December 21, 2011

TO: INTERESTED PARTIES

RE: Stewart Material Coal Handling Facility

On December 20, 2011, the Minnesota Pollution Control Agency Citizens’ Board voted to approve the Findings of Fact, Conclusions of Law, and Order for a Negative Declaration on the need for an Environmental Impact Statement for the proposed Stewart Material Coal Handling Facility, McLeod County. The Findings of Fact, Conclusions of Law, and Order document concludes that the project does not have the potential for significant environmental effects. This decision for a Negative Declaration completes the state environmental review process under the revised Minnesota Environmental Quality Board Rules, Minn. R. ch. 4410. Final governmental actions on the granting of permits and approvals for the project may now be made.

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

We appreciate the time and effort of those who submitted comments on the Environmental Assessment Worksheet. Comments and responses to them have been incorporated into the Findings of Fact, Conclusions of Law, and Order and have been considered by MPCA staff during the permit process for the proposed project.

Sincerely,

[Signature]
Paul W. Aasen
Commissioner

PWA: mbo
STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY  

IN THE MATTER OF THE DECISION  
ON THE NEED FOR AN ENVIRONMENTAL  
IMPACT STATEMENT FOR THE PROPOSED  
 STEWART MATERIAL COAL HANDLING FACILITY  
 COLLINS TOWNSHIP  
 MCLEOD COUNTY, MINNESOTA  

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER  

FINDINGS OF FACT  

The above-entitled matter came before the Minnesota Pollution Control Agency (MPCA) Citizens' Board at a regular meeting held in St. Paul, Minnesota, on December 20, 2011. Based on MPCA staff review, the Environmental Assessment Worksheet (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. Gascoyne Materials Handling and Recycling (Proposer or GMHR) is proposing to construct the Stewart Material Coal Handling Facility (Project or Facility), a coal unloading/storage/loading facility, on a 3.03-acre site in the NE¼ of the SW¼ of Section 33, Township 115 North, Range 30 West, Collins Township, in McLeod County. The proposed Project for the purposes of this environmental review consists of a rail spur, unloading conveyor system and stockpile area and a coal pile runoff/stormwater treatment system (treatment system). The Facility is described in greater detail in the EAW.  

2. The site of the proposed Project and surrounding land are zoned for agriculture. The Project site is bordered on the south by U.S. Highway 212 and the Twin Cities and Western Rail (TCWR) line and on the west, north, and east by agriculture uses. There are seven farmsteads within a one-mile radius around the Project site, with the closest farmstead approximately ¼-mile southwest of the Project site (the location of Stewart Energy Products, a registered recycler of waste fuel products).  

3. Coal would be delivered to the Facility via the rail spur from the TCWR rail line by unit trains, each holding approximately 12,000 tons of coal. The expected average annual throughput is 200,000 tons of sub-bituminous processed coal per year. The Facility will have the maximum capacity for up to 450,000 tons per year. This is equivalent to an average of 16 unit trains per year and a maximum of 37 unit trains per year. The coal would arrive from the western coal mines already processed and sprayed with a dust control agent (DUSTREAT DC9144). Coal would be unloaded from each railcar in an enclosed structure via an automatic unloading 48-inch by 70-foot conveyor system, located just north of the rail spur on the Project site. The conveyor system will consist of a truss style design gravity take-up system, full top covers, flanging, and head chute. The conveyor system can move 800 tons of coal per hour, with the average unloading time of 16 hours for each unit train. The coal would be transferred to a 48-inch by 100-foot radial stacker that spreads the coal out in an uncovered pile, approximately 212 feet by 160 feet, covering 36,250 square feet of the site, with a maximum stockpile height of 24 feet.
4. Coal delivery will be dependent on customer demand and orders. Customers loading would occur by scheduled appointment only. Buyer’s trucks will enter the Project site via the access road from Highway 212 and be weighed empty upon arrival at the weigh station. Coal will be loaded from the pile into buyers’ trucks on the northwest side of the coal pile using a front-end loader. Trucks will be reweighed after loading to determine the weight of coal on the trucks prior to leaving the site via the same access road. Portions of the Facility site may be fenced as necessary to comply with screening or security requirements of McLeod County.

5. The proposed Project would be capable of operating throughout the year, five-days per week during the hours from 7:00 a.m. to 6:00 p.m.

6. The coal stockpile area would be all-weather access and sloped to maintain drainage of the coal pile runoff and to direct the runoff into the treatment system. The coal stockpile area would have eight inches of Class 5 aggregate over 12 inches of existing soil, scarified and re-compacted to maximize impermeability and to minimize transport of any contaminants to groundwater. The soils in the area are primarily clay soils.

7. Coal pile runoff and stormwater from other areas of the Facility will be collected at the treatment system, which consists of Pond 1 for solids reduction, and Pond 2, a detention pond with a discharge outfall on the east side of the Project site. Pond 1 will be designed and constructed with a 12-inch minimum clay liner and a permanent pond volume of 1,800 acre feet to accommodate contributing drainage for the 10-year storm event. Pond 2 will be designed, constructed, and operated to hold the difference in volume between the pre-developed and post-developed 100-year storm event. A 6-inch corrugated metal pipe outlet from Pond 2 will physically limit the discharge to a maximum allowable daily volume of 0.3 million gallons per day (gpd). Further information regarding the treatment system can be found in Appendix A of the EAW.

8. A well would be installed on site to supply approximately 200 gallons of water per day to be used for the weigh station/office.

9. The Project will include a restroom for employee use and a septic tank/drainfield system to dispose of sanitary wastewater. The septic tank/drainfield system must be constructed in accordance with the McLeod County ordinance. Because of the heavy clay soils at the site, it is expected that installation of a mound septic system will be required.

10. The proposed Project is to be a newly constructed facility; therefore, no prior environmental review, permitting, or enforcement has taken place for the proposed Project.

Procedural History

11. Pursuant to Minn. R. 4410.4300, subp. 8.A, an EAW on the proposed Project was prepared by the MPCA. Pursuant to Minn. R. 4410.1500, the EAW was distributed to the Environmental Quality Board (EQB) mailing list and other interested parties on August 19, 2011. The mailing list for the EAW is incorporated by reference.
12. The MPCA notified the public of the availability of the EAW for public comment. A news release was provided to news media in McLeod, Meeker, Renville, and Sibley Counties, as well as other interested parties, on August 22, 2011. The notice of the availability of the EAW was published in the EQB Monitor on August 22, 2011, and the EAW was made available for review on the MPCA website at [http://www.pca.state.mn.us/news/eaw/index.html](http://www.pca.state.mn.us/news/eaw/index.html) on August 22, 2011.

13. The 30-day comment period for the EAW began on August 22, 2011, and ended on September 21, 2011. During the EAW comment period, the MPCA received one comment letter from a citizen, four comment letters from government entities and one comment letter from an environmental group. The citizen's comment letter included a request for the preparation of an Environmental Impact Statement (EIS), thus requiring that the EIS-need decision be made by the MPCA Citizens’ Board. The comment letters received during the comment period are contained in Appendix A, which is hereby incorporated into these Findings of Fact, Conclusions of Law, and Order. Responses to comments on the EAW are included as Appendix B, which is hereby incorporated into these Findings of Fact, Conclusions of Law, and Order.

14. The MPCA conducted an evaluation of federal regulations, development documents, state rules, and information about existing National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) facilities with similar discharges, and a reasonable potential analysis was conducted for pollutants known to be in coal pile and precipitation runoff. The MPCA determined that a treatment system for the coal pile and precipitation runoff with effluent limits would be required and prepared NPDES/SDS Permit MN0069612 (NPDES/SDS Permit) for the proposed Project. The NPDES/SDS Permit was placed on public notice on August 26, 2011. The end of the public notice period was September 26, 2011. The NPDES/SDS Permit was made available for review on the MPCA website at [http://www.pca.state.mn.us/news/](http://www.pca.state.mn.us/news/) on August 29, 2011. The MPCA will prepare responses to all comments received during the comment period.

15. During the EAW comment period, it was determined the Project would also require a Buffalo Creek Watershed District (BCWD) approval for construction and operation of the Facility.

16. After the end of the EAW comment period, but before consideration of the EIS request by the MPCA Citizens’ Board, MPCA staff determined that the Project would require construction of a permanent coal unloading building, an exhaust air system, and a baghouse for the unloading of coal by rail in order to satisfy the applicable requirements of Minn. R. 7011.1105, Standards of Performance for Certain Coal Handling Facilities. The Proposer submitted revised design plans and an air permit applicability determination that were reviewed by MPCA staff. The MPCA agreed with the Proposer’s determination that an air emissions permit was not required. The MPCA letter is hereby incorporated as Appendix D to the Findings of Fact, Conclusions of Law, and Order.

17. Under Minn. R. 4410.1700, the MPCA must order an EIS for projects that have the potential for significant environmental effects. 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. The type, extent, and reversibility of environmental effects
B. Cumulative potential effects
C. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority
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

18. 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 each of these factors are set forth below.

19. The types of impacts that may reasonably be expected to occur from the Project include the following:
   - Water quality Impacts
   - Air quality impacts
   - Impacts on Sullivant’s Milkweed (Asclepias sullivantii) - state-listed threatened species
   - Impacts from traffic

Water quality impacts

20. With respect to the extent of any potential water quality impacts that are reasonably expected to occur from the Project, the MPCA makes the following findings:

21. The proposed Project is not anticipated to result in any significant adverse water quality impacts related to stormwater runoff during construction. There are no steep slopes or highly erodible soils on the site. Best management practices (BMPs) will be implemented to control soil erosion during and after Project construction. The BMPs will be identified in a Stormwater Pollution Prevention Plan (SWPPP), which will be finalized and implemented for the site prior to construction. The SWPPP becomes an enforceable component of both the construction stormwater permit as well as the NPDES/SDS Permit MN0069612. Specific BMPs will likely include the use of silt fencing during construction, and vegetated swales, inlet protection, and the development of a stormwater management system.

22. Upon Project completion, the acreage of impervious surface at the site will increase from 0.47 to 1.78 acres. The Project is being designed to minimize infiltration of runoff into groundwater at the coal stockpile and to optimize settling in the treatment system. The coal stockpile area will have Class 5 aggregate packed on top of local clay soils, which will be scarified and compacted to minimize potential infiltration into groundwater. Pond 1 will be lined with a minimum of 12-inches of clay to
allow for the pretreatment by settling of solids and to control infiltration into groundwater. Pond 2 will provide further treatment through settling and have an effluent volume that is limited by design to a maximum of 0.3 million gpd. The discharge outlet is located on the north side of Pond 2, and the discharge will first flow onto the site. The natural slope of the site will direct the discharge east and immediately south through a wetland to the rail right–of–way, then east to the local ditch system. The ditch system flows north to County Ditch No. 64, thence to Buffalo Creek.

23. The MPCA has required, through the NPDES/SDS Individual Permit MN0069612, that the Facility have a permanent stormwater management system, including the SWPPP and a treatment system with effluent limits for runoff from the coal pile and the stormwater management system. A monitoring program will also be required to determine compliance with permit requirements and to monitor performance of the treatment system.

24. Minnesota has the delegation for the federal NPDES permit program, and the MPCA is the regulatory authority for that program. The authority is found in Minn. Stat. § 115.03, subd. 1 (a). The MPCA has a duty to “issue...permits...under such conditions as it may prescribe, in order to prevent, control or abate the discharge of pollutants to waters of the state (Minn. Stat. § 115.03, subd. 1(e). There are no federal uniform technology-based effluent limits (also known as federal categorical effluent limits) for coal pile runoff for this particular type of facility. As a result, to establish limitations, standards and other permit conditions as required by 40 CFR §§ 122.44, including (a)(1), (b)(1), (d), (e), MPCA staff researched federal and state regulations, rules, development guidance for other facilities with similar activities that do have federal categorical effluent guidelines, and data from existing NPDES-permitted facilities in Minnesota with similar activities. The information gathered was utilized to determine the pollutants expected to be in the discharge and to conduct a reasonable potential analysis of the expected pollutants. As the delegated authority for the NPDES permit program, the MPCA then developed “Best Professional Judgment” effluent limits, because there were no federal categorical effluent guidelines for this specific type of facility. This proposed discharge is precipitation runoff that comes into contact with coal. MPCA staff determined that this Facility should be required to have a treatment system for the proposed discharge of coal pile runoff and required effluent limits based on the federal development documents for similar discharges from coal mines and MPCA permitting experience that this type of discharge, if untreated and without appropriate limits, could cause or contribute to a violation of a water quality standards. (40 CFR 122.26 (a)(v).

25. To provide further clarification regarding the MPCA NPDES/SDS Permit analysis, the MPCA provided a Summary Memorandum, hereby incorporated as Appendix C to the Findings of Fact, Conclusions of Law, and Order.

26. As noted, federal categorical effluent guidelines do exist for similar activities at other types of facilities. Both U.S. Environmental Protection Agency (EPA) studies and MPCA staff experience with similar activities indicate that heavy metals may be found in coal pile runoff, although all results are not consistent. To address the inconsistency in these results, the MPCA staff relied in part on its experience and evaluation of federal regulations, development documents and studies, and experience with NPDES-permitted facilities with similar activities, all which demonstrate that the content of metals in wastewater effluents is correlated with total suspended solids (TSS) and that lower effluent concentrations of metals will be achieved by removing TSS.
27. Additional effluent limits proposed in the NPDES/SDS draft permit by MPCA staff include limiting pH to an instantaneous minimum and maximum of 6.0 and 9.0 units, respectively, and a daily maximum effluent limit of 0.5 milliliters/per liter for settleable solids. The MPCA’s research has also found that limiting pH to this range will further inhibit the separation of metals from solids, further removing metals from the treated discharge. MPCA staff also chose to limit settleable solids in the treated discharge because MPCA staff is aware, from existing permitted facilities in the state, that it provides a useful measure of pond performance as flows increase during precipitation or snow melt.

28. In addition, as described in the EAW and in Appendices B and C to the Findings of Fact, Conclusions of Law, and Order, MPCA staff has proposed additional monthly monitoring requirements for heavy metals as well as two nonconventional pollutants in the treated discharge as additional assurance and verification that the treatment system is working as designed.

29. The Project will include the installation of a water supply well on site. The water from the well will be used for potable and sanitary uses in the weigh station/office restroom. The wastewater from the restroom facility will be directed to a septic system also to be constructed on site. The septic system is subject to a McLeod County Septic System permit.

30. As noted in the EAW, the original total estimated water use of the Project, considering water use for the restroom, would be 200 gpd, 5 days per week, 52 weeks per year, for a total of 52,000 gallons per year. Some water may also be used intermittently for washdown and dust control. The projected amount of water used at the Facility is expected to be well below Minnesota Department of Natural Resources (DNR) permit thresholds (10,000 gpd or 1,000,000 gallons/year).

31. Minn. R. 7011.1105, Standards of Performance for Certain Coal Handling Facilities, requires treatment of active unpaved truck haul roads with chemical agents when the annual coal throughput is 200,000 tons per year or more. Access areas surrounding coal stockpiles and parking facilities must also be treated with either chemical agents or water.

32. When using chemical agents and/or water, the Proposer will be required to seek prior MPCA review and approval for use of the specific chemical agent, including both the volume and the solution ratio, in accordance with NPDES/SDS Permit requirements. The Proposer will be required to meet discharge, stormwater and, if applicable, federal, state, and local requirements for storage and use of chemical agents at the Facility site.

33. To the extent that the Proposer chooses to treat access areas surrounding coal stockpiles and parking facilities with water, the Proposer will be required to withdraw less than 10,000 gpd from the water well to remain below the DNR water appropriation permit threshold. As with runoff, washdown water will be directed to the treatment system.

34. With respect to the reversibility of any potential effects related to water quality, the MPCA finds that the potential effects that are reasonably expected to occur from this Project would be reversible. As discussed above, the expected effects on water quality due to construction are temporary in nature and will be addressed in the NPDES/SDS Construction Stormwater Permit and the BCWD permit. Permanent coal pile and precipitation runoff treatment, effluent limits, as well
as stormwater management measures will be installed as part of the proposed Project and will be included as enforceable requirements of NPDES/SDS Permit MN0069612. These measures will provide appropriate stormwater quality management and quantity control measures to minimize potential impacts to downstream receiving waters. Both the treatment system and stormwater management system are expected to sufficiently control the quantity of runoff. The septic system must comply with McLeod County septic system requirements. If the Facility discontinues operation, coal pile runoff will no longer be generated.

35. The impacts that are reasonably expected to occur from this Project are not expected to cause a significant adverse impact on streamflow volumes or the water quality of surface and groundwaters.

36. The MPCA finds that the environmental review is adequate to address concerns related to potential impacts to water quality that are reasonably expected to occur from the proposed Project. Measures to prevent or mitigate these impacts have been developed and will be included in permits issued by the MPCA, McLeod County, and Buffalo Creek Watershed District.

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

Air quality impacts

38. An air permit applicability determination was initially performed in March 2010, to determine if a Project proposal with a throughput of less than 200,000 tons per year would require an air emissions permit. The assessment determined that no air permit for the proposed Project was required either under a federal Part 70 Permit under Minn. R. 7007.0200 or a state permit under Minn. R. 7007.0250; however, the Project proposal described and reviewed in the EAW was for a throughput of up to 450,000 tons per year.

39. After the end of the EAW comment period, the MPCA identified that for the larger throughput, a permanent building/structure would be required where the coal is unloaded from railcars and that a dust collector would also be needed to satisfy the applicable requirements of Minn. R. 7011.1100 to 7011.1140, Standards of Performance For Certain Coal Handling Facilities. MPCA staff required the submittal of a revised and updated air applicability assessment to re-determine whether any air permits were required for operation of the Facility. Based on the revised assessment, it was again determined that an air permit for the proposed Project was not required. The MPCA letter concerning the review and approval of the air applicability assessment is hereby incorporated as Appendix D to the Findings of Fact, Conclusions of Law, and Order. The applicable requirements of Minn. R. ch. 7011, in particular subpart 1105, would continue to apply.

40. In order to meet the requirements of Minn. R. 7011.1105 (H), Standards of Performance for Certain Coal Handling Facilities – Railcar Unloading, the Proposer has submitted revised design information to include the permanent building/structure and additional controls for the unloading of coal by rail. The coal unloading from railcars will be conducted in a building with a dust collector that has a control efficiency of 99 percent for total particulate matter, 93 percent for particulate matter smaller than 10 microns in diameter, and 93 percent for particulate matter smaller than 2.5 microns.
41. The coal will arrive from western coal mines having already been processed and pretreated with a dust suppressant to achieve a surface moisture content of 1.634 percent.

42. The updated air applicability assessment submitted by the Proposer also provides information on how the Proposer will ensure the Facility will comply with other applicable requirements of Minn. R. 7011.1105 to 7011.1140. For example, the Facility will be required to treat all active unpaved truck haul roads with chemical agents when the annual coal throughput by truck is 200,000 tons or greater, and access areas surrounding coal stock piles and parking facilities must be treated with chemical agents or water. As noted, the Proposer is required to follow NPDES/SDS Permit requirements regarding MPCA prior review and approval of the chemical agents, and projected water use will be well below the 10,000 gpd threshold for a DNR water appropriations permit.

43. The proposed Project is expected to result in an estimated maximum truck traffic level of 54 trucks per day using an access road onto Minnesota Highway 212. The Minnesota Department of Transportation (Mn/DOT) has jurisdiction on Minnesota Highway 212. Minnesota Highway 212 is a two-lane highway functionally classified as a principal arterial highway by Mn/DOT. Highway 212 has a fairly stable mix of heavy commercial and passenger vehicles, with slow-moving commercial vehicle traffic at its peak during fall harvest. Customers will be required to follow state weight restrictions for Minnesota Highway 212. Customer truck traffic related to the proposed Project is not likely to generate significant amounts of fugitive dust or other emissions that would adversely affect air quality in the area.

44. With respect to the reversibility of any potential air quality impacts, the MPCA finds that any air impacts, if they were to occur, would likely be temporary in nature and corrective measures could be implemented to minimize impacts. Such measures could include the initiation of a complaint investigation by the MPCA and requiring the Project proposer to make operational and maintenance changes. Therefore, the impacts on air quality that are reasonably expected to occur from the Project are reversible. In the event that coal storage and handling activities at the site would end, the potential for air impacts would end.

45. The MPCA finds that information presented in the EAW and other information in the environmental review record is adequate to address the air quality concerns. Impacts on air quality that are reasonably expected to occur from the proposed Project have been considered during the review process and will be addressed by appropriate mitigation methods.

46. 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 on air quality that are reasonably expected to occur from the Project.

State-listed threatened species

47. With respect to the extent of potential impacts on any ecologically sensitive species that are reasonably expected to occur from the Project, the MPCA makes the following findings.

48. As discussed in the EAW, the DNR Heritage database identified one known state-listed species in the Project area. Two populations of Sullivant’s Milkweed (Asclepias sullivantii), a state-listed threatened species, were identified during a McLeod County Biological Survey (MCBS) of the
railroad right-of-way in the general area of the Project in the late 1990s. The plants were observed in two locations in wet/mesic prairie between the highway and railroad and included the habitat along the southern boundary of the Project site. The most appropriate time during the year to conduct a field survey for Sullivant’s Milkweed is in July or August to allow assessment of the seed pod and discrimination from other milkweed species.

49. The Proposer’s consultant conducted a field survey in August 2011, and did not identify Sullivant’s Milkweed at the Project site. A report has been completed and the Proposer is in contact with DNR staff regarding this information.

50. With respect to the reversibility of any potential effects related to state listed-threatened species from construction of the Project, the MPCA finds that the potential effects that are reasonably expected to occur from this Project would be reversible. As discussed above, the Proposer’s consultant field survey did not identify any Sullivant’s Milkweed in the August 2011 survey. No DNR Takings Permit will be required.

51. The MPCA finds that the environmental review is adequate to address impacts on state-listed threatened species that are reasonably expected to occur from the proposed Project. A current MCBS survey has determined no Sullivan’s Milkweed in the Project area. No measures will be necessary to prevent or mitigate impacts.

52. The MPCA finds that the Project, as it is proposed, does not have the potential for significant environmental effects related to state-listed threatened species based on the type, extent, and reversibility of impacts that are reasonably expected to occur.

Public comments expressing concerns regarding impacts from traffic

53. With respect to the extent of any potential traffic impacts that are reasonably expected to occur from the Project, the MPCA makes the following findings.

54. The proposed Project is expected to result in an estimated maximum truck traffic level of 54 trucks per day, with the only access road to the Facility onto Minnesota Highway 212. Mn/DOT has jurisdiction on Minnesota Highway 212. Minnesota Highway 212 is a two-lane highway functionally classified as a medium priority interregional corridor, principal arterial highway by Mn/DOT. Traffic on Highway 212 is a fairly stable mix of heavy commercial and passenger vehicles, with slow-moving commercial vehicle traffic at its peak during fall harvest. According to a “Mn/DOT 2010 Trunk Highway Average Annual Daily Traffic Volume Map,” Minnesota Highway 212 in the area of the Project sees approximately 3,500-5,900 vehicles per day. East of the area, the average daily traffic averages 2,000-3,499 vehicles per day.

55. With respect to traffic, at the maximum coal annual throughput of 450,000 tons per year, the proposed Project is expected to result in an estimated maximum truck traffic level of 54 trucks per day on Minnesota Highway 212. The maximum volume of trucks will not significantly increase the amount of traffic on Minnesota Highway 212. Customers are required to follow weight and other restrictions applicable to Minnesota Highway 212.
56. Customer trucks, as with other agricultural vehicles that may travel on other roads prior to entering or exiting Minnesota Highway 212, will be subject to any weight restrictions or prohibitions by the local authority with jurisdiction over the roads. Therefore, a significant impact to local roads related to customer traffic has not been identified. A permit will be required from the Minnesota Department of Transportation in order to gain site access via Highway 212.

57. With respect to the reversibility of any potential effects related to traffic, the MPCA finds that the potential effects that are reasonably expected to occur from this Project would be reversible. As discussed above, the expected effects on safety, emergency response, and noise due to facility operations are not believed to be significant and can be addressed, to the extent necessary, through Mn/DOT permitting.

58. The MPCA finds that the environmental review is adequate to address concerns related to traffic that are reasonably expected to occur from the proposed Project. Measures to prevent or mitigate these impacts have been developed.

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

Cumulative Potential Effects

60. 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’s findings with respect to this criterion are set forth below.

61. Cumulative potential effects were addressed for the following areas during the environmental review of the proposed Project:
- Water quality
- Air quality including traffic

Water quality

62. The coal stockpile area at the Project site is designed to minimize infiltration of coal pile runoff at the site into groundwater. The Project site area is designed to minimize the amount of precipitation and coal pile runoff leaving the site and to direct it into the treatment system. The treatment system at the facility is designed, and the proposed effluent limits and monitoring requirements in the NPDES/SDS Permit have been drafted such that the proposed discharge is not expected to cause or contribute to significant adverse cumulative effects on downstream surface waters. The design of the outfall will also limit the discharge volume to prevent adverse effects related to flow volumes.
63. Cumulative potential effects on the water quality of surface waters from the unnamed ditch to County Ditch No. 64 and to Buffalo Creek are not expected to be significant because the water discharged from the installed treatment system will be a treated, controlled discharge, with effluent limits and monitoring requirements that will apply to coal pile runoff and stormwater from the Project site. Compared to past agricultural use of the site, impacts related to runoff from the site, post-construction, may tend to be reduced as all runoff and stormwater will be directed to a treatment system, treated, and limited in the volume discharged per day. There are no significant sources of surface water discharges to within one mile of the proposed Project that could contribute to cumulative surface water quality effects. There are no known plans for construction of facilities with surface water discharges to the unnamed ditch or County Ditch 64.

Air quality

64. The MPCA evaluated cumulative potential air quality effects of the project related to air emissions from the proposed facility. Air emissions from the Project will be below levels that would require the Facility to have an air permit. The Project will, however, need to meet the requirements of Minn. R. 7011.1105, applicable to a proposed new coal handling facility outside of the metropolitan area. As a result, the proposed Project will have additional air quality mitigation requirements, including the building structure for unloading of coal received by rail, along with a dust collector for particulates. If the Project has an annual coal throughput of 200,000 tons per year or greater, there are additional requirements to suppress dust on unpaved active haul roads with a chemical agent, and at the coal stockpile area and parking facilities with either chemical agents or water. Customer traffic related to the Project will be via the access road located on the south boundary of the site that enters Minnesota Highway 212. Significant air emissions related to customer trucks are not expected. Based on the information related to the anticipated air emissions from the facility, the MPCA does not expect cumulative potential effects from the proposed Project to be significant.

65. The MPCA also evaluated the cumulative potential air quality effects of the proposed Project in relation to other existing facilities in the surrounding area. Based on available information on the proposed Project, including the staff review of the updated air permit application assessment, the additional building structure and emission controls to meet Minn. R. 7011.1105, air modeling, information obtained during development of the EAW, and responses to comments on the EAW, the MPCA does not expect cumulative potential effects from the proposed Project to be significant.

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

67. The MPCA finds that the proposed Project does not have the potential for significant effects due to cumulative potential effects.
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” (Minn. R. 4410.1700, subp. 7.C). The MPCA findings with respect to this criterion are set forth below. The following permits or approvals will be required for the Project.

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<thead>
<tr>
<th>Unit of Government</th>
<th>Permit or Approval Required</th>
<th>Status</th>
</tr>
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<tbody>
<tr>
<td>McLeod County</td>
<td>Conditional Use Permit</td>
<td>Pending</td>
</tr>
<tr>
<td>McLeod County</td>
<td>Septic System Permit</td>
<td>Pending</td>
</tr>
<tr>
<td>Mn/DOT, District 8</td>
<td>Road Access Permit</td>
<td>Pending</td>
</tr>
<tr>
<td>Buffalo Creek Watershed District</td>
<td>Watershed Permit</td>
<td>Pending</td>
</tr>
<tr>
<td>MPCA</td>
<td>NPDES/SDS Construction Stormwater Permit</td>
<td>Pending</td>
</tr>
<tr>
<td>MPCA</td>
<td>NPDES/SDS Individual Permit</td>
<td>Off Notice</td>
</tr>
</tbody>
</table>

69. **Conditional Use Permit (County)**
A Conditional Use Permit is required when a use is not usually allowed within a zoning district, but may be allowed with certain conditions. A Conditional Use Permit may be approved upon a showing by an applicant that standards and criteria stated in the county’s ordinance would be satisfied. The county may specify conditions to the permit that it believes are necessary to mitigate adverse impacts on neighboring land uses.

70. **Septic System Permit (County)**
A County Septic System Permit is required for the installation of an individual septic treatment system. The septic system design must be submitted to the McLeod County Environmental Services Department.

71. **Road Access Permit (Mn/DOT)**
An access permit is required when working on a new access road, or improving an existing access road opening onto a state highway. The permit assures that the access road will be constructed or modified in accordance with state transportation requirements.

72. **Watershed Permit (Buffalo Creek Watershed)**
Based on rules adopted on May 25, 1993, the BCWD has developed a permitting process for the activities that have the potential to impact water resources. Some examples of activities that require BCWD permits include, but are not limited to, work in any watercourse or water base, work in the right-of-way of any legal drainage system, land-disturbing activities in both incorporated and unincorporated areas, diversion of water into a legal drainage system from land not assessed for the system, and any other act that, as judged by the Board of Managers, may have a significant impact on the BCWD’s water resources.

73. **NPDES/SDS General Construction Stormwater Permit (MPCA)**
An NPDES/SDS Construction Stormwater Permit is required by the MPCA when a project disturbs one or more acres. The NPDES/SDS Permit requires the use of BMPs to prevent eroded sediment
from leaving the construction site. The proposer must have a sediment and erosion control plan that describes the specific measures that will be implemented. The plan will also address phasing of construction, vehicle tracking of sediment, inspection of erosion control measures that are implemented, and time frames in which erosion control measures will be implemented. The NPDES/SDS Permit also requires adequate stormwater treatment capacity to insure that water quality will not be impacted by runoff once the Project is constructed.

74. **NPDES/SDS Individual Permit (MPCA)**
An individual NPDES/SDS permit will be required for the construction, operation, and discharge, including effluent limits, from the treatment system at the Facility, as well as permanent stormwater management at the Facility.

75. The above-listed permits will include general and specific requirements for mitigation of environmental effects of the Project. The MPCA finds that the environmental effects that are reasonably expected to occur from the Project will be subject to mitigation 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**

76. 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.

77. The following documents were reviewed by MPCA staff as part of the analysis of the potential environmental impact of the proposed Project.

- EAW and supporting data
- NPDES/SDS Permit Application
- MPCA Statement of Basis for NPDES/SDS Permit
- Updated Air Permit Applicability Assessment

78. This list is not intended to be exhaustive. The MPCA also relied on information provided by the Project proposer, persons commenting on the EAW, staff experience with the environmental review and permitting of other facilities with similar activities, consultation with staff at other state or local governmental units and other available information obtained by staff.

79. There are no elements of the Project that pose the potential for significant environmental effects that cannot be addressed in the Project design and permit development processes, or by regional and local planning and zoning processes.

80. Based on the environmental review, previous environmental studies, and MPCA staff expertise on similar projects, the MPCA finds that the environmental effects of the Project that are reasonably expected to occur can be anticipated and controlled.
81. The MPCA incorporates the rationale stated in the attached Response to Comments (Appendix B of the Findings of Fact, Conclusions of Law, and Order) as the basis for response to any issues not specifically addressed in these Findings.

CONCLUSIONS OF LAW

82. The MPCA has jurisdiction to determine the need for an EIS for this Project. The EAW, the permit development process, responses prepared by MPCA staff to comments on the EAW, and the evidence in the record are adequate to support a reasoned decision regarding the potential for significant environmental effects that are reasonably expected to occur from this Project.

83. Areas where the potential for significant environmental effects may have existed have been identified and appropriate mitigation measures have been incorporated into the Project design and permits. The Project is expected to comply with all MPCA standards.

84. 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.

85. An EIS is not required.

86. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

ORDER

The Minnesota Pollution Control Agency determines that there are no potential significant environmental effects reasonably expected to occur from the Stewart Material Coal Handling Facility, McLeod County project and that there is no need for an Environmental Impact Statement.

IT IS SO ORDERED

[Signature]
Commissioner Paul Aasen
Chair, Citizens' Board
Minnesota Pollution Control Agency

12/20/11
Date