indeed contributing to these numbers.

Response: Historical groundwater monitoring results in the area indicate that some of the analytes listed above may be elevated in background concentrations in upgradient monitoring wells from the Dem-Con landfill; possibly occurring from past landfilling practices. At the Existing Landfill, water quality in monitoring wells W-8, W-10, and W-120 reflect background conditions. Background conditions of the Existing Landfill have been routinely monitored since 1999. Typically, elevated levels of some of the noted analytes are found in monitoring well DC -117, and to a lesser extent DC-118 and DC-119. These wells are intended to monitor upgradient of the MPCA's closed MSW Louisville Landfill, and downgradient of the unlined original fill area of the Dem-Con Landfill. The original unlined fill area is in the approximately southern one half of the Existing Landfill shown on Plan Sheet C1.1 and shares a common boundary with the Louisville Landfill. These wells are within the narrow interface between the two landfills. In some areas, there is likely overlap between the wastes and the monitoring well log indicates that the well was

drilled through several feet of waste materials. In addition, due to the three-dimensional nature of precipitation and the travel paths associated with percolation and infiltration through the MSW fill materials, groundwater mounding, etc., it was established many years ago that the groundwater quality at DC-117 has been impacted by the MSW waste placed within the unlined Louisville Landfill. Monitoring results at this well consistently include detection of VOCs like other downgradient wells in the Louisville Landfill monitoring network. These groundwater contaminants are typically associated with unlined MSW landfills. For example, concentrations of Manganese are below background levels in all the downgradient wells except for DC-117. The closed unlined Louisville Landfill is likely the source of those elevated levels. Other constituents, Boron, and Chloride for example, are elevated above background levels in all the interface wells, indicating that the unlined Louisville Landfill and unlined portion of the Dem-Con Landfill are potential sources.

Barium has been detected above background levels in monitoring wells downgradient of both lined and unlined demolition fill areas, but below permit levels and well below Health Risk Limits and Maximum Contaminant Levels for drinking water. Barium is naturally occurring in groundwater and the source can be from limestone and dolomite bedrock, which is prevalent in the area. Other constituents listed above including Sulfate, Iron, and Nitrate + Nitrite are generally not detected above background concentrations and the monitoring results are not necessarily indicative of elevated levels.

Measures have been routinely implemented at the Dem-Con Landfill to reduce potential impacts to groundwater quality. A leachate liner and collection system has been installed on all phases of the landfill constructed since 2005. Dem-Con adopted this policy proactively before liner and leachate collection systems were required. Further, a liner and leachate collection system will be installed on all future phases of landfill development.

Additionally, the southern unlined portion of the landfill was recently completed and is no longer taking waste, and an enhanced final cover that exceeds current cover requirements was constructed. Last, a piggyback liner and leachate collection system were also recently constructed over the remaining portion of the unlined waste, effectively capping all the unlined portion of the landfill.

Collectively, all of these measures along with MPCA's construction of an enhanced final cover system and landfill gas extraction system in 2003 at the closed Louisville Landfille will minimize future leachate production within the original unlined demolition landfill area and the unlined Louisville Landfill and concentrations of any constituents that may have originated from unlined fill areas are expected to decrease over time.

Comment 5-2: It is unclear from the document if air monitoring is required? Please provide further information on requirements of any air monitoring during operation and post closure.

Response: Air monitoring is not required during operation or post closure.

6. <u>Comments by Steve Albrecht. Shakopee Mdewakanton Sioux Community. Letter received on December 15, 2022.</u>

Comment 6-1: It is our understanding that the project will occur on an active limestone quarry permitted by Scott County where approximately 2/3 of the quarry has been mined to date. The remaining 1/3 has limited habitat for wildlife and the dry plant prairie is ranked poor. No state or

federally listed threatened or endangered plant or animal species were identified or expected to occur in the project area.

Response: Comment noted, no response necessary.

Comment 6-2: Although there are no WCA wetlands, and there will not be physical alteration of surface water, stormwater will be generated during rain events. There is mention of stormwater discharge "off-site" but a more thorough description of the direction, rate and volume will provide a better understanding of potential downstream impacts.

Response: Section 12.b.II (pages 32-37 and Figures 11 and 12) describes the proposed stormwater management system in detail, including existing and proposed flow directions, rates of runoff (Table 12-4 page 35 of the EAW) and volume controls which include unconnected impervious surfaces and infiltration basins. Final stormwater management will be designed to meet the Scott County water resources requirements which include rate and volume control, and implementation of erosion and sedimentation best management practices. The landfill operates under an MPCA Industrial Stormwater NPDES Permit.

From EAW: TABLE 12-4 PEAK RUNOFF RATES

24-HR, Event	**Pre-Settlement Runoff (cfs)**	**Proposed Runoff (cfs)**
North Regional Drainage Area		
2-YR	38.19	31.4
10-YR	80.22	77.91
100-YR	304.56	303.4
Central Drainage Area		
2-YR	0.11	0
10-YR	7.49	5.67
100-YR	116.61	24.30
Southern Drainage Area		
2-YR	2.38	0
10-YR	4.69	0.55
100-YR	40.65	15.02

Comment 6-3: Cultural resources important to the SMSC and Dakota people have recently been discovered nearby in a similar geologic setting to this area. Has the Office of the State Archeologist or the Minnesota Indian Affairs Council been consulted recently regarding TCP's known to exist in the area? The Summit Phase 1 report contains letters dating back to 2011 that may not contain updated information. The 201 Phase 1 completed by Summit should be reviewed and updated as necessary based on new cultural resource information. Due to the recent findings nearby, it is essential that an unanticipated/unintended discovery plan is developed and utilized. The SMSC's Cultural Resources Director should also be consulted. Pottery and other tools are indicators that a historical Dakota Settlement may be in the area, so diligence is imperative in the cultural resources review of the proposed area. Any inadvertent and accidental discovery of bones, tools or other indicators of cultural importance should halt work immediately.

Response: Dem-Con is working directly with SMSC and will prepare and provide an Inadvertent Discovery Plan that will address future mining across the remaining undisturbed southern 1/3 of Project area. The SHPO letter is included above and Dem-Con has contacted both OSA and MIAC as suggested by SHPO, and they will be consulted regarding any updated information they may have regarding cultural resources in the area as part of development of the Inadvertent Discovery Plan. Based on communications with SMSC, SMSC is not aware of specific resources on the site. Dem-Con will continue to work with SMSC on these items.

7. Comments by Angela R. Torres. Metropolitan Council. Letter received December 15, 2022.

Comment 7-1: The primary concern with the proposed project is the proximity of the floor of the landfill to the water table in the expansion table. The EAW states a commitment to construct the base of the landfill liner a minimum of five feet above the groundwater table. Council staff urge the proposer to use the utmost caution to avoid groundwater contamination, especially when placing and grading subsoils over the floor and slopes of the quarry and when constructing the liner and leachate collection system.

Response: Dem-Con will utilize caution during construction of the liner and leachate collection system over the floor and slopes of the quarry. During construction of each individual cell, a strict quality control program is implemented to insure proper liner construction. Ultimately the resulting liner and leachate collection system is a design element implemented to be protective of the underlying soil and groundwater. The groundwater monitoring network installed and maintained as part of the Project will serve to identify not only potential groundwater impacts resulting from the landfilling activity itself, but also any impacts resulting from the placing and grading of subsoils associated with the construction of the liner and leachate collection system.

Comment 7-2: Additionally, the project proposer should consider the impact of current Minnesota climate trends and anticipated changes in groundwater levels from changes in rainfall frequency, intensity, and amount. While this is not currently a requirement of the EAW, there is value in considering long-term water resource shifts, including groundwater, when making a large investment in a project that impacts groundwater and water supply risks far into the future.

Response: The impact of Minnesota Climate trends including anticipated changes in groundwater levels was considered in Section 7. B, Table 7b of the EAW. As described in this section, increasing groundwater levels could result in an inward hydraulic gradient landfill. As mitigation, the base of the liner has been designed to maintain a separation from the current groundwater elevations by a minimum of five feet which can accommodate a rise in groundwater elevations should they occur. If a rise in groundwater levels exceeds the separation distance provided, which is over ten feet at some locations of the liner, that portion of the liner will develop an inward gradient. When an inward-directed hydrostatic head difference is maintained, it limits the outward coupled flux of the leachate and continues to be protective of the regional groundwater aquifer. Stormwater management features that consider potential effects from increased rainfall frequency, intensity and amounts include providing additional freeboard and controlled emergency overflow locations to minimize downstream impacts for events that exceed the current design standards.

8. Comments by Melissa Collins. Department of Natural Resources. Letter received December 15, 2022.

Comment 8-1: Page 10, Table 7b: Resource Category. The DNR appreciates the project design climate adaptations that address the potential for increased precipitation and a higher groundwater elevation in the future. It is unclear according to this section if the bottom of the liner will be

placed at an elevation that anticipates higher groundwater levels in the future, or if leachate capacity is the primary adaptation to address this concern. Since the leachate system will need to be maintained indefinitely, placing the bottom liner at an elevation that keeps waste materials above projected future groundwater elevations will reduce the maintenance requirements of the leachate system after Dec-Con's obligation to the site has concluded.

Response: Table 7b describes implications of a higher water table, which may or may not occur because of future climate change, (for example, increased intensity of rainfall events may increase rates of stormwater runoff and decrease infiltration, recharge, and groundwater levels). The liner will be placed a minimum of five feet above the water table. The liner grades slope from east to west at a greater slope than the water table. The five-foot separation from the water table occurs only along the very western perimeter of the landfill. The separation distance increases to over ten feet above the water table as the liner slopes up to the east. The five-to-ten-foot separation provides a buffer to accommodate a future rise in water levels, should they occur. In addition, water level data will continue to be collected over the course of landfill development. This data will be evaluated to inform the final liner design elevation of each phase of the landfill with elevations established to provide a separation between the liner the waste and to keep waste materials above the groundwater.

Comment 8-2: Page 19, Geology; Page 32, Wastewater; Page 34, Stormwater. While karst features have not been identified within the project area, the site is mapped as a region prone to surface karst feature development. Groundwater mounding can occur beneath stormwater infiltration basins and septic system drain fields and could pose a challenge in areas with karst conditions and shallow depth to groundwater.

Response: Karst landscapes can develop where limestone and dolostone are at or near the surface. As defined in the Minnesota Stormwater Manual,[1] active karst is a terrain having distinctive landforms and hydrology created primarily from the dissolution of soluble rocks within 50 feet of the land surface. Stormwater management features will be constructed within areas of the Project where the shallow limestone deposit has been either entirely removed or at least partially removed by past quarry activity. Engineered backfill will provide a separation layer between any remaining limestone and infiltrating stormwater. Final design/location of the infiltration areas will consider the potential for groundwater mounding and will follow guidance presented in the MPCA's Minnesota Stormwater Manual. The final location of the infiltration basin Pond-I4 will be coordinated with the mining operator so that the basin is located where mining has removed most of the shallow limestone deposit. (Mining will remove limestone to the water table. Five to ten feet of limestone located below the water table will remain in place). The quarry face along the western property line will be inspected for evidence of karst features prior to backfilling. Backfill materials will be evaluated to assess their stability under increased hydrostatic pressures, and the infiltration basin itself will be constructed with engineered backfill. Pond I-5 will be in an area where all the limestone resource is located above the water table and will be removed. The bottom of the infiltration basins will be 20-40 feet above the water table.

Comment 8-3: Page 21, Soils and Topography. This section states that the final floor elevation of the quarry will be 2-5 feet above the regional water table, and that the liner thickness and grade will maintain at least a five-foot separation between the top of the liner and the seasonally high-water table. What are the predicted future water table elevations in the area that were referenced in

[1] Minnesota Stormwater manual available online at: https://stormwater.pca.state.mn.us/index.php?title=Main_Page

Table 7b, and will the liner depth be determined based on future water table levels or current conditions?

Response: Future water table elevations have not been predicted; they were identified as a possible result of future climate change. The design elevation of the liner depth is based on groundwater modelling and past water level data collected at the Project area.

Comment 8-4: Page 22, Water Resources; Page 43, Rare Features. This section states that demolition landfills have little to no impact on migratory birds. This statement is inaccurate. It is a known issue that many types of landfills attract wildlife species, particularly cosmopolitan and scavenging species like mice, raccoon, coyotes, eagles and more. Another Twin Cities area landfill experienced issues recently when scavenging birds, like eagles, were attracted to biological waste within 24 hours of placement within the facility. This situation resulted in the mortality of individuals of a protected species. Situations like this highlight the need to monitor for the presence of protected wild animals using the site in to protect them from inadvertent harm. We encourage this project to investigate integrated pest management strategies and raptor deterrent programs if it becomes evident that wildlife is attracted to the site.

Response: The Twin Cities landfill referenced above is a Municipal Solid Waste (MSW) landfill that accepts wastes that attract scavenging birds. In general, demotion landfills including the Dem-Con Landfill, does not accept putrescible or biological waste that would attract scavengers. Scavenging birds or other wildlife have not been an issue at the landfill in the past. However, the landfill will investigate integrated pest management strategies and raptor deterrent programs if it becomes evident that wildlife is attracted to the site.

Comment 8-5: Page 23, Groundwater. This section states that the depth to the water table varies from 2-20 feet below the floor of the quarry, while page 21 states that the final elevation of the quarry will be 2-5 feet above the seasonally high-water table. Why is there a difference between these sections?

Response: Portions of the quarry floor are currently not excavated to their final mining depth and are 20 feet above the water table. Once the entire floor of the quarry is lowered to its final depth as part of continued mining operations, the floor will be two to five feet above the water table.

Comment 8-6: Page 23 Groundwater. How was the depth to the seasonally high-water table determined? In the Appendices, Figures C5.1 through C5.8 reference the July 2015 Water Table, while the Hydrologic Assessment references monitoring well readings taken on 4/23/2015. The 2021 Groundwater Monitoring Report references several other points in time for groundwater levels, however most of those were taken in 2021 during historic drought conditions. It is unclear if consistent monitoring has been used to establish the seasonally high-water table, which likely fluctuates substantially throughout the growing season and from year to year. It is important that an accurate elevation is identified to ensure that the liner is placed at a conservative elevation that will protect groundwater now and well into the future.

Response: The seasonal high-water table was determined based on past water level monitoring associated with the Merriam Junction Sands EIS hydrologic investigation using spring water levels when the water table is expected to be at a seasonal high (Figure 7a). The MJS EIS well network included the Project area and this data was used to determine the seasonal high-water table. The 2021 Groundwater Monitoring Report was included in the Dem-Con EAW at the request of Scott County. The annual report is required to provide water table information for the reporting year.

The water table maps within the report serve to illustrate the magnitude of seasonal fluctuations in the area. In addition, because collection of the MJS water level data was stopped several years ago, a round of water level data was collected in 2022 at the request of Scott County and included as Figure 7b to provide current water level data. Water level data previously collected for the expansion area will be supplemented by additional data collected from the five new proposed wells associated with the Dem-Con Landfill monitor well network and the continued collection and reporting to the MPCA throughout the life of the Landfill.

Comment 8-7: Page 26, Groundwater. How will liner longevity and effectives be impacted if the liner is consistently in contact with groundwater in the future?

Response: If groundwater levels were to rise sufficiently to contact the liner, the longevity and effectiveness should not be impacted. The HDPE liner is compatible with groundwater (as well as much higher strength liquids, which is why it is used as a liner material). There have been decades of research conducted on the compatibility and longevity of HDPE liner materials in contact with liquids. The 60-mil liner that will be utilized in the Expansion Area meets the specification adopted by the state for municipal waste landfills under Minn. Rule 7035.2815 subp. 7. The landfill liner and leachate collection system, the final cover system, and the groundwater monitoring plan are integrated systems that work in concert to protect the groundwater quality on a long-term basis. If water levels increase above the base of the liner, the pressure gradient reverses direction, and the landfill would become an inward gradient landfill at that location. The liner system would still function to resist flow of groundwater into the landfill or leachate out of the landfill. Groundwater protection is maintained by the continued collection and removal of leachate from the liner and leachate collection system. Minnesota does not have rules that prohibit liners to be in contact with groundwater. There are some landfills (in Minnesota, other states within the US, and other countries) that are specifically designed to be inward gradient landfills with liners below groundwater level.

Comment 8-8: Page 26, Groundwater. Are the fill and liner able to resist the lateral flow of groundwater across the pit/cells, or does this also generate leachate?

Response: The liner materials resist flow. The perimeter slopes of the landfill will be lined which acts to contain leachate within the landfill and prevent groundwater from flowing into the landfill from the sides. The liner is constructed not just over the base of the landfill, but also from base up the perimeter slopes to the existing grade. Even if the elevation of the groundwater were to rise above the base of the liner, the liner placed over the perimeter slopes restricts groundwater flow into the landfill and lateral flow of groundwater will not generate leachate.

Comment 8-9: Page 27, Groundwater. Groundwater flows from the east towards wetlands and the Minnesota River. Therefore, we recommend enhancing the detection network closer to the landfill by increasing groundwater monitoring stations west of F.W -126 and F.W-127 along the southwest boundary of the landfill site (Figure 5 Monitoring Well Networks), as opposed to MW-16, MW-8, and the cluster near MW-11 that are in wetlands/along the Minnesota River**.**

Response: Figure 10 from the EAW illustrates the existing and proposed Dem-Con landfill monitoring well networks as well as the other groundwater monitoring networks that have been established in the area, including the Merriam Junction Sands and Louisville Landfill networks. MW-16 and MW-8 and the cluster near MW-11 described above are not part of the Dem-Con Landfill monitoring well network. The Project proposes two additional upgradient monitoring wells and three additional downgradient monitoring wells, providing sufficient coverage of the Project area.

The property west of F.W-126 and F.W-127 is not on the landfill property and does not meet the MPCA demolition landfill guidance that down-gradient monitoring wells should be placed within the property boundary, but not farther than 200 feet from the edge of the waste fill area.

Comment 8-10: Page 40, Contamination/Hazardous Materials/Wastes. Leachates from tires are known to affect egg survival in some species of fish. Out in the elements, tires also provide habitats for mosquitos that carry diseases like La Crosse Encephalitis. Therefore, we request that tires be placed in a covered and leakproof container.

Response: Waste tires will be managed at the Dem-Con landfill in accordance with Minn. R. Chapter 9220, WASTE TIRE PROGRAMS. Storing the tires in covered containers is not feasible. The MPCA's solid waste permit includes specific conditions for the management of tires to minimize potential groundwater contamination and the spread of infectious disease. The draft permit includes the following conditions which Dem-Con currently implements as part of their tire management policies:

The Permittee shall identify a designated waste tire storage area. The Permittee may store a maximum of 2,000 passenger tire equivalents (PTE) in this area. [Minn. R. 9220.0450, subp. 3(D)]

The Permittee shall maintain all tire piles in a manner that keeps the piles free of vegetation, mosquitoes, and rodents. [Minn. R. 9220.0450, subp. 3(H)]

The Permittee shall divert surface water drainage around and away from the waste tire storage area. [Minn. R. 9220.0450, subp. 3(I)]

Comment 8-11: Page 54, Dust and Odors. This section does not discuss the potential for fugitive dust and dust control measures. Windblown soil can cause wildlife impacts, and piles of soil/materials can become sinks for birds that nest in spoil piles. It is also unclear how fugitive dust from trucking waste materials to the site will be controlled.

Response: Fugitive dust is controlled at the landfill by utilizing a paved main access road used to transport demolition materials to the landfill, (the access road to the Project area will also be paved). Watering unpaved portions of internal haul roads and creating topographic barriers by establishing a screening berm along the outer edge of active fill areas. Stockpiles of materials to be used for future liner or cover construction will be stabilized by establishing temporary vegetative cover and perimeter berms will be seeded and mulched to minimize fugitive dust.

9. **Comments by Rachell Gralnek. US Army Corp of Engineers. Letter received December 27, 2022. (this letter was received after the close of the comment period)**

Comment 9-1: If the proposal involves activity in navigable waters of the United States, it may be subject to the Corps of Engineers' jurisdiction under Section 10 of the Rivers and Harbors Act of 1899 (Section 10). Section 10 prohibits the construction, excavation, or deposition of materials in, over, or under navigable waters of the United States, or any work that would affect the course, location, condition, or capacity of those waters, unless the work has been authorized by a Department of the Army permit.

Response: Comment noted, no response necessary.

Comment 9-2: If the proposal involves discharge of dredged or fill material into waters of the United States, it may be subject to the Corps of Engineers' jurisdiction under Section 404 of the Clean

Water Act (CWA Section 404). Waters of the United States include navigable waters, their tributaries, and adjacent wetlands (33 CFR § 328.3). CWA Section 301(a) prohibits discharges of dredged or fill material into waters of the United States unless the work has been authorized by a Department of the Army permit under Section 404. Information about the Corps permitting process can be obtained online at http://www.mvp.usace.army.mil/regulatory.

Response: Comment noted, no response necessary.

Comment 9-3: The Corps evaluation of a Section 10 and/or a Section 404 permit application involves multiple analyses, including (1) evaluating the proposal's impacts in accordance with the National Environmental Policy Act (NEPA) (33 CFR part 325), (2) determining whether the proposal is contrary to the public interest (33 CFR § 320.4), and (3) in the case of a Section 404 permit, determining whether the proposal complies with the Section 404(b)(1) Guidelines (Guidelines) (40 CFR part 230).

Response: Comment noted, no response necessary.

Comment 9-4: If the proposal requires a Section 404 permit application, the Guidelines specifically require that "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences" (40 CFR § 230.10(a)). Time and money spent on the proposal prior to applying for a Section 404 permit cannot be factored into the Corps' decision whether there is a less damaging practicable alternative to the proposal.

Response: Comment noted, no response necessary.

Comment 9-5: If an application for a Corps permit has not yet been submitted, the project proposer may request a pre-application consultation meeting with the Corps to obtain information regarding the data, studies or other information that will be necessary for the permit evaluation process. A pre-application consultation meeting is strongly recommended if the proposal has substantial impacts to waters of the United States, or if it is a large or controversial project.

Response: Comment noted, no response necessary.

APPENDIX C

Minnesota Pollution Control Agency

Dem-Con Landfill SW 290 Expansion
Environmental Assessment Worksheet (EAW)

ERRATA SHEET

1. Table 9: Permits and approvals on page 14 of the EAW should have included a Drainage Permit from the Minnesota Department of transportation.

Table 9: Permits and approvals

Unit of Government	Type of Application	Status
Minnesota Pollution Control Agency (MPCA)	Amendment to Solid Waste Facility Permit SW-290	Submitted
	NPDES/SDS (Industrial Stormwater Multi Sector General Permit)	Obtained
	Air Permit Applicability Determination	Submitted and Completed (no permit needed)
Minnesota Department of Health (MDH)	Well Sealing (as needed)	To be submitted
	Well Construction Permit	To be submitted
	Monitoring Well Permit	To be submitted
Minnesota Department of Transportation (MnDOT)	Drainage Permit	To be submitted
Metropolitan Council	Industrial Discharge Permit (Special Discharges) for leachate disposal	Obtained.
Scott County	Amendment to Conditional Use Permit (CUP)	To be submitted
	Annual Solid Waste License	Obtained for existing Landfill, Submitted annually
	Septic system, building permits, etc.	To be submitted