

40952 Minnesota Pollution Control Agency Request for Comments on CDL Rule

Closed Sep 12, 2025 · Discussion · 15 Participants · 1 Topics · 19 Answers · 0 Replies · 6 Votes

15

PARTICIPANTS

1

TOPICS

19

ANSWERS

0

REPLIES

6

VOTES

SUMMARY OF TOPICS

SUBMIT A COMMENT

 19 Answers · 0 Replies

Important: All comments will be made available to the public. Please only submit information that you wish to make available publicly. The Court of Administrative Hearings does not edit or delete submissions that include personal information. We reserve the right to remove any comments we deem offensive, intimidating, belligerent, harassing, or bullying, or that contain any other inappropriate or aggressive behavior without prior notification.

Dan Hecht · Citizen · (Postal Code: unknown) · Sep 03, 2025 3:27 pm

 0 Votes

This comment relates to proposed amendments to rules governing Construction and Demolition Land Disposal Facilities, specifically 7035.2830 Subpart 2. H., beginning on preliminary draft page 19 of 58. This part requires closure of unlined cells within 8 years of rule effective date and according to subitems (1), (2), or (3) which further limit that time frame to 2, 5 or 8 years with those time frames equating to increasingly stringent final cover specifications as closure is deferred. In particular, I'm concerned with subitem (1), which requires closure within 2 years with the least stringent final cover specification. Although I can support the intent of this part as it's structured to incentivize expedited closure, I would argue the overall time frames are generally too short to be useful in many cases. Given that MPCA currently forecasts rule promulgation to occur near the end of 2026, there is approximately 3 years from the current date to close under the subitem (1) option, and I don't feel that's a reasonable time frame. To demonstrate why I feel that way I'll use Clearwater County's demolition landfill (SW-168) as an example, a scenario to which it's likely others are similar. This facility operates in a rural area of the state as a public service and heavily subsidized by the county, and where no alternative disposal sites currently exist within a reasonable distance. The County will close this facility as a result of this rule amendment, yet it's imperative that the County continue to provide the service currently provided by the landfill. The alternative to the landfill is to transfer the waste to another facility, however, like others, the transfer infrastructure now needs to be planned, built and paid for. Further, at least in the case of Clearwater County, the available destination facilities for waste that would be transferred are not known and will need to be identified. All this without outside planning or funding assistance. So, although the County feels it's prudent to close its landfill under the least stringent requirements, it's clear that to identify an alternative

40952 Minnesota Pollution Control Agency Request for Comments on CDL Rule

Closed Sep 12, 2025 · Discussion · 15 Participants · 1 Topics · 19 Answers · 0 Replies · 6 Votes

destination, plan, fund and build a transfer station is completely unreasonable within a 3-year time frame. I request altering the language in 7035.2830 Subpart 2 H. subitem (1) to allow for at least five (5) years from rule promulgation to close with a cover system as currently described or consistent with the current permit requirements for the facility, to allow for reasonably adequate planning and transition preparations to be made.

Michael Cook · Citizen · (Postal Code: unknown) · Sep 10, 2025 2:55 pm

👍 1 Votes

Olmsted County respectfully submits the comments presented in the attached PDF.

Chris Haar · Citizen · (Postal Code: unknown) · Sep 11, 2025 12:09 pm

👍 0 Votes

Dear MPCA,

I am writing to express my concerns and recommendations regarding the proposed rules mandating the use of liners in construction and demolition (C&D) landfills across Minnesota.

While I support the intent of these regulations to enhance environmental protections and safeguard groundwater I believe it is essential that the state also take proactive steps to ensure equitable access to compliant disposal infrastructure. Specifically, I urge the MPCA to consider establishing or supporting regional public landfill options for C&D waste.

Many municipalities and counties in Greater Minnesota lack the financial resources to upgrade or construct lined landfills within the required timelines. Without accessible public alternatives, these communities may be forced to rely solely on private operators, whose compliance and long-term stewardship may vary. This could undermine the very environmental protections these rules are designed to achieve.

By investing in regional, publicly managed C&D landfills, the state can:

- Ensure consistent enforcement of environmental standards,
- Provide equitable access to compliant disposal options,
- Reduce the burden on rural and under-resourced communities,
- And promote transparency and accountability in landfill operations.

I respectfully request that the MPCA explore funding mechanisms, partnerships, or policy frameworks that would support the development of regional public landfill infrastructure as part of the implementation of these new requirements.

Thank you for your time and consideration. I would welcome the opportunity to discuss this further or provide additional input from a local government perspective.

Sincerely,

Christopher Haar

Matthew Gouin · Citizen · (Postal Code: unknown) · Sep 11, 2025 1:46 pm

👍 0 Votes

Koochiching County respectfully submits the attached comments in the attached file.

Chris McConn · Citizen · (Postal Code: unknown) · Sep 12, 2025 8:28 am

👍 0 Votes

40952 Minnesota Pollution Control Agency Request for Comments on CDL Rule

Closed Sep 12, 2025 · Discussion · 15 Participants · 1 Topics · 19 Answers · 0 Replies · 6 Votes

On behalf of Otter Tail County, I am submitting the attached letter of comment.
Sincerely, Chris McConn, P.E.

Drew Hatzenbihler · Citizen · (Postal Code: unknown) · Sep 12, 2025 10:24 am

👍 1 Votes

Morrison County respectfully submits the comments in the attached file.

Ryan O'Gara · Citizen · (Postal Code: unknown) · Sep 12, 2025 10:39 am

👍 1 Votes

Waste Connections respectfully submits our comments in the attached file.

Jennifer Schuelke · Citizen · (Postal Code: unknown) · Sep 12, 2025 11:01 am

👍 1 Votes

Lac qui Parle County respectfully submits the comments in the attached file

Brian Olson · Citizen · (Postal Code: unknown) · Sep 12, 2025 11:29 am

👍 1 Votes

Beltrami County Solid Waste Letter of Comment

Phillip Shaffer · Citizen · (Postal Code: unknown) · Sep 12, 2025 11:37 am

👍 1 Votes

The National Waste & Recycling Association (NWRA) respectfully submits the attached comments.

Chris McConn · Citizen · (Postal Code: unknown) · Sep 12, 2025 11:58 am

👍 0 Votes

On behalf of Wadena County I am submitting the attached letter with comments

Drew Hatzenbihler · Citizen · (Postal Code: unknown) · Sep 12, 2025 12:00 pm

👍 0 Votes

I would like to submit the attached comments for Gary Johanson, Environmental Services Director for Norman County. Please direct all replies accordingly.

Josh Holte · Citizen · (Postal Code: unknown) · Sep 12, 2025 12:04 pm

👍 0 Votes

40952 Minnesota Pollution Control Agency Request for Comments on CDL Rule

Closed Sep 12, 2025 · Discussion · 15 Participants · 1 Topics · 19 Answers · 0 Replies · 6 Votes

On behalf of Hubbard County the attached comment letter is being submitted.

Brian Martinson · Citizen · (Postal Code: unknown) · Sep 12, 2025 12:09 pm
👍 0 Votes

I am submitting the attached comments behalf of the Association of Minnesota Counties.

Chris McConn · Citizen · (Postal Code: unknown) · Sep 12, 2025 1:01 pm
👍 0 Votes

On behalf of Todd County, I am submitting the attached letter with comments.

Alan Phillips · Citizen · (Postal Code: unknown) · Sep 12, 2025 1:28 pm
👍 0 Votes

Please see the attached comments from Dem-Con Companies. Thank you

Tim Kraemer · Citizen · (Postal Code: unknown) · Sep 12, 2025 3:45 pm
👍 0 Votes

I am submitting the attached comments on behalf of Tom Kraemer, Inc.

Dustin Hauschild · Citizen · (Postal Code: unknown) · Sep 12, 2025 3:53 pm
👍 0 Votes

Please see the attached comment on behalf of Lincoln County

Dustin Hauschild · Citizen · (Postal Code: unknown) · Sep 12, 2025 4:26 pm
👍 0 Votes

Am also requesting that there be an extension to post comments due to the issues people are having receiving the email verification to be able to post them. I was able to get my IT to push the email thru this time, but they said it wasn't a correct email and would not whitelist it as suggested. Have been talking with other people having the same issues and am concerned we are missing some comments due to IT issues.



September 9, 2025

The Honorable Kimberly J. Middendorf
Administrative Law Judge
Minnesota Court of Administrative Hearings
600 N. Robert Street
St. Paul, Minnesota 55101

**RE: Possible Amendments to Rules Governing Construction and Demolition
Debris Land Disposal Facilities, Minnesota Rules, Chapters 7001 (Permits) and
7035 (Solid Waste); Revisor's ID No. R-4556**

Dear Judge Middendorf and stakeholders:

On behalf of Olmsted County, we appreciate the opportunity to comment on the Minnesota Pollution Control Agency's (MPCA) proposed amendments to the Construction and Demolition (C&D) landfill rules. We share MPCA's goal of protecting groundwater and public health while advancing sustainable materials management. Many of the proposed requirements represent important steps toward ensuring long-term environmental protection.

At the same time, the proposed rules will significantly impact counties and local solid waste operators, particularly in rural areas. We respectfully submit the following comments to highlight areas where flexibility, state support, and additional program development will be essential for successful implementation. In particular, we encourage MPCA to consider options that promote regional cooperation and expanded C&D diversion efforts, which will strengthen Minnesota's overall solid waste system.

1. Support enhanced environmental protection – but request flexibility for small facilities.

We support the MPCA's intent to increase protections for groundwater and public health by requiring liners, site evaluations, and financial assurance. However, we recommend the MPCA consider a conditional general permit pathway or streamlined permit for smaller landfills (under 5,000 cy annual C&D intake), to reduce burdens on facilities with low risk and volume.

2. Implementation timeline for unlined facility closure is aggressive.

The phased closure requirements (2/5/8-year schedules) may be difficult for facilities that lack capital or local solid waste planning capacity. We suggest allowing extensions based on demonstrated financial need or permitting progress toward lined expansions.

3. Support for alternate design provisions.

We appreciate the ability to propose alternative designs in 7035.2830, subpart 1(B), which acknowledges site-specific conditions and operator innovation. We request that MPCA clarify the review process timeline and criteria for approval to improve predictability.

4. Post-closure and custodial care terms need clarification.

The introduction of 'custodial care' is an important step, but the path for a facility to achieve custodial care status should be more clearly defined in terms of monitoring duration, compliance history, and modeling of long-term risks.

5. Permit burden increases without proportional state support.

Many counties and local operators will face significant technical and financial burdens under the new rules. We suggest the MPCA consider offering technical assistance grants or permitting cost offsets for facilities transitioning under 7035.2830, subpart 2.

6. Groundwater monitoring requirements are extensive.

The rules require hydrogeologic evaluation and monitoring plans equivalent to MSW landfills. For sites in low risk hydrogeologic settings, this may be excessive. We recommend MPCA consider tiered monitoring requirements based on site risk and location.

7. Support for regionalization of solid waste systems.

Given the challenges associated with developing lined C&D capacity at every individual county or municipal site, we encourage MPCA to provide support for regionalization of solid waste systems. This could include technical assistance, grant funding, or permitting incentives for facilities that agree to accept C&D waste on a regional basis. Without regional solutions, some communities will be left without viable disposal options.

8. Support and guidance for expanded C&D diversion programs.

To reduce pressure on lined landfill capacity and advance Minnesota's waste hierarchy, we request that MPCA provide support and guidance to develop more C&D diversion programs. This could include model ordinances, grant funding, market development efforts, and technical guidance to increase recovery of materials such as wood, metals, shingles, and concrete. Stronger support for C&D diversion will reduce disposal volumes, extend landfill life, and align with state sustainability goals.

9. Cost impacts to consumers and local economies.

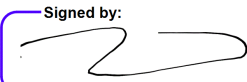
The proposed design and closure requirements will substantially increase the cost of C&D disposal. Facilities transitioning from unlined to lined capacity face significant capital expenditures for cell construction, permitting, and long-term financial assurance. These costs will ultimately be passed on to consumers, including contractors, homeowners, and small businesses. In many counties, disposal rates could double or triple, creating barriers to compliance and incentivizing illegal dumping or hauling waste long distances.

We recommend MPCA carefully evaluate the economic impacts of these rules and consider mechanisms to mitigate cost increases for end users, such as state-supported infrastructure grants, financial assurance pool options, or phased implementation tied to market development for C&D diversion. Without such support, the rules risk shifting costs disproportionately onto local taxpayers and ratepayers.

In closing, we thank the MPCA for its leadership in strengthening environmental protections through these proposed rule changes. We support the intent of the rules and recognize the importance of ensuring long-term protection of Minnesota's communities and natural resources. At the same time, we respectfully request that MPCA provide flexibility for smaller facilities, clearer guidance on compliance pathways, and greater state-level support to help local governments adapt.

By incorporating regionalization strategies and expanding support for C&D diversion programs, MPCA can help ensure that all Minnesota communities—urban and rural alike—have access to practical, affordable, and sustainable solid waste solutions. We look forward to partnering with MPCA in implementing rules that balance environmental protection with operational and financial realities. Thank you for your consideration of Olmsted County's comments and suggestions.

Sincerely,

Signed by:


EE970E718D0F40A...

Mark Thein

9/9/2025 | 1:55 PM CDT

Chair, Olmsted County Board of Commissioners

mark.thein@olmstedcounty.gov



**KOOCHICHING COUNTY
ENVIRONMENTAL SERVICES**

Courthouse
715 4th Street
International Falls, MN 56649

Telephone: (218) 283-1157 Fax: (218) 283-1159

September 8, 2025

The Honorable Kimberly J. Middendorf
Administrative Law Judge
Minnesota Court of Administrative Hearings
600 N. Robert Street
St. Paul, Minnesota 55101

RE: Revisor's ID No. R-04556; Minnesota Pollution Control Agency Possible Amendments to Rules Governing Construction and Demolition Debris Land Disposal Facilities, Minnesota Rules, Chapters 7001 (Permits) and 7035 (Solid Waste)

To whom it may concern,

I am writing in response to the draft of the Construction and Demolition Debris Land Disposal Facility (CDL) Rule on behalf of Koochiching County. Koochiching County will be impacted as an owner and operator of a Construction and Demolition (C&D) Debris Landfill. We feel the state has not provided adequate evidence to support the MPCA's position that all unlined C&D facilities are negatively impacting groundwater and the proposed rule will have significant impacts to the statewide solid waste management systems that have not adequately been addressed or explored. Specific impacts around Solid Waste Management, Certificate of Need (CON) and demonstration of need, closure/postclosure care financing, permitting and closure timelines, and the overall cost to counties to make the required improvements will impact the number of viable C&D facilities in the state as well as current waste disposal systems. Koochiching County has a total area of approximately 3,150 square miles. Many residents of the County make less than 200% of the federal poverty level which is the income threshold considered for concern for environmental justice. We feel the state has not adequately addressed how the added costs will impact our County residents. We believe many residents within the County, as a result of limited resources, will choose to burn, bury or dump within our rural areas due to the increased expense associated with the proposed rules. This waste may end up in the backyards of these same citizens, (possibly contaminating their land) or dumped at the end of rural or forestry roads. These impacts must be addressed before rule implementation.

MPCA Evidence Necessitating Rule Change

Neither this rule nor MPCA guidance throughout the stakeholder engagement process has provided adequate evidence to support the need for these rule changes. We have not seen data on what chemicals and contaminants are in C&D leachate that is impacting groundwater. Similarly, we haven't seen data on what materials going into C&D landfills are causing groundwater contamination. This rule change response feels

premature given the amount of data that seems to exist on this topic. Were other options explored prior to developing the proposed rule and what materials going into C&D facilities are not inert? Is it possible to allow for unlined disposal of materials that don't impact groundwater and move non-inert materials to lined MSW or industrial facilities? These foundational questions remain unanswered as the MPCA pushes for a major rule revision. This justification is an important part of the rulemaking process and neither the rule revisions nor the MPCA's messaging around the revisions have provided adequate justification for the rule change.

Permitting and Closure Timelines

The revised rules provide an eight-year timeframe to fully close existing C&D facilities. Given the complex permitting and siting requirements for C&D landfills, also outlined in this rule, and the MPCA's current backlog of facilities already waiting for new or renewed permits, it is unlikely that the eight-year timeframe will prove adequate to permit and construct new, necessary facilities throughout the state to meet the disposal demands for C&D waste. The rule requires all existing facilities provide transition schedule to the agency within 12 months of rule propagation if they plan to remain in operation past the propagation date or if facilities have unclosed areas of the landfill after propagation. These transition plans will need review by MPCA staff and engineers along with closure documentation. We feel that the MPCA does not have adequate staff to review the volume of documentation that is required of facilities regardless of their closure timeline given that MPCA permitting and engineering staff that will be tasked with this effort are already failing to keep up with the current permitting workload.

In addition, the maximum eight-year timeline for closure does not guarantee that final elevations will be met for existing C&D landfills that will be required to close all unlined areas. If landfills are unable to reach final elevations as outlined in their design and engineering, the closed landfill cannot be expected to perform as designed once they have been closed, which means increased costs for postclosure care which are currently unfunded. The addition of covers to landfills that have not met their initial geometry could further compound this issue.

Cost Burden to Minnesota Counties

This plan fails to adequately account for the significant costs that will be borne by counties to implement and adapt their solid waste systems. These impacts will be felt most acutely in the sparsely populated regions of Greater Minnesota. The increased costs of opening and operating a C&D landfill will make new, lined facilities financially unfeasible for many counties. This will leave large swaths of Minnesota without affordable and local options for C&D waste disposal. As a result, the only remaining options for much of the region will be long-distance trucking of this bulky and heavy waste or disposing of it in Municipal Solid Waste (MSW) landfills. This increases carbon emissions and uses valuable MSW landfill capacity for C&D waste.

The closure of C&D facilities would not only result in a direct loss of revenue for many communities, but the increased disposal costs will affect all Minnesotans. If MSW tip fees or taxes are applied to C&D waste, making construction and demolition projects less affordable. This escalation in prices could also lead to a dangerous increase in illegal dumping and burying of waste which will be an added cost to counties to enforce and clean-up.

Closure and Postclosure Care

The funding requirements for closure and postclosure care outlined in the rule draft put an undue burden on publicly owned facilities by requiring financing up-front. Privately owned landfills can satisfy these requirements with a letter of credit while public facilities need to provide funding prior to a permit being issued. These requirements mean that not only would a publicly owned facility need to fund the construction of a new C&D landfill, which is now much more expensive due to the rule changes, they also need to finance the closure in advance. This makes publicly owned C&D facilities much more unlikely for Greater Minnesota where waste volumes are not expected to generate enough revenue to make the investment financially viable. The waste volumes in Greater Minnesota are unlikely to make C&D Landfill

construction financially viable which means much of Minnesota will not have a location to dispose of C&D waste except for an MSW facility with limited capacity.

Certificate of Need and Permitted Capacity

The new C&D Landfill requirements fail to address the significant impact the rule will have on existing, permitted capacity of MSW landfills. It is expected that in many parts of Greater Minnesota that previously relied on C&D landfills, under the new requirements, will opt instead to dispose of C&D waste in a lined MSW facility due to the expensive costs associated with the new requirements. Since C&D waste is not factored into facility capacities or the Certificate of Need process, existing permitted capacity will fill much quicker than at the time CON was approved. Without a capacity exception for C&D Waste entering MSW facilities, permitted MSW capacity will fill more quickly requiring early CON application and capacity permitting. Similarly, if such an exception is allowed, it provides an unintended loophole to extend permitted capacity by mischaracterizing MSW as C&D waste. The issue is further compounded by the fact that C&D waste volumes are less predictable than MSW volumes since natural disasters, local economic conditions, and local building practices can vary wildly from year to year making the determination of an accurate, needed capacity difficult. This would make factoring C&D waste volumes into CON nearly impossible.

The proposed rule needs a clear way for counties and private companies to demonstrate a need for C&D landfill capacity and options for disposal that will not affect county recycling rates or permitted MSW capacity. This process would also help identify potential partners and identify necessary capacity within an area that might make facilities more financially viable. Ideally, this identification process should have been taken prior to rule development to help create a statewide management system for C&D waste. This is truly a statewide issue, and the best solutions are going to come from a statewide response not individual counties trying to find local or regional solutions without consideration for other regions or parts of the state. The new rules also limit overall landfill capacity by requiring frequent cover and 200-foot setbacks. The cover frequency outlined in the rule needlessly wastes valuable airspace by requiring cover more frequently than traditional C&D materials necessitate. The rule should include cover frequency requirements in line with current cover requirements. This would still allow the MPCA to designate more frequent cover at specific facilities as part of the permitting process. In addition, the 200-foot setback requirement for these facilities outlined in the rule is inconsistent with current MPCA requirements for MSW and other facilities which only require a 50-foot setback from property lines. This more stringent standard needlessly wastes permitted airspace and capacity for facilities and adds additional cost.

This rule change will affect all of Minnesota's disposal systems and will especially affect Koochiching County residents and businesses. Very few workable options have been presented by the State for how Greater Minnesota is expected to meet the terms of this rule. Any proposed solutions, for example a hub and spoke model, have proved too costly and have not gained state funding support, which makes them nonviable options. The isolated geographic location of Koochiching County within Minnesota multiplies the costs associated with solid waste management. We believe many residents within the County, as a result of limited resources, will choose to burn, bury or dump within our rural areas due to the increased expense associated with the proposed rules. The stated goal of the new rules is to decrease the risks to human health and the environment associated with disposal of construction and demolition waste. The new rules may have the opposite effect in our County without adequate funding and support from the state and the MPCA.

Thank you for the opportunity to comment on this important rule.

Sincerely,



Matthew Gouin
Koochiching County Environmental Services Director



September 12, 2025

Mr. Jon Buck
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

**Re: 40952 Minnesota Pollution Control Agency (MPCA) CDL Rule
CAH Docket No. 21-9003-40952**

Dear Mr. Buck:

On behalf of Otter Tail County, I am submitting comments on the Construction and Demolition (C&D) proposed rule revisions for Minnesota Rules, Chapters 7001 (Permits) and 7035 (Solid Waste); Revisor's ID No. R-4556 (draft rules).

Otter Tail County (County) appreciates the years of effort put forth to collaborate with stakeholders prior to publishing draft rule revisions. As a former member of the Rule Advisory Panel (RAP), I can attest the MPCA has provided copious opportunities to discuss this topic. Otter Tail County greatly values its natural resources and works hard to protect the health of humans and the environment in its own backyard.

The draft rules have several features that will harm the County. I believe this County is not an exception, but rather the norm for most counties in greater Minnesota where lower population densities create a solid waste industry that is not well managed by the proposed rule revisions. It hurts Otter Tail County because:

- The transition timing (eight years) is too fast, unnecessarily stranding our assets.
- It creates unintended consequences within the solid waste management tax law. This includes a potential 500% increase in tax on C&D waste.
- The proposed rule revisions generally incorporate MSW waste rules to C&D waste and leaves gaps in industrial waste regulation. This approach creates many problems. We need a comprehensive law that applies uniformly to C&D, Industrial and Municipal waste.
- Similarly, the financial assurance and closure/post-closure elements of the existing (MSW and Industrial Waste) rules proposed for expansion into C&D landfills have unintended consequences. The language needs to be reviewed and updated before being applied to C&D.
- The MPCA lacks evidence demonstrating need for lining C&D landfills.
- Cost Burden to Greater Minnesota regions.



I. TRANSITION TIMING

The draft rules provide C&D landfill owners with the following timelines¹:

- a. One year to submit a transition schedule
- b. Two years to close landfills with soil covers.
- c. Up to eight years to close all unlined landfills

Minnesota Counties (and districts) are charged with the responsibility (and authority) to manage solid waste generated within their respective borders in accordance with Minnesota Statutes 115A (specifically Sections 115A.46, 115A.556 and 115A.919), 400 and 473. Through discussion within the solid waste community, most unlined (private and public) landfills would close (in greater Minnesota) if draft rules are ratified. As discussed with the MPCA, the general scope of work for each county would include:

- a. Generate a transition schedule (for MPCA approval)
- b. Revise Solid Waste Management Plan (for MPCA approval)
- c. Create regional partnerships for C&D waste management (or do nothing and let the free market dictate)
- d. After forming a regional partnership:
 - i. Obtain financing
 - ii. Establish market securities and update ordinances
 - iii. Retain consultants
 - iv. Site and purchase a regional landfill capable of receiving C&D waste
 - v. Permit regional landfill
 - vi. Design and construct the first lined cell\
- e. Close existing unlined C&D landfills.

The County is already involved in regional solutions in multiple ways. It is part of the following:

- i. Six-county household hazardous waste program.
- ii. Three-county film plastic collection program.
- iii. Five-county joint powers authority operating a resource recovery facility.
- iv. Manage Todd and Wadena Solid Waste Departments.



Otter Tail County operates two C&D landfills (Henning SW-395, and Northeast Otter Tail: SW-544). According to our 2024 annual reports, they have approximately 15 and 10 years of remaining airspace, respectively. Both have no future horizontal expansions permitted. All their airspace is in constructed cells. The draft rules will ultimately create stranded assets for the County without adequate time to regionalize, permit, design and build new assets. To streamline the process, the MPCA needs to allow landfill owners to use airspace within the cells that they have already constructed. To create a feasible transition, landfills need no less than 15 years to transition out of existing landfills.

II. STATE TAX LAW

The solid waste management tax (Statute 297H) requires the following:

- a. C&D waste generators pay 60 cents per cubic yard (Section 297H.04 Subd. 2(c)1.
- b. Industrial waste generators pay 60 cents per cubic yard (Section 297H.04 Subd 2(c)2.
- c. Residential Mixed Municipal Solid Waste Generators pay 9.75% of the cost of management (collection, transportation, processing and disposal) per Section 297H.02 Subd. 2.
- d. Commercial mixed municipal solid waste generators pay 17% of the cost of management per Subd. 297H.03 Subd. 2.
- e. C&D waste disposed with mixed waste (MSW) shall pay the MSW tax rate (9.75% or 17%) per section 297H.04, Subd. 4.

If Otter Tail closes their C&D landfills and transfers C&D waste to the closest lined MSW landfills, this would increase the tax on C&D waste from \$0.60 per cubic yard to about \$3.60 per ton. This is about a 500% increase². Solid waste management tax should be applied relative to the environmental risk of the waste. C&D waste has far less environmental risk than MSW. The draft rules harm greater Minnesota where fewer landfills are available and co-disposal of C&D waste with MSW (and industrial waste) will be a logical practice.

III. COMPREHENSIVE MSW, C&D AND INDUSTRIAL WASTE RULES

The draft rules maintain three different programs for three different wastes. These include old policies (and gaps) developed under a context that no longer exists. They should be reviewed and updated. Below are several examples:

- a. EAW and EIS thresholds
Minnesota Rule 4410 requires an EAW or EIS for MSW landfills at certain thresholds. There is no requirement specified for C&D or Industrial landfills. This disparity has been observed by the Environmental Quality Board³.
- b. Certificate of Need
Minnesota Rule 9215 requires a certificate of need (CON) issued by the MPCA to expand municipal waste landfills. This is not required for C&D landfills or Industrial Landfills.
- c. Industrial Waste Landfills



Minnesota Rules 7035 have specific rules about geological evaluation (boring depth and quantity), annual groundwater evaluations, annual reporting, liner design, final cover design, leachate collection efficiency, and precipitation rejection efficiency. The proposed rules have similar requirements for C&D landfills. There is little or no guidance for industrial waste landfills.

The 2015 Solid Waste Policy Report recognized in its executive summary that the current system (“rules, laws, fees and taxes”) is aimed at MMSW. Not enough attention has been invested in C&D waste or industrial waste. It elaborated in later chapters that industrial waste was a significant waste stream: 2.7 million tons a year – larger than the 2.0 million tons of MSW or 1.9 million tons of C&D. The fervor the MPCA has applied to C&D waste is disproportionate to the risk. Minnesota Rules (7001 and 7035) need to be updated uniformly for the three major waste types: MSW, Industrial and C&D waste.

Some review should be made of Wisconsin’s program. From my preliminary review, the requirements for the three waste types are approached more comprehensively and uniformly.

IV. FINANCIAL ASSURANCE

The financial assurance and closure/post-closure care requirements used for MSW and Industrial landfills have essentially been applied to C&D waste in the draft rules. There are weaknesses to the financial assurance rules that are easy to correct as described below (for the benefit of all landfill types):

a. Remaining Landfill Life and Design Capacity

Minnesota Statute 7035 defines design capacity as,

“the total volume of compacted solid waste, topsoil, intermittent, intermediate, and final cover specified in the facility permit, as calculated from final contour and cross-sectional plan sheets that define the areal and vertical extent of the fill area.”

The MPCA expands this to require financial assurance to be calculated by a “remaining capacity” (not defined by statute) that includes final cover in its airspace. This creates falsely high estimates for remaining landfill life. For example, a five-acre landfill with a three-foot final cover that is filled to top of waste grades would have 24,200 cubic yards of “remaining capacity”. If the landfill historically uses 12,000 cubic yards per year, the MPCA forces owners to report this landfill has two years of remaining life when in reality it has zero years. This is harmful to all facilities whose managers assume this MPCA generated formula is useful and accurate for planning purposes. The rule needs to define remaining capacity to exclude final cover. This will result in more accurate estimates of remaining facility life.

b. Discount and Interest Rates

The financial assurance formulas included in Rule 7035 require use of inflation and discount factors to calculate financial assurance payments. Recent market history has demonstrated that



projecting annual rates over 20 years creates inconveniently erratic results. For example, in 2021 the formula calculated an inflated and discounted cost of post-closure for the Otter Tail Ash Monofil of approximately \$1,045,000 using the current inflation and discount rates (4.0265% and 0.25%, respectively). In 2024, the same annual closure cost resulted in a total post-closure cost of \$573,000. This is nearly 100% variation. The financial assurance should be revised to utilize five-year averages for inflation and discount factors to normalize the monthly costs and economic market fluctuations.

c. Current MPCA Practice

Currently, the MPCA is not utilizing the financial assurance language for landfills currently within its application. Revised rules and MPCA practices need to be consistent. Some examples include:

- i. MPCA staff have not allowed the County to withdraw funds from dedicated trust funds for closure costs¹⁰.
- ii. The MPCA financial assurance calculator does not reflect the formulas provided in the rule. For example, the rule elaborates in detail alternate calculation methods for monthly payments that are not

One may speculate why rules and administration/enforcement are not aligned. I would speculate the current rule is too complex for staff to apply with existing resources and culture. Regardless of the real answer, the demonstrated disconnect demonstrates something is wrong and needs to be fixed.

V. LACK OF EVIDENCE

The MPCA Report⁴ used historical groundwater concentrations of manganese, boron, and arsenic around C&D landfills to demonstrate need. The report studied about 43 landfills and found three required well advisories to nearby property owners. The report was very informative and provided useful information. A separate collaboration among 45 publicly and privately owned landfill owners on PFAs (Per- and Polyfluoroalkyl substances) independently concluded with a similar observation: PFAs concentrations downgradient of unlined landfills are generally more elevated and; lined landfills are much less likely to have the same correlation⁵.

There remain shortcomings in the MPCA Report:

- a. Manganese and Arsenic are naturally occurring⁶, with geochemical properties that make them poor indicators of landfill contamination - specifically, their solubility relative to dissolved oxygen.
- b. Boron is not effectively removed at wastewater treatment facilities by conventional methods like coagulation, flocculation and filtration. Therefore, collecting boron from landfill leachate and, “treating” it at a wastewater treatment facility only redistributes boron – often in more harmful places such as in rivers and streams⁷ (that could result in greater exposure to downstream receptors).



If boron is the sole negative impact of demolition landfills, would it be better to change policies to prohibit boron containing waste (sheetrock and gypsum) from C&D landfills? This represents 8.1% of the waste stream⁸. These changes would be supplemented by investments in recycling and re-use of gypsum driven by the MPCA's existing sustainability policies.

VI. COST BURDEN

Otter Tail County C&D unlined landfills charge \$24 per cubic yard. The City of Fergus Falls (in Otter Tail County) has a lined C&D landfill and charges \$48 per cubic yard. It does not follow all of the proposed C&D rule requirements. Based on information in the MPCA funded study of northwestern Minnesota's nine-county hub and spoke study, I am confident that our neighboring region would have similar costs (\$75 to \$100/ton range). Based on \$75/cubic yard, this would be an additional cost to Otter Tail County residents and businesses of \$1,900,000 per year.⁹ Extrapolated to all of Greater Minnesota based on population, cost is about \$78 million per year. This is unacceptable. Many of our residents will burn their waste to avoid the cost.

VII. RECOMMENDATIONS

There are significant opportunities to improve the solid waste rules for the benefit of all Minnesota. We respectfully request MPCA staff to go back to recommendations provided by the RAP and other stakeholders to correct the issues provided herein. Our recommendations include:

- a. Provide 15-year transition schedule allowing landfills to utilize existing developed cells while they develop regional solutions that include lined landfills to receive C&D waste.
- b. Work with Legislature to revise solid waste management tax so that C&D waste taxation does not change if co-mingled with MSW.
- c. Make the solid waste rules more comprehensive for MSW, C&D and Industrial waste.
- d. Revise financial assurance and closure/post-closure requirements as described.
- e. Look for more affordable solutions, including removal of gypsum to allow a place for unlined landfills.

Thank you for your attention to these important matters. If you have any questions, please contact me at 218-998-8904 or cmcconn@ottertailcounty.gov.

Sincerely,

Chris McConn, P.E.
Solid Waste Director

cc: Otter Tail County Board of Commissioners
Nick Leonard, Otter Tail County Deputy Administrator

REFERENCES:

1. Proposed Language from Rules 7035.2830 subp. 2 as furnished on the MPCA website.
2. In Otter Tail County, this estimate is based on hauling demolition waste to a nearby MSW landfill, like Morrison County, or conversion of the City of Fergus Falls C&D landfill into a combined MSW and C&D waste landfill. In either, calculation assumes cost of \$1,500 for disposal and transport of a 40 cubic yards roll-off container. This translates to \$3.65 per cubic yard in solid waste management tax. The conversion from cubic yard to ton for demolition varies based on the content of the waste. The MPCA general accepts the United States Environmental Protection Agency (USEPA) conversion table available at https://www.epa.gov/sites/default/files/2016-04/documents/volume_to_weight_conversion_factors_memo_04192016_508fnl.pdf. There are a variety of conversions available depending on waste types for C&D (wood, concrete, shingles, gypsum board, etc.). At a density of 500 pounds per cubic yard, the \$0.60/cubic yard tax rate is equal to \$2.40 per ton.
3. See report entitled, “Mandatory Environmental Review Categories, Legislative Assessment Report”, December 2024, Environmental Quality Board, page 39 states, “Consider updating terminology to include all waste types, like ‘construction and demolition’ waste and better align with the MPCA solid waste program’s existing definitions for terms like ‘design capacity’ ” https://www.eqb.state.mn.us/sites/eqb/files/2024_mandatory_category_report_2.pdf
4. Minnesota Pollution Control Agency Report entitled, “*Groundwater Impacts of Unlined Construction and Demolition Debris Landfilling*”, October 2019.
5. Barr Engineering Company Report entitled, “Statewide Study on the Occurrence and Distribution of PFAs in Groundwater at Minnesota Landfills, June 2025.
6. Lively, R.S.; Thorleifson, L.Harvey. (2009). OFR09-02, Minnesota Soil, Till, and Ground-Water Geochemical Data. Retrieved from the University of Minnesota Digital Conservancy.
7. International Journal of Environmental Research and Public Health, August 2022: 19(17):10671 report entitled, “Advances in Technologies for Boron Removal from Water: A Comprehensive Review.
8. MPCA Report entitled, “*Construction and Demolition Materials Composition Study*”, November, 2020.
9. Based on reported C&D waste land disposed at the Henning, NEOT and City of Fergus Falls landfills in 2024 (approximately 43,000 cubic yards).
10. Through multiple discussions, MPCA staff denied use of financial assurance funds for closure activities through about a two-year discussion period prior to a final cover project at SW-544. After the project was completed, the County submitted a request to be reimbursed with its financial assurance funds. MPCA never responded.



*Morrison County provides cost effective, high quality
Services in a friendly and respectful manner.*

September 12, 2025

Public Works Department

213 1st Avenue SE

Little Falls, MN 56345-3196

320-632-0121

Toll Free: 1-866-401-1111

Minnesota Court of Administrative Hearings
Administrative Law Judge Kimberly J. Middendorf
520 Lafayette Road N
St. Paul, MN 55101

RE: **Revisor's ID No. R-04556**; Minnesota Pollution Control Agency Request for Comments on Possible Amendments to Rules Governing Construction and Demolition Debris Land Disposal Facilities, Minnesota Rules, Chapters 7001 (Permits) and 7035 (Solid Waste)

To whom it may concern,

I am writing in response to the draft of the *Construction and Demolition Debris Land Disposal Facility (CDL) Rule* on behalf of Morrison County. Morrison County will be impacted as an owner and operator of a Construction and Demolition (C&D) Debris Landfill. We feel the state has not provided adequate evidence to support the MPCA's position that all unlined C&D facilities are negatively impacting groundwater and the proposed rule will significantly impact statewide solid waste management systems that have not adequately been addressed or explored. Specific impacts around Solid Waste Management Tax (SWMT), Certificate of Need (CON) and demonstration of need, closure/postclosure care financing, permitting and closure timelines, and the overall cost to counties to make the required improvements to this new "hybrid" landfill design will impact the number of viable C&D facilities in the state and financially impact MSW waste disposal systems. These impacts must be addressed before rule adoption.

MPCA Evidence Necessitating Rule Change

Neither this rule nor MPCA guidance throughout the stakeholder engagement process has provided adequate evidence to support the need for these rule changes. We have not seen data on what chemicals and contaminants are in C&D leachate that is impacting groundwater. Similarly, we haven't seen data on what materials going into C&D landfills are causing groundwater contamination. This rule change response feels premature given the amount of data that seems to exist on this topic. Were other options explored prior to developing the proposed rule and what materials going into C&D facilities are not inert? Is it possible to allow for unlined disposal of materials that don't impact groundwater and move non-inert materials to lined MSW or industrial facilities? These foundational questions remain unanswered as the MPCA pushes for a major rule revision. This justification is an important part of the rulemaking process and neither the rule revisions nor the MPCA's messaging around the revisions have provided adequate justification for the rule change.

Permitting and Closure Timelines

The revised rules provide an eight-year timeframe to fully close existing C&D facilities. Given the complex permitting and siting requirements for C&D landfills, also outlined in this rule, and the MPCA's current backlog of facilities already waiting for new or renewed permits, it is unlikely that the eight-year

timeframe will prove adequate to permit and construct new, necessary facilities throughout the state to meet the disposal demands for C&D waste. The rule requires all existing facilities provide transition schedule to the agency within 12 months of rule promulgation if they plan to remain in operation past the promulgation date or if facilities have unclosed areas of the landfill after promulgation. These transition plans will need review by MPCA staff and engineers along with closure documentation. We feel that the MPCA does not have adequate staff to review the volume of documentation that is required of facilities regardless of their closure timeline given that MPCA permitting and engineering staff that will be tasked with this effort are already failing to keep up with the current permitting workload.

In addition, the maximum eight-year timeline for closure does not guarantee that final elevations will be met for existing C&D landfills that will be required to close all unlined areas. If landfills are unable to reach final elevations as outlined in their design and engineering, the closed landfill cannot be expected to perform as designed once they have been closed, which means increased costs for postclosure care which are currently unfunded. The addition of covers to landfills that have not met their initial geometry could further compound this issue.

Cost Burden to Minnesota Counties

This plan fails to adequately account for the significant costs that will be borne by counties to implement and adapt their solid waste systems. These impacts will be felt most acutely in the sparsely populated regions of Greater Minnesota. The increased costs of opening and operating a new hybrid C&D landfill will make new, lined facilities financially unfeasible for many counties. This will leave large swaths of Minnesota without affordable and local options for C&D waste disposal. As a result, the only remaining options for much of the region will be long-distance trucking of this bulky and heavy waste or disposing of it in more costly, privately owned hybrid C&D landfills or in more costly Municipal Solid Waste (MSW) landfills. This increases carbon emissions and uses valuable MSW landfill capacity for C&D waste.

In effect, the MPCA has created a new hybrid design, the cost of which is out of reach for most Minnesota Counties, forcing the volume of the waste generated in Minnesota to the few lined and primarily large, private, hybrid facilities. The proposed hybrid design meets higher standards yet also undercuts the MSW landfill market if MSW derived materials are allowed to go to these new hybrid facilities. If MSW derived materials such as bypass and residue are allowed to go to a hybrid lined C&D landfill, shouldn't that landfill be required to meet Federal Subtitle D Standards for liners, leachate collection and gas management?

The closure of C&D facilities would not only result in a direct loss of revenue for many communities, but the increased disposal costs will affect all Minnesotans. If MSW tip fees or taxes are applied to C&D waste, this will make construction and demolition projects less affordable. This escalation in prices could also lead to a dangerous increase in illegal dumping and burying of waste. Which will be an added cost to counties and the state to enforce and clean-up.

Solid Waste Management Tax

The current SWMT system, combined with proposed rule changes, creates a perverse incentive that discourages proper waste disposal. Because MSW is taxed as a percentage of the tipping fee while C&D and industrial waste are charged a flat rate, it becomes significantly cheaper to dispose of waste at facilities with lower environmental protection standards. Municipal Solid Waste (MSW) landfills have the highest environmental requirements for liners, leachate, and gas collection, while industrial and C&D landfills have far less stringent standards. This tax structure incentivizes the movement of waste away from the safest disposal sites. This is particularly concerning given that many of the worst groundwater issues at C&D landfills are a direct result of poor waste screening and the disposal of improper materials.

The current tax system also incentivizes the transportation of waste over long distances for disposal rather than keeping material disposal more local and disposing of waste at an MSW landfill with higher environmental protection standards. In addition to increasing the carbon emissions associated with C&D waste, this creates liability issues for the municipalities where the waste is originating should environmental harm result from the disposal. This transport incentive could also lead to lost revenue for counties and lost revenue for the environmental programs supported by the SWMT. The rule change does not address the taxation rate for C&D materials disposed of in an MSW landfill and does not correct the associated discrepancy that creates a financial incentive to move waste to facilities with the least environmental protection.

Closure and Postclosure Care

The funding requirements for closure and postclosure care outlined in the rule draft put an undue burden on publicly owned facilities by requiring financing up-front. Privately owned landfills can satisfy these requirements with a letter of credit while public facilities need to provide funding prior to a permit being issued. These requirements mean that not only would a publicly owned facility need to fund the construction of a new C&D landfill, which is now much more expensive due to the rule changes, they also need to finance the closure in advance. This makes publicly owned C&D facilities much more unlikely for Greater Minnesota where waste volumes are not expected to generate enough revenue to make the investment financially viable for counties or private industry. This means much of Minnesota will not have a location to dispose of C&D waste except for an MSW facility with limited capacity.

Certificate of Need and Permitted MSW Capacity

The new C&D Landfill requirements fail to address the significant impact the rule will have on existing, permitted capacity of MSW landfills. It is expected that in many parts of Greater Minnesota that previously relied on C&D landfills, under the new requirements, will opt instead to dispose of C&D waste in a lined MSW facility due to the expensive costs associated with the new rule requirements. Since C&D waste is not factored into facility capacities or the Certificate of Need (CON) process, existing permitted capacity will fill much quicker than at the time CON was approved. Without a capacity exception for C&D Waste entering MSW facilities, permitted MSW capacity will fill more quickly requiring early CON application and capacity permitting. Similarly, if such an exception is allowed, it provides an unintended loophole to extend permitted capacity by mischaracterizing MSW as C&D waste. The issue is further compounded by the fact that C&D waste volumes are less predictable than MSW volumes since natural disasters, local economic conditions, and local building practices can vary wildly from year to year making the determination of an accurate, needed capacity difficult. This would make factoring C&D waste volumes into CON nearly impossible.

The proposed rule needs a clear way for counties and private companies to demonstrate a need for C&D landfill capacity and options for disposal that will not affect county recycling rates or permitted MSW capacity. This process would also help identify potential partners and identify necessary capacity within an area that might make facilities more financially viable. Ideally, this identification process should have taken place prior to rule development to help create a statewide management system for C&D waste. This is truly a statewide issue, and the best solutions are going to come from a statewide response not individual counties trying to find local or regional solutions without consideration for other regions or parts of the state.

The new rules also limit overall landfill capacity by requiring frequent cover and 200-foot setbacks. The cover frequency outlined in the rule needlessly wastes valuable airspace by requiring cover more frequently than traditional C&D materials necessitate. The rule should include cover frequency requirements in line with current cover requirements. This would still allow the MPCA to designate more frequent cover at specific facilities as part of the permitting process. In addition, the

200-foot setback requirement for these facilities outlined in the rule is outdated based on current MPCA requirements for MSW and other facilities which only require a 50-foot setback from property lines. This more stringent standard needlessly wastes permitted airspace and capacity for new hybrid facilities.

This rule change along with the solid waste tax discrepancies will affect all of Minnesota's disposal systems. Lower tax rates at demo industrial landfills means that waste can profitably be transported long distances for disposal at lined industrial facilities, bypassing county run landfills and transfer operations. In addition, this transport increases the carbon emissions associated with the disposal of C&D waste. This loss of revenue will be felt by counties throughout the state. When this transportation is not financially feasible many counties will opt to put C&D materials into an MSW landfill thus using the state's most valuable remaining landfill capacity unnecessarily. In practice this will look like an influx of waste from Greater Minnesota to a handful of sites in highly populated areas in small pockets of the state. Locations further from these available sites will likely opt to dispose of C&D waste in a MSW landfill because the cost of building a lined C&D landfill is too costly to make financial sense.

Very few workable options have been presented by the State for how Greater Minnesota is expected to meet the terms of this rule. Any proposed solutions, for example a hub and spoke model, have proved too costly and have not gained state funding support, which makes them nonviable options. Without adequate funding and support from the state and the MPCA, this rule is going to have far-reaching effects for all of Minnesota's waste disposal systems - counties and public facilities are going to be stuck paying for it.

Thank you for the opportunity to comment on this important rule.

Sincerely,

A handwritten signature in black ink that reads "Drew Hatzenbihler". The signature is written in a cursive, flowing style.

Drew Hatzenbihler
Environmental Manager
Morrison County Public Works Department

On behalf of Waste Connections (WCN), we greatly appreciate the opportunity to provide comments on the Preliminary Draft Construction and Demolition Debris Land Disposal Facility (CDL) Rule.

General Comments:

Waste Connections owns and operates lined Construction and Demolition (C&D), merchant Industrial, and Mixed Municipal Solid Waste (MMSW) landfills in Minnesota. We began implementing liner & leachate collection systems at our privately-owned facilities as early as 1992. Today, the vast majority of C&D generated in MN (approximately 75%) is disposed of in lined landfills. We support the MPCA's goal of requiring liner systems at all C&D landfills in MN, however the draft rule would impose new or more stringent requirements on existing lined C&D facilities than even what is required for landfills managing riskier waste streams such as Mixed Municipal Solid Waste. WCN feels these rules were intended to primarily to require liners for unlined facilities. As such, WCN does not want the new rules to disrupt the status quo for existing lined C&D, merchant Industrial, and MMSW facilities in terms of design, operations, waste flows and economics—a system of facilities that has been successful in managing these various waste streams generated in the State for decades. Additionally, WCN is broadly concerned about any unintended consequences that might occur as a result of recategorizing merchant Industrial landfills (industrial landfills who also accept C&D) as simply C&D landfills.

Specific Comments:

Subpart 10 has a host of new cover and liner material testing requirements that serve no apparent analytical purpose in determining materials that will meet the prescriptive requirements in the rules. Even the MPCA's guidance documents only provide suggestions for particle size, Atterberg limits, permeability, compaction, soil classification, and water content. No benefit is gained by finding the specific gravity, soil description, consolidation, mineralogy, unconfined compression, triaxial compression, cation exchange, etc. for these materials. There is some potential benefit for the nutrient requirements, etc. for the topsoil part, but given the cost associated with this testing, we do not believe this testing should be required.

7001.3425, Subpart 1, item I (page 7 of draft) and 7035.2830 Subpart 7, Item H, 5, require a gas monitoring, collection, and treatment system. These provisions were borrowed from the MMSW rules, despite gas generation issue being much less likely to occur at C&D facilities. Given the costs associated with such systems, WCN urges the MPCA to modify the rules so that gas systems shall be required if the Commissioner determines the need based on location, waste characteristics, site characteristics, odor or gas migration issues. For consistency, WCN urges the same criteria be used in both sections of the rule, therefore we recommend deleting "waste types" in 7001.3425, Subpart 1, item I (page 7 of draft) and inserting "on location, waste characteristics, site characteristics, odor or gas migration issues" as the criteria. The same language should be used in 7035.2830 Subpart 7, Item H, 5.

The new definitions and sections pertaining to Custodial Care (7035.0300 and 7035.2830 Subp. 20 and 21) are new requirements on C&D that are not even required for landfills that accept waste streams

with much higher potential risk associated with them, such as MSW or Industrial facilities. These requirements are unreasonable given the nature of the waste at C&D facilities.

7035.2830 Subp. 7, Item C (page 32 of draft) requires a 200-foot setback from the property line, while currently only a 50-foot setback is required. In over three decades of operation, WCN is not aware of groundwater impacts from a lined C&D or merchant Industrial landfill in MN, which is backed by decades of groundwater monitoring data at these facilities. Imposing these setback requirements will harm existing lined facilities and will result in reduced airspace capacity serving the State and the need to permit additional capacity elsewhere in the State. With no apparent benefit and no justification for why this requirement is reasonable given the reduced risk these facilities pose, WCN recommends maintaining the setback to 50 feet.

7035.2830 Subp. 4, Item C(3), prohibits the location of a facility within 5,000 or 10,000 feet from an airport runway. This rule language was borrowed from the MMSW rules for facilities where vectors such as birds are factors. Lined C&D facilities do not accept wastes that attract vectors, specifically birds, so including this prohibition is unnecessary and could lead to facilities that have operated for decades without issues prematurely closing if not granted approval from the Federal Aviation Administration (FAA). WCN urges this requirement be deleted.

7035.2830 Subp. 8, Item C (1)(a) i, changes the cover requirement from 30 days to weekly. In over three decades of operation, WCN is not aware of any issues or impacts resulting from applying cover on a monthly basis at lined C&D or merchant Industrial landfills in MN. Needlessly requiring more frequent cover application will harm facilities that have operated for decades without issue by reducing valuable airspace that could otherwise be used to manage wastes.

7035.2830 Subp. 11, A, requires lysimeters and was borrowed from the MSW landfill rules. WCN does not believe this requirement is reasonable since lysimeters are unreliable and do not provide accurate leak detection data. In over three decades of operation, WCN is not aware of a single groundwater impact from a lined C&D or merchant Industrial landfill in MN, which is backed by decades of groundwater monitoring data at these facilities. This requirement will simply add cost without providing any discernable benefit.

7035.2830 Subp. 16, R, requires mowing of vegetated intermediate/final cover slopes a minimum of two times per year, where the existing requirement is once per year. Due to the nature of slopes shedding water, in some dry years it is common that the vegetation should only be mowed once and more frequent mowing could potentially damage the vegetation. WCN urges the Agency to leave the requirement at once per year.

7035.2830 Subp. 7, D(5), requires stormwater management to design the facility to manage a 100-year, 24-hour event. This is unreasonable as the MPCA issued an MMSW landfill permit in 2025 that only requires a 25-year, 24-hour event. It is not reasonable to have a more requirement for C&D facilities that pose a lower risk. WCN recommends using the 25-year, 24-hour event in the rule.

WCN again appreciates the opportunity to comment and looks forward to continuing to cooperate with the MPCA on this important rulemaking.

September 12, 2025

Minnesota Court of Administrative Hearings
Administrative Law Judge Kimberly J. Middendorf
520 Lafayette Road N

RE: **Revisor's ID No. R-04556**; Minnesota Pollution Control Agency Request for Comments on Possible Amendments to Rules Governing Construction and Demolition Debris Land Disposal Facilities, Minnesota Rules, Chapters 7001 (Permits) and 7035 (Solid Waste)

To whom it may concern,

I am writing in response to the draft of the *Construction and Demolition Debris Land Disposal Facility (CDL) Rule* on behalf of Lac qui Parle County. The county will be impacted as an owner of a closed Construction and Demolition (C&D) Debris Landfill. Although we don't operate an open Construction and Demolition (C&D) Debris Landfill, the impacts and potential closure of nearby options will have impacts for how this waste is managed in our community. We feel the state has not provided adequate evidence to support the MPCA's position that all unlined C&D facilities are negatively impacting groundwater and the proposed rule will have significantly impact statewide solid waste management systems that have not adequately been addressed or explored. Specific impacts around Solid Waste Management Tax (SWMT), Certificate of Need (CON) and demonstration of need, closure/postclosure care financing, permitting and closure timelines, and the overall cost to counties to make the required improvements to this new "hybrid" landfill design will impact the number of viable C&D facilities in the state and financially impact MSW waste disposal systems. These impacts must be addressed before rule adoption.

MPCA Evidence Necessitating Rule Change

Neither this rule nor MPCA guidance throughout the stakeholder engagement process has provided adequate evidence to support the need for these rule changes. We have not seen data on what chemicals and contaminants are in C&D leachate that is impacting groundwater. Similarly, we haven't seen data on what materials going into C&D landfills are causing groundwater contamination. This rule change response feels premature given the amount of data that seems to exist on this topic. Were other options explored prior to developing the proposed rule and what materials going into C&D facilities are not inert? Is it possible to allow for unlined disposal of materials that don't impact groundwater and move non-inert materials to lined MSW or industrial facilities? These foundational questions remain unanswered as the MPCA pushes for a major rule revision. This justification is an important part of the rulemaking process and neither the rule revisions nor the MPCA's messaging around the revisions have provided adequate justification for the rule change.

Permitting and Closure Timelines

The revised rules provide an eight-year timeframe to fully close existing C&D facilities. Given the complex permitting and siting requirements for C&D landfills, also outlined in this rule, and the MPCA's current backlog of facilities already waiting for new or renewed permits, it is unlikely that the eight-year timeframe will prove adequate to permit and construct new, necessary facilities throughout the state to meet the disposal demands for C&D waste. The rule requires all existing facilities provide transition schedule to the agency within 12 months of rule propagation if they plan to remain in operation past the

propagation date or if facilities have unclosed areas of the landfill after propagation. These transition plans will need review by MPCA staff and engineers along with closure documentation. We feel that the MPCA does not have adequate staff to review the volume of documentation that is required of facilities regardless of their closure timeline given that MPCA permitting and engineering staff that will be tasked with this effort are already failing to keep up with the current permitting workload.

In addition, the maximum eight-year timeline for closure does not guarantee that final elevations will be met for existing C&D landfills that will be required to close all unlined areas. If landfills are unable to reach final elevations as outlined in their design and engineering, the closed landfill cannot be expected to perform as designed once they have been closed, which means increased costs for postclosure care which are currently unfunded. The addition of covers to landfills that have not met their initial geometry could further compound this issue.

Cost Burden to Minnesota Counties

This plan fails to adequately account for the significant costs that will be borne by counties to implement and adapt their solid waste systems. These impacts will be felt most acutely in the sparsely populated regions of Greater Minnesota. The increased costs of opening and operating a new hybrid C&D landfill will make new, lined facilities financially unfeasible for many counties. This will leave large swaths of Minnesota without affordable and local options for C&D waste disposal. As a result, the only remaining options for much of the region will be long-distance trucking of this bulky and heavy waste or disposing of it in more costly, privately owned hybrid C&D landfills or in more costly Municipal Solid Waste (MSW) landfills. This increases carbon emissions and uses valuable MSW landfill capacity for C&D waste.

In effect, the MPCA has created a new hybrid design, the cost of which is out of reach for most Minnesota Counties, forcing the volume of the waste generated in Minnesota to the few lined and primarily large, private, hybrid facilities. The proposed hybrid design meets higher standards yet also undercuts the MSW landfill market if MSW derived materials are allowed to go to these new hybrid facilities. If MSW derived materials such as bypass and residue are allowed to go to a hybrid lined C&D landfill, shouldn't that landfill be required to meet Federal Subtitle D Standards for liners, leachate collection and gas management?

The closure of C&D facilities would not only result in a direct loss of revenue for many communities, but the increased disposal costs will affect all Minnesotans. If MSW tip fees or taxes are applied to C&D waste, making construction and demolition projects less affordable. This escalation in prices could also lead to a dangerous increase in illegal dumping and burying of waste. Which will be an added cost to counties to enforce and clean-up.

Solid Waste Management Tax

The current SWMT system, combined with proposed rule changes, creates a perverse incentive that discourages proper waste disposal. Because MSW is taxed as a percentage of the tipping fee while C&D and industrial waste are charged a flat rate, it becomes significantly cheaper to dispose of waste at facilities with lower environmental protection standards. Municipal Solid Waste (MSW) landfills have the highest environmental requirements for liners, leachate, and gas collection, while industrial and C&D landfills have far less stringent standards. This tax structure incentivizes the movement of waste away from the safest disposal sites. This is particularly concerning given that many of the worst groundwater issues at C&D landfills are a direct result of poor waste screening and the disposal of improper materials.

The current tax system also incentivizes the transportation of waste over long distances for disposal rather than keeping material disposal more local and disposing of waste at an MSW landfill with higher environmental protection standards. In addition to increasing the carbon emissions associated with C&D waste, this creates liability issues for the municipalities where the waste is originating should

environmental harm result from the disposal. This transport incentive could also lead to lost revenue for counties and lost revenue for the environmental programs supported by the SWMT. The rule change does not address the taxation rate for C&D materials disposed of in an MSW landfill and does not correct the associated discrepancy that creates a financial incentive to move waste to facilities with the least environmental protection.

Closure and Postclosure Care

The funding requirements for closure and postclosure care outlined in the rule draft put an undue burden on publicly owned facilities by requiring financing up-front. Privately owned landfills can satisfy these requirements with a letter of credit while public facilities need to provide funding prior to a permit being issued. These requirements mean that not only would a publicly owned facility need to fund the construction of a new C&D landfill, which is now much more expensive due to the rule changes, they also need to finance the closure in advance. This makes publicly owned C&D facilities much more unlikely for Greater Minnesota where waste volumes are not expected to generate enough revenue to make the investment financially viable. The waste volumes in Greater Minnesota are unlikely to make C&D Landfill construction financially viable which means much of Minnesota will not have a location to dispose of C&D waste except for an MSW facility with limited capacity.

Certificate of Need and Permitted MSW Capacity

The new C&D Landfill requirements fail to address the significant impact the rule will have on existing, permitted capacity of MSW landfills. It is expected that in many parts of Greater Minnesota that previously relied on C&D landfills, under the new requirements, will opt instead to dispose of C&D waste in a lined MSW facility due to the expensive costs associated with the new requirements. Since C&D waste is not factored into facility capacities or the Certificate of Need process, existing permitted capacity will fill much quicker than at the time CON was approved. Without a capacity exception for C&D Waste entering MSW facilities, permitted MSW capacity will fill more quickly requiring early CON application and capacity permitting. Similarly, if such an exception is allowed, it provides an unintended loophole to extend permitted capacity by mischaracterizing MSW as C&D waste. The issue is further compounded by the fact that C&D waste volumes are less predictable than MSW volumes since natural disasters, local economic conditions, and local building practices can vary wildly from year to year making the determination of an accurate, needed capacity difficult. This would make factoring C&D waste volumes into CON nearly impossible.

The proposed rule needs a clear way for counties and private companies to demonstrate a need for C&D landfill capacity and options for disposal that will not affect county recycling rates or permitted MSW capacity. This process would also help identify potential partners and identify necessary capacity within an area that might make facilities more financially viable. Ideally, this identification process should have been taken prior to rule development to help create a statewide management system for C&D waste. This is truly a statewide issue, and the best solutions are going to come from a statewide response not individual counties trying to find local or regional solutions without consideration for other regions or parts of the state.

The new rules also limit overall landfill capacity by requiring frequent cover and 200-foot setbacks. The cover frequency outlined in the rule needlessly wastes valuable airspace by requiring cover more frequently than traditional C&D materials necessitate. The rule should include cover frequency requirements in line with current cover requirements. This would still allow the MPCA to designate more frequent cover at specific facilities as part of the permitting process. In addition, the 200-foot setback requirement for these facilities outlined in the rule is outdated based on current MPCA requirements for MSW and other facilities which only require a 50-foot setback from property lines. This more stringent standard needlessly wastes permitted airspace and capacity for new hybrid facilities.

This rule change along with the solid waste tax discrepancies will affect all of Minnesota's disposal systems. Lower tax rates at demo industrial landfills means that waste can profitably be transported long distances for disposal at lined industrial facilities, bypassing county run landfills and transfer operations. In addition, this transport increases the carbon emissions associated with the disposal of C&D waste. This loss of revenue will be felt by counties throughout the state.

When this transportation is not financially feasible many counties will opt to put C&D materials into an MSW landfill thus using the state's most valuable remaining landfill capacity unnecessarily. In practice this will look like an influx of waste from Greater Minnesota to a handful of sites in highly populated areas in small pockets of the state. Locations further from these available sites will likely opt to dispose of C&D waste in a MSW landfill because the cost of building a lined C&D landfill is too costly to make financial sense.

Very few workable options have been presented by the State for how Greater Minnesota is expected to meet the terms of this rule. Any proposed solutions, for example a hub and spoke model, have proved too costly and have not gained state funding support, which makes them nonviable options. Without adequate funding and support from the state and the MPCA, this rule is going to have far-reaching effects for all of Minnesota's waste disposal systems - counties and public facilities are going to be stuck paying for it.

Thank you for the opportunity to comment on this important rule.

Sincerely,

On behalf of Beltrami County Solid Waste Division

Brina Olson, Solid Waste Director, brian.olson@co.beltrami.mn.us

Comments on CD Rule (Revisor's ID N. R.4556)

7035.2830, Subp. It states, as well as certain industrial waste, I think industrial waste needs to be defined, what certain industrial waste would be, and during the public online meetings there were discussions that food waste would even be allowed. I believe this starts to really blur the lines between the different types of landfills, and if the state is going to have 3 different types of landfills then there should be set waste types for each, which would also then match a tax rate.

7035.2830 subp 2 D. 12 months to come up with a transition plan is not acceptable. The MPCA doesn't have a viable alternative option identified as of today, and both state and local governments don't have the money to support this transition, or can react fast enough to fund, permit, build such alternate sites. For sites/Counties to come up with a transition schedule is almost impossible when the funding and permits are not guaranteed and timely.

7035.2830 subp 2 H. All facilities must close within 8 years. This timeline seems unrealistic when it takes more time than this if this is implemented statewide, especially for greater Minnesota when we have competing unfunded state mandates, which this would be another one. There should have been a phased approach. The legislature has already not approved the funding for an alternative to Unlined landfills in NW Minnesota the past 2 years in a row. Counties can't afford to do this on our own, especially when most Counties don't think this is as big of an issue as the MPCA makes it out to be.

7035.2830 subp 2 H. (2) The enhanced cover timeline is extortion. The MPCA should say landfill will be closed in 2 years of effective date period, because the economics doesn't pay for most unlined landfills to stay open any longer than the 2 year period otherwise they will need to pay more money to close and most of the landfills already subsidize the landfill operations so the demo gets to the facility.

7035.2830 subp 7 C. Why the 200 ft from the property line, more restrictive than other landfills.

7035.2830 subp 8 C. Intermittent cover if this is going to be C&D why the need for daily weekly or daily cover.

An overall comment is that I think that both the industrial and C&D Rules should have been redone at the same time. It seems that the C&D Landfill has too many similarities to an industrial landfill and MSW in design/construction requirements, and in some cases even more stringent. 200 ft property line buffer.

It seems overall diversion has been missed in the rule if that is a state priority, example making it illegal to bury concrete, shingles, or other diversion priorities/incentives.



September 12, 2025

The Honorable Kimberly J. Middendorf
Administrative Law Judge
Minnesota Court of Administrative Hearings
600 N. Robert Street
St. Paul, Minnesota 55101

Dear Judge Middendorf and stakeholders:

On behalf of the National Waste Recycling Association ("NWRA") Minnesota Chapter, we greatly appreciate the opportunity to provide comments on the Preliminary Draft Construction and Demolition Debris Land Disposal Facility (CDL) Rule.

General Comments

NWRA members own and operate lined Construction and Demolition (C&D), merchant Industrial, and Mixed Municipal Solid Waste (MMSW) landfills in Minnesota. Our members began implementing liner & leachate collection systems at our privately-owned facilities as early as 1992. Today, the vast majority of C&D generated in MN (approximately 75%) is disposed of at one of our members lined landfills. We support the MPCA's goal of requiring liner systems at all C&D landfills in MN; however, the draft rule would impose new or more stringent requirements on existing lined C&D facilities than even what is required for landfills managing riskier waste streams such as Mixed Municipal Solid Waste.

NWRA members feel these rules were intended primarily to require liners for unlined facilities. As such, NWRA does not want the new rules to disrupt the status quo for existing lined C&D, merchant Industrial, and MMSW facilities in terms of design, operations, waste flows and economics—a system of facilities that has been successful in managing these various waste streams generated in the State for decades.

Additionally, NWRA members are broadly concerned about any unintended consequences that might occur as a result of recategorizing merchant Industrial landfills (industrial landfills who also accept C&D) as simply C&D landfills.

Specific Comments

Subpart 10 has a host of new cover and liner material testing requirements that serve no apparent analytical purpose in determining materials that will meet the prescriptive requirements in the rules. Even the MPCA's guidance documents only provide suggestions for particle size, Atterberg limits, permeability, compaction, soil classification, and water content. No benefit is gained by finding the specific gravity, soil description, consolidation, minerology, unconfined compression, triaxial compression, cation exchange, etc. for these materials. There is some potential benefit for the nutrient requirements, etc. for the topsoil part, but given the cost associated with this testing, we do not believe this testing should be required.

7001.3425, Subpart 1, item I (page 7 of draft) and 7035.2830 Subpart 7, Item H, 5, require a gas monitoring, collection, and treatment system. These provisions were borrowed from the MMSW rules, despite gas generation issue being much less likely to occur at C&D facilities. Given the costs associated with such systems, NWRA urges the MPCA to modify the rules so that gas systems shall be required if the Commissioner determines the need based on location, waste characteristics, site characteristics, odor, or gas migration issues.

For consistency, NWRA urges the same criteria be used in both sections of the rule, therefore we recommend deleting "waste types" in 7001.3425, Subpart 1, item I (page 7 of draft) and inserting "on location, waste characteristics, site characteristics, odor or gas migration issues" as the criteria. The same language should be used in 7035.2830 Subpart 7, Item H, 5.

The new definitions and sections pertaining to Custodial Care (7035.0300 and 7035.2830 Subp. 20 and 21) are new requirements on C&D that are not even required for landfills that accept waste streams with much higher potential risk associated with them, such as MSW or Industrial facilities. These requirements are unreasonable given the nature of the waste at C&D facilities.

7035.2830 Subp. 7, Item C (page 32 of draft) requires a 200-foot setback from the property line, while currently only a 50-foot setback is required. In over three decades of operation, our members are not aware of groundwater impacts from a lined C&D or merchant Industrial landfill in MN, which is backed by decades of groundwater monitoring data at these facilities.

Imposing these setback requirements will harm existing lined facilities and will result in reduced airspace capacity serving the State and the need to permit additional capacity elsewhere in the State. With no apparent benefit and no justification for why this requirement is reasonable given the reduced risk these facilities pose, NWRA recommends maintaining the setback to 50 feet.

7035.2830 Subp. 4, Item C(3), prohibits the location of a facility within 5,000 or 10,000 feet from an airport runway. This rule language was borrowed from the MMSW rules for facilities where vectors such as birds are factors.

Lined C&D facilities do not accept wastes that attract vectors, specifically birds, so including this prohibition is unnecessary and could lead to facilities that have operated for decades without issues prematurely closing if not granted approval from the Federal Aviation Administration (FAA). NWRA urges this requirement to be deleted.

7035.2830 Subp. 8, Item C (1)(a) i, changes the cover requirement from 30 days to weekly. In over three decades of operation, our members are not aware of any issues or impacts resulting from applying cover on a monthly basis at lined C&D or merchant Industrial landfills in MN. Needlessly requiring more frequent cover application will harm facilities that have operated for decades without issue by reducing valuable airspace that could otherwise be used to manage wastes.

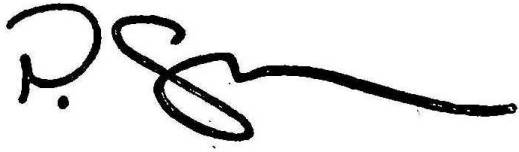
7035.2830 Subp. 11, A, requires lysimeters and was borrowed from the MSW landfill rules. NWRA does not believe this requirement is reasonable since lysimeters are unreliable and do not provide accurate leak detection data. In over three decades of operation, our members are not aware of a single groundwater impact from a lined C&D or merchant Industrial landfill in MN, which is backed by decades of groundwater monitoring data at these facilities. This requirement will simply add cost without providing any discernable benefit.

7035.2830 Subp. 16, R, requires mowing of vegetated intermediate/final cover slopes a minimum of two times per year, where the existing requirement is once per year. Due to the nature of slopes shedding water, in some dry years it common that the vegetation should only be mowed once and more frequent mowing could potentially damage the vegetation. NWRA urges the Agency to leave the requirement at once per year.

7035.2830 Subp. 7, D(5), requires stormwater management to design the facility to manage a 100-year, 24-hour event. This is unreasonable as the MPCA issued an MMSW landfill permit in 2025 that only requires a 25-year, 24-hour event.

It is not reasonable to have a more requirement for C&D facilities that pose a lower risk. NWRA recommends using the 25-year, 24-hour event in the rule.

NWRA again appreciates the opportunity to comment and looks forward to continuing to cooperate with the MPCA on this important rulemaking.

A handwritten signature in black ink, appearing to read 'P. Shaffer', with a long horizontal flourish extending to the right.

Phillip T. Shaffer, MBA
Vice President, Chapter Relations
National Waste & Recycling Association
1550 Crystal Drive, Suite 804
Arlington, VA 22202
317-435-5976
pshaffer@wasterecycling.org
wasterecycling.org



*Wadena County Transfer Station
10542 170th Street
Wadena, MN 56482
(218) 631-2474*

Department of Solid Waste

September 12, 2025

The Honorable Kimberly J. Middendorf
Administrative Law Judge
Minnesota Court of Administrative Hearings
600 N. Robert Street
St. Paul, Minnesota 55101

**Re: 40952 Minnesota Pollution Control Agency (MPCA) CDL Rule
CAH Docket No. 21-9003-40952**

Dear Judge Middendorf and stakeholders:

On behalf of Wadena County, I am submitting comments on the Construction and Demolition (C&D) proposed rule revisions for Minnesota Rules, Chapters 7001 (permits) and 7035 (solid waste); Revisor's ID No. R-4556 (draft rules).

Wadena County (County) appreciates the years of effort put forth to collaborate with stakeholders prior to publishing draft rule revisions. As a former member of the Rule Advisory Panel (RAP), I can attest the MPCA has provided copious opportunities to discuss this topic. Wadena County greatly values its natural resources and works hard to protect the health of humans and the environment in its own backyard.

The rules as drafted have several features that will harm Wadena County. I believe Wadena County is not an exception, but rather the norm for most counties in greater Minnesota where lower population densities create a solid waste industry that is not well managed by the draft rules. It hurts the County because:

- The transition timing (eight years) is too fast, unnecessarily stranding assets in the County with inadequate time to develop new regional programs, ordinances and infrastructure.
- It creates unintended consequences within the solid waste management tax law. This includes a potential 500% increase in tax on C&D waste.
- It generally incorporates MSW waste rules to C&D waste. Minnesota needs rules that apply comprehensively to C&D, Industrial and Municipal waste.
- Similarly, the financial assurance and closure/post-closure elements of the existing (MSW and Industrial Waste) rules proposed for expansion into C&D landfills have unintended consequences. The language needs to be reviewed and updated before being applied to C&D.
- The cost burden to greater Minnesota is great and has not been reasonably weighed against other alternatives, and the benefits of the draft rules.



I. TRANSITION TIMING

The draft rules provide C&D landfill owners with the following timelines¹:

- a. One year to submit a transition schedule
- b. Two years to close cells with existing permitted soil cover designs.
- c. Up to eight years to close all unlined landfills.

Minnesota Counties (and districts) are charged with the responsibility (and authority) to manage solid waste generated within their respective borders in accordance with Minnesota Statutes 115A (specifically Sections 115A.46, 115A.556 and 115A.919), 400 and 473. Through discussion within the solid waste community, most unlined (privately and publicly owned) landfills would close (in greater Minnesota) if this rule is ratified. As discussed with the MPCA, the general scope of work for each county would include:

- a. Generate a transition schedule (for MPCA approval)
- b. Revise Solid Waste Management Plan (for MPCA approval)
- c. Create regional partnerships for C&D waste management (or do nothing and let the free market dictate).
- d. After forming a regional partnership:
 - i. Obtain financing
 - ii. Establish market securities and update ordinances
 - iii. Retain consultants
 - iv. Site and purchase a regional landfill capable of receiving C&D waste
 - v. Permit regional landfill
 - vi. Design and construct the first lined cell.
- e. Close existing unlined C&D landfill(s).

The County is already involved in regional solutions in multiple ways. It is part of the following:

- i. six-county household hazardous waste program.
- ii. Three-county film plastic collection program.
- iii. Five-county joint powers authority operating a resource recovery facility.
- iv. Contract with Otter Tail County for Solid Waste Management.



Wadena County operates one C&D landfill (SW-317). The County submitted a permit reissuance application in 2016 that has never been reviewed (9 years). The information in the application is no longer valid. The County submitted an updated permit reissuance application in 2025. If the recent application is approved, the County will have approximately 29 years of remaining airspace. All the available airspace is within the existing developed cells. The proposed rules will ultimately create a stranded asset for Wadena County. To streamline the process, the MPCA needs to allow landfill owners to use airspace within the cells that they have already constructed. To create a feasible transition, landfill owners need no less than 15 years to transition.

II. STATE TAX LAW

The solid waste management tax (Statute 297H) requires the following:

- a. C&D waste generators pay 60 cents per cubic yard (Section 297H.04 Subd. 2(c)1).
- b. Industrial waste generators pay 60 cents per cubic yard (Section 297H.04 Subd 2(c)2)
- c. Residential Mixed Municipal Solid Waste (MMSW) generators pay 9.75% of the cost of management (collection, transportation, processing and disposal) per Section 297H.02 Subd. 2
- d. Commercial MMSW generators pay 17% of the cost of management (Section 297H.03 Subd. 2).
- e. C&D waste disposed with mixed waste (MSW) shall pay the MSW tax rate (9.75% or 17%) per section 297H.04, Subd. 4.

If Wadena closes their C&D landfill and transfers C&D waste to the closest lined MSW landfills, this would increase the tax on C&D waste from \$0.60 per cubic yard to about \$3.60 per ton. This is about a 500% increase². Solid waste management tax should be applied relative to the environmental risk of the waste. C&D waste has less environmental risk than MSW or industrial waste. The proposed C&D Rule Revisions harm greater Minnesota where fewer landfills are available and co-disposal of C&D waste with MSW (and industrial waste) will be a logical practice.

III. COMPREHENSIVE MSW, C&D AND INDUSTRIAL WASTE RULES

The draft rules maintain three different programs for three different wastes. These include old policies (and gaps) developed under a context that no longer exists. They should be reviewed and updated so they work harmoniously and uniformly. Below are several examples:

- a. EAW and EIS thresholds
Minnesota Rule 4410 requires an EAW or EIS for MSW landfills at certain thresholds. There is no requirement specified for C&D or Industrial landfills. This disparity has been observed by the Environmental Quality Board³.
- b. Certificate of Need
Minnesota Rule 9215 requires a certificate of need (CON) issued by the MPCA to expand municipal waste landfills. This is not required for C&D landfills or Industrial Landfills.



c. Industrial Waste Landfills

Minnesota Rules 7035 have specific rules about geological evaluation (boring depth and quantity), annual groundwater evaluations, annual reporting, liner design, final cover design, leachate collection efficiency, and precipitation rejection efficiency. The proposed rules have similar requirements for C&D landfills. There is little or no guidance for industrial waste landfills.

The 2015 MPCA Solid Waste Policy Report recognized in its executive summary that the current system (“rules, laws, fees and taxes”) is aimed at MMSW. Not enough attention has been invested in C&D waste or industrial waste. It elaborated in later chapters that industrial waste was a significant waste stream: 2.7 million tons a year – larger than the 2.0 million tons of MSW or 1.9 million tons of C&D. The effort the MPCA has applied to C&D waste is disproportionate to the risk. This hasn’t changed. Minnesota Rules 7035 needs to be updated uniformly for the three major waste types: MSW, Industrial and C&D waste.

IV. FINANCIAL ASSURANCE

The financial assurance and closure/post-closure care requirements used for MSW and Industrial landfills have essentially been applied to C&D waste in the proposed rule revision. There are weaknesses to the financial assurance rules that are easy to correct as described below (for the benefit of all landfill types):

a. Remaining Landfill Life and Design Capacity

Minnesota Statute 7035 defines design capacity as,

“the total volume of compacted solid waste, topsoil, intermittent, intermediate, and final cover specified in the facility permit, as calculated from final contour and cross-sectional plan sheets that define the areal and vertical extent of the fill area.”

The MPCA expands this to require financial assurance to be calculated by a “remaining capacity” (not defined by statute) that includes final cover in its airspace. This creates falsely high estimates for remaining landfill life. For example, a five-acre landfill with a three-foot final cover that is filled to top of waste grades would have 24,200 cubic yards of “remaining capacity”. If the landfill historically uses 12,000 cubic yards per year, the MPCA forces owners to report this landfill has two years of remaining life when in reality it has zero years. This is harmful to all facilities managers that assume this MPCA generated formula is useful and accurate for planning purposes. The rule needs to define remaining capacity to exclude final cover. This will result in more accurate estimates of remaining facility life.

b. Discount and Interest Rates

Financial assurance formulas included in Rule 7035 require use of inflation and discount factors to calculate financial assurance payments. Recent market history has demonstrated that projecting



Wadena County Transfer Station
10542 170th Street
Wadena, MN 56482
(218) 631-2474

Department of Solid Waste

Page 5 of 6

annual rates over 20 years creates inconveniently erratic results. Financial assurance should be revised to utilize five-year averages for inflation and discount factors to normalize the monthly costs and temp market fluctuations.

c. Current MPCA Practice

Currently, the MPCA is not utilizing the financial assurance language for landfills currently within its application. Revised rules and MPCA practices need to be consistent. For example, the MPCA financial assurance calculator does not reflect the formulas provided in the rule. For example, the rule elaborates in detail alternate calculation methods for monthly payments that are not offered.

V. COST BURDEN

The County C&D landfill charges \$20 per cubic yard. The City of Fergus Falls (in Otter Tail County) has a lined C&D landfill and charges \$48 per cubic yard. It does not follow all of the proposed C&D rule requirements. Based on information in the MPCA funded study of northwestern Minnesota's nine-county hub and spoke study, I am confident that our neighboring region would have similar costs (\$75 to \$100/ton range). Based on \$75/cubic yard, this would be an additional cost to Wadena County residents and businesses of \$255,000 per year.⁴ Extrapolated to all of Greater Minnesota based on population, cost is about \$44 million per year. This is unacceptable. Many of our residents will burn their waste to avoid the cost.

There are several other investigative efforts that the MPCA did not communicate to the public or the RAP group that are needed. For example:

- a. There should be an option considered (like in Wisconsin) limited to small landfills allowing to continue without liners.
- b. There should be an option considered where waste types currently accepted in C&D landfills that are most likely to cause groundwater impacts (sheetrock and other gypsum containing products) are removed from their acceptable list to allow C&D landfiling to continue without liners.

VI. RECOMMENDATIONS

There are significant opportunities to improve the solid waste rules for the benefit of all Minnesota. We respectfully request MPCA staff to go back to recommendations provided by the RAP and other stakeholders to correct the issues provided herein. Our recommendations include:

- a. Provide 15-year transition schedule allowing landfills to utilize existing developed cells while they develop regional solutions that include lined landfills to receive C&D waste.
- b. Work with Legislature to revise solid waste management tax so that C&D waste taxation does not change if co-mingled with MSW.
- c. Through one rule revision process revise rules to be more comprehensive for MSW, C&D and Industrial waste.



Wadena County Transfer Station
10542 170th Street
Wadena, MN 56482
(218) 631-2474

Department of Solid Waste

Page 6 of 6

-
- d. Revise financial assurance and closure/post-closure requirements as described.
 - e. Investigate affordable solutions that consider risk and cost-benefit.

Thank you for your attention to these important matters. If you have any questions, please contact me at 218-998-8904 or cmcconn@ottertailcounty.gov.

Sincerely,

Chris McConn, P.E.

Wadena County Solid Waste Director

cc: Wadena County Board of Commissioners
Wade Miller, Solid Waste Supervisor

NOTES:

1. Proposed Language from Rules 7035.2830 subp. 2 as furnished on the MPCA website.
2. In Wadena County, this estimate is based on hauling demolition waste to a nearby MSW landfill, like Morrison County. Calculation assumes cost of \$1,500 for disposal and transport of a 40 cubic yards roll-off container. This translates to \$3.65 per cubic yard in solid waste management tax.
3. See report entitled, "Mandatory Environmental Review Categories, Legislative Assessment Report", December 2024, Environmental Quality Board, page 39 states, "Consider updating terminology to include all waste types, like 'construction and demolition' waste and better align with the MPCA solid waste program's existing definitions for terms like 'design capacity' "
4. Based on average reported C&D waste landfilled at the Wadena County C&D landfill in the years 2020-2024 (4,639), Wadena County population (14,437) and estimated population of Greater Minnesota (2.5 million).

Norman County Demolition Landfill

Visser Trenching – Owner/Operator

Comments:

1. No one wants to hurt the environment.
2. The new rules are too extreme for demolition.
3. The time period for transition is too short.
4. Should allow demo to be placed on old cells to better prevent water filtration through old waste.
5. Should have a small site or large site based on population, not a one size fits all model.
6. Economic impact on small counties.

Thank you for your review of Norman Counties comments.



Hubbard County Solid Waste

812 Henrietta Ave S
Park Rapids, MN 56470

Email: josh.holte@co.hubbard.mn.us
Phone: (218) 732-9568 • Fax: (218) 732-0036

RECEIVED

By: OAH on 9/12/2025
Josh Holte Attachment

September 12, 2025

Administrative Law Judge Kimberly J. Middendorf
Minnesota Court of Administrative Hearings
600 North Robert Street
St. Paul, MN 55164-0620

RE: Second Request for Comments on Plans to Amend Rules Governing Construction and Demolition Debris Land Disposal Facilities, Minnesota Rules, chs. 7001 (Permits) and 7035 (Solid Waste); OAH Docket No. 21-9003-40952; and Revisor's ID No. R-04556

Dear Judge Middendorf and Stakeholders:

On behalf of Hubbard County, I am writing in response to the draft of the *Construction and Demolition Debris Land Disposal Facility (CDL) Rule*. Hubbard County appreciates the opportunity to provide comment on the proposed rules and the collaboration that has taken place with stakeholders over the last several years. Hubbard County takes great pride in our solid waste program that we provide for our residents and businesses, and we also value the abundant natural resources and environment that our County provides.

As an owner and operator of two Construction and Demolition (C&D) Debris Landfills, these proposed rules will have major impacts on Hubbard County and our solid waste facilities. These rule changes will also impact the residents and businesses within Hubbard County. We feel that the Minnesota Pollution Control Agency (MPCA) has not provided adequate evidence to support their position regarding the need for new C&D rules, and has also not considered the full economic and environmental impact of these rule changes.

We have identified specific concerns with the draft rules regarding facility closures, transition timelines, permitting, new operation and maintenance guidelines, closure/post closure care financing, and financial assurance. These concerns and their potential impacts should be addressed before any rule adoption.

MPCA Evidence Necessitating Rule Change

Neither this rule nor MPCA guidance throughout the Rule Advisory Panel (RAP) meetings or stakeholder engagement process has provided adequate evidence to support the need for these rule changes. The MPCA has based the need to update these rules on groundwater contamination, but hasn't identified what C&D materials are leading to contamination. The proposed rule change feels premature given the limited data available on this topic. Were alternate approaches considered before developing the proposed rule? What specific materials entering C&D facilities are not inert? Is it possible to allow for unlined disposal of materials that don't impact groundwater and move non-inert materials to lined MSW or industrial facilities? An example of this would be the correlation of boron impacts as it relates to sheetrock/drywall. These foundational questions remain unanswered as the MPCA pushes for a major rule revision.



Hubbard County Solid Waste

812 Henrietta Ave S
Park Rapids, MN 56470

Email: josh.holte@co.hubbard.mn.us
Phone: (218) 732-9568 • Fax: (218) 732-0036

This justification is an important part of the rulemaking process and neither the rule revisions nor the MPCA's messaging around the revisions have provided adequate justification for the rule change.

Another strong consideration should be to examine the full environmental picture. If we close unlined C&D landfills to address groundwater contamination, are the alternatives going to have a better environmental impact? Many small C&D facilities will close and will need to transport C&D waste great distances. What are the greenhouse gas impacts associated with that transition and are they worse than potential groundwater impacts? Are new C&D facilities going to have access to leachate treatment? Are existing wastewater treatment plants going to be able to process the C&D leachate, or will the groundwater contamination issue just move downstream of a treatment plant such as in a lake or river, rather than into a groundwater well? If C&D disposal becomes too costly, what are residents and businesses going to do? They are going to find other ways of disposal and a lot of C&D material will end up being burned and buried across Minnesota on public and private lands. The MPCA has not adequately considered the risk that high disposal costs could lead to increased illegal dumping and burning of C&D waste.

Cost Burden to Minnesota Counties

This plan fails to adequately account for the significant costs that will be borne by counties to implement and adapt their solid waste systems. These impacts will be felt most acutely in the sparsely populated regions of Greater Minnesota. The increased costs of opening and operating a new lined C&D landfill will be financially unfeasible for many counties. This will leave large swaths of Minnesota without affordable and local options for C&D waste disposal.

In 2023, Hubbard County and eight other Counties in Northwestern Minnesota (Beltrami, Cass, Clearwater, Hubbard, Mahnomen, Marshall, Norman, Polk and Red Lake) in anticipation of C&D rule changes, completed a feasibility study to determine long term options if unlined C&D facilities close. We developed a Hub & Spoke model that has been used by the MPCA as an option for closing of C&D landfills in greater MN. With the Hub & Spoke model C&D landfilling would become more regionalized with small C&D landfills closing and converting to transfer stations, and a larger regional lined landfill being constructed. The main issue identified in our study is that this comes with a very high price tag which is unachievable without state funding.

Our 9-County Hub & Spoke group has pushed for state bonding dollars in 2024 and 2025 to fund 75% of our project, but has failed to gain the support of the MPCA and the Legislature. For our 9 County group alone, the infrastructure needs identified in our project were \$81 million. If you multiply those needs across the entire state, that is a huge financial burden for taxpayers. We feel that the MPCA must prioritize state funding for new C&D landfills prior to passing any new rules.

Facility Closures and Transition Timelines

The revised rules provide a two, five, or eight-year timeframe to fully close existing C&D facilities. Given the complex permitting and siting requirements for C&D landfills, also outlined in this rule, and the MPCA's current backlog of facilities already waiting for new or renewed permits, it is unlikely that the eight-year timeframe will prove adequate to permit and construct new, necessary facilities throughout the state to meet the disposal demands for C&D waste. The



Hubbard County Solid Waste

812 Henrietta Ave S
Park Rapids, MN 56470

Email: josh.holte@co.hubbard.mn.us
Phone: (218) 732-9568 • Fax: (218) 732-0036

rule requires all existing facilities to provide a transition schedule to the agency within 12 months of rule promulgation if they plan to remain in operation past the promulgation date or if facilities have unclosed areas of the landfill after promulgation. These transition plans will need review by MPCA staff and engineers along with closure documentation. We feel that the MPCA does not have adequate staff to review the volume of documentation that is required of facilities regardless of their closure timeline given that MPCA permitting and engineering staff are already failing to keep up with the current permitting workload.

In addition, the maximum eight-year timeline for closure does not guarantee that final elevations will be met for existing C&D landfills that will be required to close all unlined areas. If landfills are unable to reach final elevations as outlined in their design and engineering, the closed landfill cannot be expected to perform as designed once they have been closed, which means increased costs for post closure care, which are currently unfunded. The addition of covers to landfills that have not met their initial geometry could further compound this issue.

If these rules move forward, these timelines need to be extended to allow counties more time to plan, fund, and bring existing facilities up to necessary grades to ensure proper closure under existing rules. We feel that the timelines to close under current conditions should be extended out to a minimum of 10 years, and should be tied more closely to existing permit renewals and facility capacity. Facilities that have groundwater impacts are typically already mitigating negative impacts or working on more aggressive closure schedules. State funding also should be secured prior to rule adoption to assist with closing existing facilities before they are at capacity and to help transition and build new lined C&D facilities.

Proposed Operation and Maintenance

We feel that a lot of the requirements found in the proposed rule are too stringent for C&D facilities, and in some instances are more restrictive than MSW facilities. When determining all of the requirements in this new rule the MPCA should identify and be able to justify requirements placed in the rule. Basing guidelines off of MSW standards is costly and not practical. In our preliminary meetings it did not feel that there was a scientific or logical reason behind some of the requirements.

- **200' Property Line Setback** – Current requirements call for 50' setback to property lines. Moving to a 200' setback could utilize a significant amount of airspace for a landfill and might be hard for some facilities to achieve. This setback should be reduced back to 50' as there doesn't seem to be good scientific/logical reason for increased setback.
- **Gas Monitoring** – C&D facilities should not be required to have active gas monitoring unless they are taking materials that justify the need based on their operation plan. Most C&D material should be inert, and this seems like a requirement that isn't justified or needed.
- **Cover Frequency** – The requirement to place cover weekly/daily on a C&D facility is also not justified. C&D material is inert, and there is not scientific/logical reason why cover would need to be applied weekly. The more frequent cover will consume too much air space and isn't practical, especially for smaller C&D facilities.



Hubbard County Solid Waste

812 Henrietta Ave S
Park Rapids, MN 56470

Email: josh.holte@co.hubbard.mn.us
Phone: (218) 732-9568 • Fax: (218) 732-0036

- **Natural Disasters** – There should be flexibility built into the new rule to help deal with natural disasters. Existing Permit By Rule requirements could be a good option to keep in the new rule, with standards geared toward natural disasters.
- **Remote Options** – Extremely remote and small facilities should also have unlined options, potentially with stricter acceptance criteria, such as not allowing sheetrock, which may be linked to boron.

Closure and Post Closure Care

The financial assurance funding requirements for closure and post closure care outlined in the rule draft put an undue burden on publicly owned facilities by requiring financing up-front. Privately owned landfills can satisfy these requirements with a letter of credit while public facilities need to provide funding prior to a permit being issued. These requirements mean that not only would a publicly owned facility need to fund the construction of a new C&D landfill, which is now much more expensive due to the rule changes, they also need to finance the closure in advance. This makes publicly owned C&D facilities much more unlikely for Greater Minnesota where waste volumes are not expected to generate enough revenue to make the investment financially viable. As a result, much of Minnesota will not have a location to dispose of C&D waste except for an MSW facility with limited capacity.

Summary and Recommendation

Many of the concerns raised throughout this letter need to be addressed prior to moving this rule forward. A longer transition time is needed, such as 10+ years, to allow facilities to close efficiently and cost effectively. This will also allow time to plan and fund regional solutions that include lined C&D facilities. Any proposed solutions, such as our Hub & Spoke model, have proven too costly and have not gained state funding support. If the cost of disposal becomes too great, the goals of decreasing the risks to human health and the environment associated with disposal of C&D waste are going to have the opposite effect, leading to increased illegal disposal such as burning and burying of C&D waste across greater MN. Without adequate funding and support from the state and the MPCA, this rule is going to have far-reaching impacts for all of Minnesota's waste disposal systems.

On behalf of Hubbard County, thank you for your consideration and opportunity to comment on the proposed C&D rules.

Sincerely,

Josh Holte
Solid Waste Administrator

Cc: Jeff Cadwell, Hubbard County Administrator



Association of Minnesota Counties

RECEIVED

By: OAH on 9/12/2025

Brian Martinson Attachment

September 12, 2025

Minnesota Court of Administrative Hearings
Administrative Law Judge Kimberly J. Middendorf
520 Lafayette Road N

RE: **Revisor's ID No. R-04556**; Minnesota Pollution Control Agency Request for Comments on Possible Amendments to Rules Governing Construction and Demolition Debris Land Disposal Facilities, Minnesota Rules, Chapters 7001 (Permits) and 7035 (Solid Waste)

To whom it may concern,

The Association of Minnesota Counties (AMC), representing all 87 counties, appreciates the opportunity to comment on the draft Construction and Demolition Debris Land Disposal Facility (CDL) Rule. Counties are deeply concerned about the rule's statewide impacts on waste management systems, facility viability, and community costs.

Lack of Evidence

The MPCA has not provided sufficient data showing C&D landfill leachate is contaminating groundwater or which materials are responsible. Without clear evidence or exploration of alternatives (e.g., limiting unlined disposal to inert materials), a major rule revision feels premature.

Permitting and Closure Timelines

The proposed eight-year closure timeline is unrealistic given MPCA's existing permitting backlog. Requiring transition plans and closure documentation for all facilities will overwhelm agency staff and strain local systems. Premature closure of facilities could leave regions without adequate C&D capacity, forcing reliance on MSW landfills.

Cost Burden

The hybrid landfill design imposes prohibitive costs, especially in Greater Minnesota. Most counties cannot finance construction and upfront closure care while maintaining affordable disposal options. This will shift waste to private facilities or MSW landfills, raising costs, increasing emissions, and reducing MSW capacity. Higher costs will also fuel illegal dumping.

Solid Waste Management Tax (SWMT)

Current SWMT rates create perverse incentives by taxing MSW more heavily than C&D waste, encouraging disposal at facilities with weaker environmental standards and incentivizing long-distance hauling. The proposed rule does not address this inequity.

Certificate of Need and Capacity

C&D waste is not accounted for in MSW capacity planning, yet under this rule, much C&D waste will be diverted to MSW landfills. This risks premature depletion of MSW capacity and undermines the Certificate of Need process. The rule should create a mechanism for counties to demonstrate C&D capacity needs before adoption.

Setbacks and Cover Requirements

The proposed 200-foot setback and cover frequency standards exceed those for MSW landfills, wasting valuable airspace without clear justification.

The draft rule imposes major costs on counties, undermines MSW capacity, and provides inadequate evidence to justify sweeping changes. Without funding support and a workable statewide strategy, the rule will destabilize Minnesota's solid waste system. AMC urges the MPCA to revisit its approach, provide supporting data, and engage counties in developing practical solutions.

Sincerely,



Association of Minnesota Counties
Environment Policy Analyst



WHERE THE FOREST MEETS THE PRAIRIE

Todd County

● MINNESOTA ● EST. 1855 ●

TODD COUNTY SOLID WASTE

30433 US 71

Browerville, MN 56438

Phone: 320-594-2210

Fax: 320-594-3022

September 12, 2025

The Honorable Kimberly J. Middendorf
Administrative Law Judge
Minnesota Court of Administrative Hearings
600 N. Robert Street
St. Paul, Minnesota 55101

**Re: 40952 Minnesota Pollution Control Agency (MPCA) CDL Rule
CAH Docket No. 21-9003-40952**

Dear Judge Middendorf and stakeholders:

On behalf of Todd County, I am submitting comments on the Construction and Demolition (C&D) proposed rule revisions for Minnesota Rules, Chapters 7001 (permits) and 7035 (solid waste); Revisor's ID No. R-4556 (draft rules).

Todd County (County) appreciates the years of effort put forth to collaborate with stakeholders prior to publishing draft rule revisions. As a former member of the Rule Advisory Panel (RAP), I can attest the MPCA has provided copious opportunities to discuss this topic. Todd County greatly values its natural resources and works hard to protect the health of humans and the environment in its own backyard.

The rules as drafted have several features that will harm Todd County. I believe Todd County is not an exception, but rather the norm for most counties in greater Minnesota where lower population densities create a solid waste industry that is not well managed by the draft rules. It hurts the County because:

- The transition timing (eight years) is too fast, unnecessarily stranding assets in the County with inadequate time to develop new regional programs, ordinances and infrastructure.
- It creates unintended consequences within the solid waste management tax law. This includes a potential 500% increase in tax on C&D waste from Todd County.
- It generally incorporates MSW waste rules to C&D waste. Minnesota needs rules that apply comprehensively to C&D, Industrial and Municipal waste.
- Similarly, the financial assurance and closure/post-closure elements of the existing (MSW and Industrial Waste) rules proposed for expansion into C&D landfills have unintended consequences. The language needs to be reviewed and updated before being applied to C&D.
- The cost burden to greater Minnesota is great and has not been reasonably weighed against other alternatives, and the benefits of the draft rules.



I. TRANSITION TIMING

The draft rules provide C&D landfill owners with the following timelines¹:

- a. One year to submit a transition schedule
- b. Two years to close cells with existing permitted soil cover designs.
- c. Up to eight years to close all unlined landfills.

Minnesota Counties (and districts) are charged with the responsibility (and authority) to manage solid waste generated within their respective borders in accordance with Minnesota Statutes 115A (specifically Sections 115A.46, 115A.556 and 115A.919), 400 and 473. Through discussion within the solid waste community, most unlined (privately and publicly owned) landfills would close (in greater Minnesota) if this rule is ratified. As discussed with the MPCA, the general scope of work for each county would include:

- a. Generate a transition schedule (for MPCA approval)
- b. Revise Solid Waste Management Plan (for MPCA approval)
- c. Create regional partnerships for C&D waste management (or do nothing and let the free market dictate).
- d. After forming a regional partnership:
 - i. Obtain financing
 - ii. Establish market securities and update ordinances
 - iii. Retain consultants
 - iv. Site and purchase a regional landfill capable of receiving C&D waste
 - v. Permit regional landfill
 - vi. Design and construct the first lined cell.
- e. Close existing unlined C&D landfill(s).

The County is already involved in regional solutions in multiple ways. It is part of the following:

- i. Household hazardous waste program.
- ii. Three-county film plastic collection program.
- iii. Five-county joint powers authority operating a resource recovery facility.
- iv. Contract with Otter Tail County for Solid Waste Management.



Todd County operates one C&D landfill (SW-403). The County submitted a permit reissuance application in 2025 that has never been reviewed (9 years). The information in the application is no longer valid. The County submitted an updated permit reissuance application in 2025. If the recent application is approved, the County will have approximately 29 years of remaining airspace. All the available airspace is within the existing developed cells. The proposed rules will ultimately create a stranded asset for Todd County. To streamline the process, the MPCA needs to allow landfill owners to use airspace within the cells that they have already constructed. To create a feasible transition, landfill owners need no less than 15 years to transition.

II. STATE TAX LAW

The solid waste management tax (Statute 297H) requires the following:

- a. C&D waste generators pay 60 cents per cubic yard (Section 297H.04 Subd. 2(c)1.
- b. Industrial waste generators pay 60 cents per cubic yard (Section 297H.04 Subd 2(c)2
- c. Residential Mixed Municipal Solid Waste (MMSW) generators pay 9.75% of the cost of management (collection, transportation, processing and disposal) per Section 297H.02 Subd. 2
- d. Commercial MMSW generators pay 17% of the cost of management (Section 297H.03 Subd. 2).
- e. C&D waste disposed with mixed waste (MSW) shall pay the MSW tax rate (9.75% or 17%) per section 297H.04, Subd. 4.

If Todd closes their C&D landfill and transfers C&D waste to the closest lined MSW landfills, this would increase the tax on C&D waste from \$0.60 per cubic yard to about \$3.60 per ton. This is about a 500% increase². Solid waste management tax should be applied relative to the environmental risk of the waste. C&D waste has less environmental risk than MSW or industrial waste. The proposed C&D Rule Revisions harm greater Minnesota where fewer landfills are available and co-disposal of C&D waste with MSW (and industrial waste) will be a logical practice.

III. COMPREHENSIVE MSW, C&D AND INDUSTRIAL WASTE RULES

The draft rules maintain three different programs for three different wastes. These include old policies (and gaps) developed under a context that no longer exists. They should be reviewed and updated so they work harmoniously and uniformly. Below are several examples:

- a. EAW and EIS thresholds
Minnesota Rule 4410 requires an EAW or EIS for MSW landfills at certain thresholds. There is no requirement specified for C&D or Industrial landfills. This disparity has been observed by the Environmental Quality Board³.
- b. Certificate of Need
Minnesota Rule 9215 requires a certificate of need (CON) issued by the MPCA to expand municipal waste landfills. This is not required for C&D landfills or Industrial Landfills.



c. Industrial Waste Landfills

Minnesota Rules 7035 have specific rules about geological evaluation (boring depth and quantity), annual groundwater evaluations, annual reporting, liner design, final cover design, leachate collection efficiency, and precipitation rejection efficiency. The proposed rules have similar requirements for C&D landfills. There is little or no guidance for industrial waste landfills.

The 2015 MPCA Solid Waste Policy Report recognized in its executive summary that the current system (“rules, laws, fees and taxes”) is aimed at MMSW. Not enough attention has been invested in C&D waste or industrial waste. It elaborated in later chapters that industrial waste was a significant waste stream: 2.7 million tons a year – larger than the 2.0 million tons of MSW or 1.9 million tons of C&D. The effort the MPCA has applied to C&D waste is disproportionate to the risk. This hasn’t changed. Minnesota Rules 7035 needs to be updated uniformly for the three major waste types: MSW, Industrial and C&D waste.

IV. FINANCIAL ASSURANCE

The financial assurance and closure/post-closure care requirements used for MSW and Industrial landfills have essentially been applied to C&D waste in the proposed rule revision. There are weaknesses to the financial assurance rules that are easy to correct as described below (for the benefit of all landfill types):

a. Remaining Landfill Life and Design Capacity

Minnesota Statute 7035 defines design capacity as,

“the total volume of compacted solid waste, topsoil, intermittent, intermediate, and final cover specified in the facility permit, as calculated from final contour and cross-sectional plan sheets that define the areal and vertical extent of the fill area.”

The MPCA expands this to require financial assurance to be calculated by a “remaining capacity” (not defined by statute) that includes final cover in its airspace. This creates falsely high estimates for remaining landfill life. For example, a five-acre landfill with a three-foot final cover that is filled to top of waste grades would have 24,200 cubic yards of “remaining capacity”. If the landfill historically uses 12,000 cubic yards per year, the MPCA forces owners to report this landfill has two years of remaining life when in reality it has zero years. This is harmful to all facilities managers that assume this MPCA generated formula is useful and accurate for planning purposes. The rule needs to define remaining capacity to exclude final cover. This will result in more accurate estimates of remaining facility life.

b. Discount and Interest Rates

Financial assurance formulas included in Rule 7035 require use of inflation and discount factors to calculate financial assurance payments. Recent market history has demonstrated that projecting annual rates over 20 years creates inconveniently erratic results. Financial assurance should be



revised to utilize five-year averages for inflation and discount factors to normalize the monthly costs and temp market fluctuations.

c. **Current MPCA Practice**

Currently, the MPCA is not utilizing the financial assurance language for landfills currently within its application. Revised rules and MPCA practices need to be consistent. For example, the MPCA financial assurance calculator does not reflect the formulas provided in the rule. For example, the rule elaborates in detail alternate calculation methods for monthly payments that are not offered.

V. COST BURDEN

The County C&D landfill charges \$20 per cubic yard. In contrast, the City of Fergus Falls (in Otter Tail County) has a lined C&D landfill and charges \$48 per cubic yard. It does not follow all of the proposed C&D rule requirements. Based on information in the MPCA funded study of northwestern Minnesota's nine-county hub and spoke study, I am confident that our neighboring region would have similar costs (\$75 to \$100/ton range). Based on \$75/cubic yard, this would be an additional cost to Todd County residents and businesses of \$380,000 per year.⁴ Extrapolated to all of Greater Minnesota based on population, cost is about \$36 million per year. This is unacceptable. Many of our residents will burn their waste to avoid the cost.

There are several other investigative efforts that the MPCA did not communicate to the public or the RAP group that are needed. For example:

- a. There should be an option considered (like in Wisconsin) limited to smaller landfills allowing them to continue with modified requirements (no liner, no synthetics or other cost reducing factor).
- b. There should be an option considered where waste types currently accepted in C&D landfills that are most likely to cause groundwater impacts (sheetrock and other gypsum containing products) are removed from their acceptable list to allow C&D landfilling to continue without liners.

VI. RECOMMENDATIONS

There are significant opportunities to improve the solid waste rules for the benefit of all Minnesota. We respectfully request MPCA staff to go back to recommendations provided by the RAP and other stakeholders to correct the issues provided herein. Our recommendations include:

- a. Provide 15-year transition schedule allowing landfills to utilize existing developed cells while they develop regional solutions that include lined landfills to receive C&D waste.
- b. Work with Legislature to revise solid waste management tax so that C&D waste taxation does not change if co-mingled with MSW.
- c. Through one rule revision process revise rules to be more comprehensive for MSW, C&D and Industrial waste.



- d. Revise financial assurance and closure/post-closure requirements as described.
- e. Investigate affordable solutions that consider risk and cost-benefit.

Thank you for your attention to these important matters. If you have any questions, please contact me at 218-998-8904 or cmcconn@ottertailcounty.gov.

Sincerely,

Chris McConn, P.E.
Todd County Solid Waste Director

cc: Todd County Board of Commissioners
Todd County Solid Waste Committee
Mike Eberle, Todd County Solid Waste Supervisor

NOTES:

1. Proposed Language from Rules 7035.2830 subp. 2 as furnished on the MPCA website.
2. In Todd County, this estimate is based on hauling demolition waste to a nearby MSW landfill, like Morrison County. Calculation assumes cost of \$1,500 for disposal and transport of a 40 cubic yards roll-off container. This translates to \$3.65 per cubic yard in solid waste management tax.
3. See report entitled, "Mandatory Environmental Review Categories, Legislative Assessment Report", December 2024, Environmental Quality Board, page 39 states, "Consider updating terminology to include all waste types, like 'construction and demolition' waste and better align with the MPCA solid waste program's existing definitions for terms like 'design capacity' " https://www.eqb.state.mn.us/sites/eqb/files/2024_mandatory_category_report_2.pdf
4. Based on average reported C&D waste landfilled at the Todd County C&D landfill in the years 2019-2023 (6,897 cubic yards), Todd County population (25,955) and estimated population of Greater Minnesota (2.5 million).



September 12, 2025

Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

**RE: 40952 MINNESOTA POLLUTION CONTROL AGENCY
REQUEST FOR COMMENTS ON CDL RULE**

Dear Commissioner,

Dem-Con Companies LLC (Dem-Con) appreciates the opportunity to provide comments on the Possible Amendments to Rules Governing Construction and Demolition Debris Land Disposal Facilities, Minnesota Rules, Chapters 7001 (Permits) and 7035 (Solid Waste); Revisor's ID No. R-4556.

It is Dem-Con's opinion that while it is important to update the rules governing construction & demolition (C&D) landfills, those rules should not become more restrictive than those governing municipal solid waste (MSW) landfills unless the increased restriction on C&D landfills can be justified based on data from existing lined landfills. Dem-Con is generally supportive of the MPCA's updates to Chapters 7001 and 7035; however, there are several instances outlined below where we cannot support the language as proposed.

7035.2830 Subp. 4C(3) – states that the waste boundary of a C&D landfill must not be located within 5,000 or 10,000 feet of an airport runway (depending on the type of aircraft) unless approved by the Federal Aviation Administration (FAA). This proposed rule uses almost the exact language as the existing MSW rules under 7035.2815 Subp. 2A(3). According to the MPCAs 1988 Statement on Need and Reasonableness (SONAR), this MSW Rule was created in response to FAA regulation 40 CFR §257.3-8(c) which states “... *A facility or practice disposing of putrescible wastes that may attract birds and which occurs within 10,000 feet (3,048 meters) of any airport runway used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway used by only piston-type aircraft shall not pose a bird hazard to aircraft.*” A C&D landfill that does not accept putrescible waste does not attract large quantities of birds and thus does not pose a hazard to aircraft. Dem-Con recommends removing 7035.2830 Subp. 4C(3) from the proposed rules.

7035.0300 Subp. 20C – The proposed construction debris definition limits it to “rubble resulting from construction, remodeling, repair, and demolition of buildings and roads.” C&D debris can include



materials from sources other than buildings and roads. Definition should mirror the current definition in Minnesota Rules of demolition debris which says "...buildings, roads, and other structures."

7035.2830 Subp. 7C – The proposed setback between waste limits and the property line is increased to 200 ft. The current C&D setback requirement is 50 ft which has been demonstrated to be sufficiently protective of human health and the environment as evidenced by the existing lined C&D and Industrial Landfills with groundwater monitoring including several owned and operated by Dem-Con. Further, nuisance conditions and vectors are generally less of a concern at C&D landfills and would not warrant these increased setbacks. Increasing the setbacks as proposed will significantly reduce the available landfill capacity at existing facilities, necessitating the approval of additional disposal facilities at new locations. We do not believe that increased setbacks are justified based on the operating record and monitoring data from the existing facilities and propose keeping the setbacks for C&D landfills at 50 feet.

7035.2830 Subp 7D(5) – states that stormwater features shall be designed for a 100-year rain event. The MSW rules require stormwater features to be designed for a ten-year 24-hour rain event. It is Dem-Con's opinion that while it is important to update the rules governing construction & demolition (C&D) landfills, those rules should not become more restrictive than those governing municipal solid waste (MSW) landfills unless the increased restriction on C&D landfills can be justified based on data from existing lined landfills.

7035.2830 Subp 7E – states that slopes greater than 160 ft must include drainage ways. The MSW rules require drainage ways for slopes greater than 200 ft. Why be more restrictive than MSW? It is Dem-Con's opinion that while it is important to update the rules governing construction & demolition (C&D) landfills, those rules should not become more restrictive than those governing municipal solid waste (MSW) landfills unless the increased restriction on C&D landfills can be justified based on data from existing lined landfills.

7035.2830 Subp 7H(5) – says the facility design must include "a gas monitoring and collection system in accordance with subpart 13 unless determined to be unnecessary by the commissioner based on the location, waste characteristics, and site characteristics." The way it is worded makes the default condition be that a gas system is required unless the case is made that it shouldn't be. Dem-Con recommends changing the wording so it is not automatically required by default but instead "may" be required by the Commissioner based on "location, waste characteristics and site characteristics". Based on existing facilities currently operating without gas collection systems, that are not producing significant gas as evidenced by their environmental monitoring programs, we do not believe that gas systems should be required. Does the MPCA have a basis for requiring this as a default condition given the operational and environmental monitoring records of the existing facilities?

7035.2830 Subp 8C(1)(a)(i) requires weekly intermittent cover for C&D and 7035.2830 Subp 8C(1)(a)(ii) requires daily cover for landfills that accept industrial waste that may generate methane or nuisance conditions. In our experience, industrial wastes do not typically produce nuisance conditions or generate any appreciable amounts of methane or other gases. The use of unnecessary or excessive intermittent cover uses up valuable airspace and reduces the operating life of a landfill requiring additional airspace and landfills to be approved in the future. We do not believe that filling a landfill with excessive cover is a

responsible use of valuable airspace unless warranted by operating conditions. Does the MPCA have a basis for the increased intermittent cover requirement based on existing C&D facilities? We recommend removing items (i) and (ii) from the Subp. 8C(1)(a) and instead deferring to the 30 day intermediate cover requirement outlined in Subp 8D.

7035.2830 Subp 15J – adds requirement for electronic leak detection on liners. We are not aware of this requirement existing in the MSW rules. It is Dem-Con’s opinion that while it is important to update the rules governing construction & demolition (C&D) landfills, those rules should not become more restrictive than those governing municipal solid waste (MSW) landfills unless the increased restriction on C&D landfills can be justified based on data from existing lined landfills.

7035.2830 Subp 15K adds requirements of a frost protection plan along with the stipulation that additional financial assurance will be required if temps below 32 F occur. We are not aware of this requirement existing in the MSW rules. It is Dem-Con’s opinion that while it is important to update the rules governing construction & demolition (C&D) landfills, those rules should not become more restrictive than those governing municipal solid waste (MSW) landfills unless the increased restriction on C&D landfills can be justified based on data from existing lined landfills.

7035.2830 Subp 16I – repeats the 200 ft setback requirement. The current C&D setback requirement is 50 ft which has been demonstrated to be sufficiently protective of human health and the environment as evidenced by the existing lined C&D and Industrial Landfills with groundwater monitoring including several owned and operated by Dem-Con. Further, nuisance conditions and vectors are generally less of a concern at C&D landfills and would not warrant these increased setbacks. Increasing the setbacks as proposed will significantly reduce the available landfill capacity at existing facilities, necessitating the approval of additional disposal facilities at new locations. We do not believe that increased setbacks are justified based on the operating record and monitoring data from the existing facilities and propose keeping the setbacks for C&D landfills at 50 feet.

7035.2830 Subp 16W – requires an annual survey by registered land surveyor or civil engineer. Specifying that the engineer needs to be a “civil” engineer is unnecessary. Engineers can only sign off in their area of expertise. An Environmental Engineer should be able to sign, or any other engineer with a certification.

7035.2830 Subp 19E – states “*Third party cost estimates for closure, postclosure care, and contingency action must be updated annually as required by part 7035.2585, item F, and submitted on a form prescribed by the commissioner. “Third party” means a party that is not the facility owner or operator and that is independent of the facility owner or operator.*” 7035.2585 states “the owner or operator shall make a written estimate...”. MSW rules follow this. Third party estimates every year is excessive and the C&D rules should follow the MSW requirements. It is Dem-Con’s opinion that while it is important to update the rules governing construction & demolition (C&D) landfills, those rules should not become more restrictive than those governing municipal solid waste (MSW) landfills unless the increased restriction on C&D landfills can be justified based on data from existing lined landfills.

Dem-Con again thanks the MPCA for the opportunity to comment on these proposed rule changes and looks forward to our continued cooperation in the process.

DEM-CON COMPANIES,

A handwritten signature in black ink, appearing to read "Bill Keegan", with a long horizontal stroke extending to the right.

Bill Keegan PE
President

A handwritten signature in blue ink, appearing to read "Alan Phillips", with a stylized, cursive script.

Alan Phillips
Environmental Compliance Coordinator



September 12, 2025

Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155-4194

RE: 40952 Minnesota Pollution Control Agency – Request for Comments on CDL Rule

Dear Commissioner,

Thank you for the opportunity to provide comments on the proposed rule changes. While we respect the decision to update the rules, we believe some of the proposed requirements are unnecessarily stringent.

7035.2830 Subp. 7C – The proposed setback between waste limits and the property line would increase to 200 feet. The current C&D setback is 50 feet, which has proven sufficient to protect human health and the environment, as demonstrated by existing lined C&D and Industrial Landfills with groundwater monitoring. Nuisance conditions and vectors are also less of a concern at C&D landfills and do not justify larger setbacks. Expanding the setback as proposed would greatly reduce available capacity at existing landfills, creating the need for additional disposal sites. Based on the operating record and monitoring data from existing facilities, we recommend keeping the C&D landfill setback at 50 feet.

7035.2830 Subp. 7D(5) – The draft rule requires stormwater features to be designed for a 100-year rain event. By comparison, MSW rules only require design for a 10-year, 24-hour rain event. While updating the rules for C&D landfills is important, they should not be made more restrictive than those for MSW landfills unless supported by data from existing facilities.

7035.2830 Subp. 7H(5) – The draft rule states that facility design must include a gas monitoring and collection system “unless determined to be unnecessary by the commissioner based on the location, waste characteristics, and site characteristics.” As written, this makes a gas system the default requirement unless proven otherwise. We believe the rule should instead state that a gas system is required only if warranted based on site-specific factors. Existing C&D facilities have operated successfully without gas collection systems, and monitoring data shows they are not producing significant gas. Given this record, it does not appear appropriate for the MPCA to make gas systems a default condition.

7035.2830 Subp. 8C(1)(a)(i–ii) – The rule requires weekly intermittent cover for C&D landfills and daily cover for landfills that accept certain industrial wastes. Requiring

unnecessary cover consumes valuable airspace, shortens landfill life, and increases the need for new capacity. Unless operating conditions warrant it, excessive cover is not a responsible use of airspace. We recommend removing items (i) and (ii) and instead deferring to the 30-day intermediate cover requirement in Subp. 8D.

Sincerely,

A handwritten signature in black ink, appearing to read "T-Kraemer", is written over a light yellow rectangular background.

Tim Kraemer
President
Tom Kraemer, Inc.
tim@tomkraemerinc.com
320-685-8226

September 12, 2025

Minnesota Court of Administrative Hearings
Administrative Law Judge Kimberly J. Middendorf
520 Lafayette Road N

RE: **Revisor's ID No. R-04556**; Minnesota Pollution Control Agency Request for Comments on Possible Amendments to Rules Governing Construction and Demolition Debris Land Disposal Facilities, Minnesota Rules, Chapters 7001 (Permits) and 7035 (Solid Waste)

To whom it may concern,

I am writing in response to the draft of the Construction and Demolition Debris Land Disposal Facility (CDL) Rule on behalf of Lincoln County. Although we don't operate a Construction and Demolition (C&D) Debris Landfill, the impacts and potential closure of nearby options will have impacts for how this waste is managed in our community. We feel the state has not provided adequate evidence to support the MPCA's position that all unlined C&D facilities are negatively impacting groundwater and the proposed rule will significantly impact statewide solid waste management systems that have not adequately been addressed or explored. Specific impacts around Solid Waste Management Tax (SWMT), Certificate of Need (CON) and demonstration of need, closure/postclosure care financing, permitting and closure timelines, and the overall cost to counties to make the required improvements to this new "hybrid" landfill design will impact the number of viable C&D facilities in the state and financially impact MSW waste disposal systems. These impacts must be addressed before rule adoption.

MPCA Evidence Necessitating Rule Change

Neither this rule nor MPCA guidance throughout the stakeholder engagement process has provided adequate evidence to support the need for these rule changes. We have not seen data on what chemicals and contaminants are in C&D leachate that is impacting groundwater. Similarly, we haven't seen data on what materials going into C&D landfills are causing groundwater contamination. This rule change response feels premature given the amount of data that seems to exist on this topic. Were other options explored prior to developing the proposed rule and what materials going into C&D facilities are not inert? Is it possible to allow for unlined disposal of materials that don't impact groundwater and move non-inert materials to lined MSW or industrial facilities? These foundational questions remain unanswered as the MPCA pushes for a major rule revision. This justification is an important part of the rulemaking process and neither the rule revisions nor the MPCA's messaging around the revisions have provided adequate justification for the rule change.

Permitting and Closure Timelines

The revised rules provide an eight-year timeframe to fully close existing C&D facilities. Given the complex permitting and siting requirements for C&D landfills, also outlined in this rule, and the MPCA's current backlog of facilities already waiting for new or renewed permits, it is unlikely that the eight-year timeframe will prove adequate to permit and construct new, necessary facilities throughout the state to meet the disposal demands for C&D waste. The rule requires all existing facilities provide transition schedules to the agency within 12 months of rule propagation if they plan to remain in operation past the propagation date or if facilities have unclosed areas of the landfill after propagation. Most C&D landfills that I have talked with intend to close within the 2-year timeframe from propagation to avoid

additional closure requirements. These transition plans will need review by MPCA staff and engineers along with closure documentation. We feel that the MPCA does not have adequate staff to review the volume of documentation that is required of facilities regardless of their closure timeline given that MPCA permitting and engineering staff that will be tasked with this effort are already failing to keep up with the current permitting workload.

In addition, the maximum eight-year timeline for closure does not guarantee that final elevations will be met for existing C&D landfills that will be required to close all unlined areas. If landfills are unable to reach final elevations as outlined in their design and engineering, the closed landfill cannot be expected to perform as designed once they have been closed, which means increased costs for postclosure care which are currently unfunded. The addition of covers to landfills that have not met their initial geometry could further compound this issue.

Cost Burden to Minnesota Counties

This plan fails to adequately account for the significant costs that will be borne by counties to implement and adapt their solid waste systems. These impacts will be felt most acutely in the sparsely populated regions of Greater Minnesota. The increased costs of opening and operating a new hybrid C&D landfill will make new, lined facilities financially unfeasible for many counties. As a result, the only remaining options for much of the region will be long-distance trucking of this bulky and heavy waste or disposing of it in more costly, privately owned hybrid C&D landfills or in more costly Municipal Solid Waste (MSW) landfills. This increases carbon emissions and uses valuable MSW landfill capacity for C&D waste.

Lincoln County is already hauling our C&D material to the Lyon County landfill and I am concerned with the increased hauling costs as well as the increased cost of disposal. The County has slowly been able to reduce the number of structures that have been illegally burned and buried in the rural areas of our County. This will leave large swaths of Minnesota without affordable and local options for C&D waste disposal which will increase the amount of illegal dumping and burying of waste as all types of garbage. Which will be an added cost to counties to enforce and clean-up.

Solid Waste Management Tax

The current SWMT system, combined with proposed rule changes, creates a perverse incentive that discourages proper waste disposal. Because MSW is taxed as a percentage of the tipping fee while C&D and industrial waste are charged a flat rate, it becomes significantly cheaper to dispose of waste at facilities with lower environmental protection standards. Municipal Solid Waste (MSW) landfills have the highest environmental requirements for liners, leachate, and gas collection, while industrial and C&D landfills have far less stringent standards. This tax structure incentivizes the movement of waste away from the safest disposal sites. This is particularly concerning given that many of the worst groundwater issues at C&D landfills are a direct result of poor waste screening and the disposal of improper materials.

The current tax system also incentivizes the transportation of waste over long distances for disposal rather than keeping material disposal more local and disposing of waste at an MSW landfill with higher environmental protection standards. In addition to increasing the carbon emissions associated with C&D waste, this creates liability issues for the municipalities where the waste is originating should environmental harm result from the disposal. This transport incentive could also lead to lost revenue for counties and lost revenue for the environmental programs supported by the SWMT. The rule change does not address the taxation rate for C&D materials disposed of in a MSW landfill and does not correct the associated discrepancy that creates a financial incentive to move waste to facilities with the least environmental protection.

Closure and Postclosure Care

The funding requirements for closure and postclosure care outlined in the rule draft put an undue burden on publicly owned facilities by requiring financing up-front. Privately owned landfills can satisfy these requirements with a letter of credit while public facilities need to provide funding prior to a permit being issued. These requirements mean that not only would a publicly owned facility need to fund the construction of a new C&D landfill, which is now much more expensive due to the rule changes, they also need to finance the closure in advance. This makes publicly owned C&D facilities much more unlikely for Greater Minnesota where waste volumes are not expected to generate enough revenue to make the investment financially viable. The waste volumes in Greater Minnesota are unlikely to make C&D Landfill construction financially viable which means much of Minnesota will not have a location to dispose of C&D waste except for an MSW facility with limited capacity.

Certificate of Need and Permitted MSW Capacity

The new C&D landfill requirements fail to address the significant impact the rule will have on existing, permitted capacity of MSW landfills. It is expected that in many parts of Greater Minnesota that previously relied on C&D landfills, under the new requirements, will opt instead to dispose of C&D waste in a lined MSW facility due to the expensive costs associated with the new requirements. Since C&D waste is not factored into facility capacities or the Certificate of Need process, existing permitted capacity will fill much quicker than at the time CON was approved. Without a capacity exception for C&D waste entering MSW facilities, permitted MSW capacity will fill more quickly requiring early CON application and capacity permitting. Similarly, if such an exception is allowed, it provides an unintended loophole to extend permitted capacity by mischaracterizing MSW as C&D waste. The issue is further compounded by the fact that C&D waste volumes are less predictable than MSW volumes since natural disasters, local economic conditions, and local building practices can vary wildly from year to year making the determination of an accurate, needed capacity difficult. This would make factoring C&D waste volumes into CON nearly impossible.

The proposed rule needs a clear way for counties and private companies to demonstrate a need for C&D landfill capacity and options for disposal that will not affect county recycling rates or permitted MSW capacity. This process would also help identify potential partners and identify necessary capacity within an area that might make facilities more financially viable. Ideally, this identification process should have been taken prior to rule development to help create a statewide management system for C&D waste. This is truly a statewide issue, and the best solutions are going to come from a statewide response not individual counties trying to find local or regional solutions without consideration for other regions or parts of the state.

The new rules also limit overall landfill capacity by requiring frequent cover and 200-foot setbacks. The cover frequency outlined in the rule needlessly wastes valuable airspace by requiring cover more frequently than traditional C&D materials necessitate. The rule should include cover frequency requirements in line with current cover requirements. This would still allow the MPCA to designate more frequent cover at specific facilities as part of the permitting process. In addition, the 200-foot setback requirement for these facilities outlined in the rule is outdated based on current MPCA requirements for MSW and other facilities which only require a 50-foot setback from property lines. This more stringent standard needlessly wastes permitted airspace and capacity for new hybrid facilities.

Very few workable options have been presented by the State for how Greater Minnesota is expected to meet the terms of this rule. Any proposed solutions, for example a hub and spoke model,

have proved too costly and have not gained state funding support, which makes them nonviable options. Without adequate funding and support from the state and the MPCA, this rule is going to have far-reaching effects for all of Minnesota's waste disposal systems. Counties and public facilities are going to be stuck paying for it.

Thank you for the opportunity to comment on this important rule.

Sincerely,

Dustin Hauschild
Lincoln County Environmental Administrator
PO Box 66, Ivanhoe MN 56142
507-694-1344



RECEIVED

By: OAH on 9/12/2025 10:27 AM

County Coordinator
606 5th Ave. SW, Room #131
Roseau, MN 56751
Phone: 218-463-4248
Fax: 218-463-3252

September 12, 2025

TO: MN Office of Administrative Hearings

RE: MN Pollution Control Proposed C&D Rules (Rules) (7035.2830)

My office is submitting this letter on behalf of the Roseau County Board of Commissioners regarding the proposed Rules.

The core issue for us, and most small rural counties, is that the provisions contained in 7035.2830, Subp.2, and specifically Subp.2 (H), will force the premature closure of small unlined demolition landfills with no affordable option to continue managing this part of the waste stream. *It is imperative that funding be provided by the State so that we can continue to provide a valuable service to our constituents and comply with the new Rules.*

A brief background on our facility/situation:

- Our small facility (7.5 acres) received approximately 8,000 cubic yards of demo waste in 2024. Our customers included 61 small contractors and 4,625 self-haulers.
- The facility is expensive to operate due to the very stringent provisions contained in our existing MPCA Permit; however, it provides a valuable public service to our constituents; therefore, the facility is heavily subsidized by property tax revenues.
- Our facility is the only permitted demo landfill located between International Falls, MN and Hallock, MN – a distance of approximately 190 miles.

Without State funding, the timelines outlined in 7035.2830, Subp.2 (H); facility closure within 2 years, 5 years, and/or 8 years, all will result in unaffordable options for the County. Basically, we would either have to build a transfer facility for demo waste or a lined demo landfill. Neither of those options are doable with just County funds; therefore, the County would be forced to discontinue providing this public service.

If the County discontinues this service, it is our hope is that the private sector will get into the demo waste management business but, based on the increased costs associated with the new Rules, it is extremely unlikely. Our fear is that there would be rampant illegal dumping throughout the County. For example, there are approximately 9 people per square mile in Roseau County, and 50-75 depleted gravel pits scattered throughout the County, including many located within Beltrami Island State Forest.

To summarize, it is our request that implementation of the proposed Rules be delayed until the MN State Legislature allocates the funding necessary for small rural counties in the State, including Roseau County, to continue to manage this important part of the waste stream.

Thank you for the opportunity to comment, and for your consideration of our request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Pelowski", is written over a horizontal line.

Jeff Pelowski
Roseau County Coordinator

Cc: Roseau County Board of Commissioners
Mr. John Burkel – MN State Representative, District 1A
Mr. Mark Johnson – MN State Senator, District 1

From: [Ketchum, Julie](#)
To: [Moore, William \(He/Him/His\) \(OAH\)](#)
Cc: [Buck, Jon \(MPCA\)](#); [Nachtigal, Sherri \(She/Her/Hers\) \(MPCA\)](#)
Subject: WM Comments on 40952 MPCA CDL Rule
Date: Friday, September 12, 2025 3:32:41 PM
Attachments: [image001.png](#)
[WM Comments Intro 9.12.25_JMK adds to TF adds \(003\).docx](#)

This message may be from an external email source.

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

WM (Waste Management) Comments on: 40952 Minnesota Pollution Control Agency Request for Comments on CDL Rule

William, please submit our comments into the OAH public comment document website and submit to MPCA for their review.

Thank you for your assistance on this matter,

Julie Ketchum

Director of Government Affairs

Upper Midwest Area

jketchum@wm.com

C: 651-334-4309
1901 Ames Drive
Burnsville, MN 55306



Recycling is a good thing. Please recycle any printed emails.

WM (Waste Management) Comments on: 40952 Minnesota Pollution Control Agency Request for Comments on CDL Rule

WM respectfully provides comments on the proposed Construction and Demolition and Industrial (CDI) landfill rule. The regulated community was informed of the rule language on August 9, 2025. Subsequent MPCA webinars held on August 13, August 21 and August 28, included comments from multiple regulated parties seeking clarification of various engineering/design, operational requirements, including what waste types would be accepted in the new hybrid type facility being proposed in this rule. The answer to many of the questions was that further explanation would be provided in the future Statement of Need and Reasonableness (SONAR). Some of the explanations also did not match up with the actual, proposed rule language.

This is especially concerning because the SONAR will be prepared after the rule language has been developed and we believe that will be too late in the process to get changes in the rule. This particular September 12 comment period is the critical point in time where the ability to get changes in the proposed rule language occur. The rule language itself is what is most important to get right, to be clear and enforceable, and to enable the regulated community to comment on the rule. Explanations on the August webinars and in the future SONAR did not, and will not, allow the regulated community to fully understand the proposed rule impacts until it is too late in the process.

Given the monumental changes affecting the disposal market by this proposed rule, its complex and technical nature, and lack of clarity on waste types that will be allowed to be accepted, we question the compressed timeframe. The short timeframe of one month, in addition to the recent inclusion of industrial waste in the August 9, 2025 proposed rule is all new and makes it difficult to digest and understand the impact of these requirements. The one month timeframe for review and comment hampers WM's and the entire regulated community's ability to fully understand and provide substantial specific comments on the technical requirements. We ask that the Agency take a more methodical approach to allow for the regulated community to digest the rule and understand its impacts and for the Agency to work out some of the issues with the rule language.

Recommendation: WM requests that MPCA provide a new draft of the rule following the review of the 9/12/25 comments that are submitted and provide for further engagement with the regulated community through webinars and exchange of questions and concerns and allow for an additional public comment period

Prior to August 2025, earlier rule discussions took place in a 2018-2020 stakeholder setting that set the course for a rule focusing only on closing unlined construction and demolition landfills and moving this material onto a liner. Parties on the August 2025 webinars questioned how the rule could morph from that three year effort into the new proposed rule that now includes industrial waste and allows for construction, demolition and industrial waste to be disposed of in one type of facility. This new hybrid facility, as stated on the webinars, could take putrescible waste, generate gases, including methane, and potentially create nuisance conditions.

These hybrid facilities would also be required to obtain Certificate of Need (CON) for the MSW type materials that they would accept. The only type of landfill currently required to get CON other than one privately owned hybrid facility are MSW facilities that are required to meet Federal Subtitle D requirements. Shouldn't these new hybrid facilities that accept some portion

of MSW be required to meet Subtitle D instead of being allowed to develop and operate a cheaper, less environmentally protective facility? WM questions whether the rule has been reviewed by U.S. EPA Region V to ensure Minnesota remains in compliance with Federal requirements for MSW type materials.

Recommendation: WM suggests that any MSW derived materials, any “MSW like” materials be managed as required by Federal Subtitle D Standards. WM further recommends review of the proposed rule by U.S. EPA Region V if that has not already occurred.

At a high level, the less expensive elements of a facility meeting the new proposed rule standards vs. lined MSW facilities include: less gas management, weekly versus daily cover requirements, lower standards for liner requirements and lower taxes. The proposed hybrid facility will be at a price point that is too high for local governments to meet, yet is cheaper than the lined MSW market, thus undercutting the lined MSW public and private landfills. The hybrid model effectively benefits the very few, large merchant Construction, Demolition and Industrial facilities in the state because generators and collectors of waste will travel longer distances for cheaper tip fees, but less environmental protection.

The lower tax on construction, demolition and industrial waste further compounds the lower costs of design and operation of the proposed hybrid facility and should be examined. If the objective of the rule is to be more environmentally protective, then the tax rate on C&D and Industrial wastes should increase and reflect the higher standard. WM supports a change in the solid waste tax that would level the playing field—a flat tax or tax by waste type instead of by facility type.

Changing the tax rate is especially important in the Twin Cities metropolitan area due to the large amount of construction, demolition and industrial waste generated there. Currently, lower taxes are paid to landfill, with minimal if any recycling, at the few large merchant C&D and Industrial landfills serving the metro area. If the MPCA wants to continue promoting waste reduction, recycling and pre-processing of waste prior to disposal, a statewide change in the tax as stated previously, is needed to bring that policy direction to fruition.

Recommendation: WM believes the calculation for this tax change would not be that difficult and we respectfully request further discussion on this matter and consider alternative tax rates that reflect the environmental protection required for these waste types.

Lastly, WM does not support NWRA’s position on this matter until further clarification of the rule and new rule language is provided that can be analyzed for its impact. NWRA members supporting the rule change already meet the proposed rule standards for a hybrid type facility or they are collection only companies, both of whom will benefit greatly from the less expensive and less environmentally protective disposal options in this new proposed rule.

The following comments represent some additional, more specific concerns and recommendations with the regulation of the proposed CD&I hybrid facility, and the design, operation and waste acceptance at these facilities. Given additional time and clarification of the some of the proposed requirement, WM may have additional concerns:

Under the proposed rule language WM understands that permitted construction and demolition (C&D) debris landfills would be allowed to accept Industrial Waste streams

including those derived from gas-generating materials. Although these facilities are not traditionally expected to generate high levels of landfill gas, the inclusion of gas-generating materials—such as drywall, wood, and other organics from industrial activities—dramatically changes the risk profile of the site. Therefore, the current proposed language in part 7035.2830 subpart 13 should be modified to include a requirement for an objective approach to determining the appropriate timing for these facilities to install and operate an active gas collection system.

Surface emissions scans are a proven, practical tool for detecting fugitive methane emissions, which pose both environmental and public health risks. Methane is a potent greenhouse gas—over 80 times more effective at trapping heat than CO₂ over a 20-year period. In addition, hydrogen sulfide and volatile organic compounds (VOCs), which can also be emitted from decomposing C&D waste, present serious odor and air quality concerns for nearby communities. Without regular emissions monitoring, regulators and operators lack the data necessary to identify early signs of gas migration, leachate issues, or liner failures. This opens the door to delayed response and increased remediation costs down the line, not to mention potential harm to public health and the environment. Requiring surface emissions scans is a reasonable, science-based precaution that aligns with Minnesota's broader environmental stewardship goals. It ensures accountability, protects neighboring communities, and provides essential data for responsible landfill management. If we are permitting these landfills to accept gas-generating materials, we must also require the safeguards that come with it.

Recommendation:

Modify proposed language in part 7035.2830 subpart 13 A per the below:

- A. The owner or operator of a construction and demolition debris land disposal facility that accepts industrial solid waste which is likely to generate methane or other decomposition gases within the landfill must perform quarterly surface emissions monitoring in accordance with the procedures of 40 CFR 60.765(c). If surface methane emissions are detected at concentrations exceeding 500 parts per million above background the owner or operator shall within 1 year, or other reasonable time as determined by the commissioner design and install and active gas collection system.

Minnesota Court of Administrative Hearings
Administrative Law Judge Kimberly J. Middendorf
520 Lafayette Road N

RE: Revisor's ID No. R-04556; Minnesota Pollution Control Agency Request for Comments on Possible Amendments to Rules Governing Construction and Demolition Debris Land Disposal Facilities, Minnesota Rules, Chapters 7001 (Permits) and 7035 (Solid Waste)

To whom it may concern,

I am submitting the following comments on the proposed demolition landfill rules. My primary concern is that several of the proposed requirements are more stringent than those applied to municipal solid waste (MSW) landfills, even though demolition debris poses lower environmental risks. Applying higher standards to demolition landfills than MSW facilities is disproportionate and creates unnecessary burdens for counties and operators.

1. Subp. 7.D.5 – Stormwater Management

The requirement to design for a 100-year, 24-hour rainfall event far exceeds the MSW landfill standard of a 10-year, 24-hour event. This raises design and cost expectations well beyond what is required of MSW facilities, without technical justification.

2. Subp. 7.E – Stormwater Drainageways

The 160-foot slope length standard is 40 feet shorter than the 200-foot length applied to MSW landfills. Combined with Subp. 7.D.5, this sets demolition landfill standards **stricter than MSW rules**, which is not reasonable or consistent.

3. Subp. 8.E.4.b – Soil Barrier Permeability

The requirement lists a permeability of $2 \times 10^6 \text{ cm/sec}$, which appears to be a typographical error and should read $2 \times 10^{-6} \text{ cm/sec}$. Clarification is needed.

4. Subp. 8.E.4 – Final Cover System

The required layering system is highly prescriptive and again goes beyond MSW standards. The restriction on using geonet only when paired with a 12-inch drainage layer is unnecessary. Substitutions should be allowed as long as design flow criteria are met.

5. Subp. 13 – Gas Management Systems

- *Subp. 13.A:* It is unclear whether all C&D landfills must install gas monitoring and management systems, or only those accepting industrial wastes. The lack of consistent standards creates uncertainty for permitting and design.
- *Subp. 13.F:* The requirement that all facilities include “gas vents” is vague. Clear definitions are needed (e.g., vertical wells, horizontal trenches, or subsurface vents).

Overall, these rules set a stricter framework for C&D landfills than for MSW landfills. This is counterintuitive given the lower risk profile of demolition debris. Such an approach will impose unnecessary financial and operational challenges on counties without providing clear environmental benefit. I respectfully urge reconsideration of these provisions so that requirements for demolition facilities are consistent with, and not more stringent than, those for MSW landfills.

Thank you for the opportunity to comment on this important rulemaking process.

Sincerely,

Kyle Pillatzki
Assistant Engineer / Solid Waste Administrator
Cottonwood County
Kyle.Pillatzki@co.cottonwood.mn.us
(507) 832-8814

September 12, 2025

Minnesota Court of Administrative Hearings
Administrative Law Judge Kimberly J. Middendorf

RE: **Revisor's ID No. R-04556**; Minnesota Pollution Control Agency Request for Comments on Possible Amendments to Rules Governing Construction and Demolition Debris Land Disposal Facilities, Minnesota Rules, Chapters 7001 (Permits) and 7035 (Solid Waste)

Judge Middendorf,

I appreciate the opportunity to comment on the preliminary draft of the Construction and Demolition Debris Land Disposal Facility (CDL) Rule. As a member of the Rule Advisory Panel and a consulting engineer with nearly four decades of experience in solid waste management, I support Minnesota Pollution Control Agency's (MPCA's) effort to modernize the CDL rules. However, key issues require clarification, evaluation, and justification before this rule advances.

First, let's provide some context. Based on the MPCA's Geographic Information System (GIS) data for construction and demolition (C&D) waste disposal during 2022:

- Approximately 3 million cubic yards (CY) of C&D waste were disposed of in Minnesota.
- About 2 million CY, or about 67 percent, were disposed at 12 lined landfills, an average of 167,000 CY per landfill.
- 1 million CY, or about 33 percent, of C&D waste were disposed at 63 unlined landfills, an average of 16,000 CY per landfill. These are primarily small publicly owned or contractor-owned Class I and Class II demolition debris facilities, as defined by the 2005 Demolition Landfill Guidance, located in Greater Minnesota.

The latter unlined facilities generally have the following characteristics:

- Located almost exclusively in rural areas with low population.
- Have low revenue, making it challenging to fund liner and cover construction projects, and to manage leachate treatment and disposal.
- Support local disposal of disaster debris and economic development projects.
- Were permitted in the 1990s in response to the closure of over 100 unlined municipal solid waste (MSW) landfills.
- Fill a critical need in Minnesota's integrated solid waste management system by providing cost-effective disposal of demolition debris and "demo-like" industrial waste in Greater Minnesota.

These preliminary CDL rules are intended to protect groundwater beneath these unlined demolition debris facilities by requiring liners, leachate collection, and a more protective final cover. However,

most of the unlined facilities will close without financial incentives for construction and a guarantee of waste (i.e., revenue) to support operation costs. These landfill closures will increase C&D waste disposal costs and will likely result in unintended consequences such as:

- Illegal dumping of waste.
- Increased air emissions from long-haul waste transfer to lined disposal sites.
- Stalled or delayed economic development projects.
- Abandoned or nuisance properties.
- Loss of MSW disposal capacity.

➔ It is critical that the Statement of Need and Reasonableness (SONAR) clearly identify who will be impacted by these rules, what is the projected cost increase for C&D waste disposal, and how the need for C&D waste disposal in Greater Minnesota will be met. Is there still a place for small volume unlined demolition debris landfills?

Second, let's discuss the scope of these preliminary rules. My understanding when the RAP effort began in October 2019, was that these rules were to address potential groundwater contamination at the Class I, II, and III unlined Demolition Debris landfills. The MPCA leaned on their groundwater quality evaluation report for the demolition debris landfills that had monitoring, focusing on arsenic, manganese, and boron impacts. However, a subtle modification of these rules [Minnesota Administrative Rules (MR) 7035.0300, Subpart (Subp.) 20b, 20c, 45, and 46] has:

- Established the definitions of construction debris, and a CDL facility.
- Excluded construction debris from the definition of "industrial solid waste".
- Redefined industrial solid waste land disposal facilities as only captive, not merchant, sites.

At the August 28, 2025 rulemaking workshop, the MPCA stated that CDL sites subject to these rules could also accept MSW-like putrescible wastes (e.g., fines from a material recovery facility or residuals from an organic compost facility). This functionally creates a new hybrid landfill category accepting demolition debris, construction waste, industrial waste, and MSW-like waste that should meet the regulatory requirements of an MSW landfill. Expanding beyond the demolition debris landfill portion of the solid waste rules seems out of scope from the original intent of this rulemaking.

➔ The MPCA needs to be very clear in the SONAR to identify the scope of this rulemaking and justify any revisions outside of the demolition debris land disposal facility section (MR 7035.2825).

Here are other issues I would like the MPCA to address if this rule advances:

1. **Solid Waste Tax Inequities**

The draft CDL rule does not address the inequity between the Minnesota Solid Waste Management Tax (SWMT) applied to MSW versus CD&I waste. These tax rates were originally established to reflect presumed differing levels of environmental liability among waste type disposal facilities. However, by requiring all facilities — MSW, C&D, and industrial — to install comparable liner, final cover, and leachate collection systems, the draft rule

effectively equates environmental risk across these waste streams. If the environmental risks are now equivalent, the current SWMT structure is outdated and inequitable. With the current SWMT, the tax difference between waste type results in market decisions where MSW-like construction waste is hauled over 100 miles for disposal at merchant industrial waste landfills.

➔ On a parallel track to this rulemaking, the MPCA needs to support legislation that modifies Minnesota Statute 297H for SWMT to reflect the equivalent environmental risks for the waste types. Passage of this legislation should be timed to become effective when the rules become effective.

2. **Consistency with MSW Rules and Scientific Basis for Changes**

The proposed rule imposes several design and operational requirements on C&D facilities that are more stringent than MSW landfills. These include new design standards and regulatory requirements such as:

- Stormwater controls to manage the 100-year, 24-hour storm event.
- Mandatory gas monitoring and control systems if accepting certain industrial wastes.
- A 12-inch buffer layer below geosynthetics.
- Electrical leak location testing of liners.
- 30-year post-closure care period.
- A perpetual custodial care plan.

Collectively, these provisions are stricter than those applied to MSW landfills, raising the question: Does the MPCA believe MSW landfill regulations are not functioning effectively? That conclusion counters decades of monitoring data.

➔ In the SONAR, the MPCA must provide the scientific and technical justification for these heightened CDL requirements, including evidence that C&D facilities pose greater risks than MSW facilities to warrant these changes. Also, if any rule changes counter existing rules for MSW and MSW combustor ash landfill rules, they should be deferred until a comprehensive rule update can be accomplished.

3. **Timing and Workload for Closures and New Facilities**

The rule requires the closure of unlined phases within either 2, 5, or 8 years with more stringent cover design with each subsequent option. As indicated earlier, this could involve the closure of up to 63 existing unlined landfills. As an engineering consultant with considerable experience in MPCA permitting, I question the MPCA's capacity to approve closure plans, certify completed closures, and process new CDL permit applications in a timely manner. What happens if a facility submits a closure certification but does not receive approval for several years? Further, allowing only 8 years for a facility to identify a new landfill location, complete all permitting and environmental review, and design and construct a new facility seems unrealistic given that MPCA permitting alone can take

multiple years. Current MSW landfill permit reissuance applications are taking over 2 years to complete.

➔The MPCA must outline how it will resource and prioritize this increased workload to avoid backlogs that could disrupt waste management across Greater Minnesota.

4. **Impacts of Additional Liner Requirements on Leachate Generation**

The proposed requirement for all C&D waste to be placed on liner systems will inherently generate additional leachate. Based on 2022 data, 1 million CY of C&D waste will transition from unlined to lined disposal generating millions of additional gallons of leachate annually requiring treatment and disposal. Leachate treatment and acceptance by wastewater treatment plants is now even more challenging, and costly, because of the presence of per- and polyfluoroalkyl substances (PFAS). When compared to MSW leachate, leachate from CD&I landfills tends to have higher concentrations of VOCs and certain metals as well.

➔The MPCA needs to evaluate the long-term leachate management and treatment implications of this preliminary rule. This includes an evaluation of leachate data for different landfill types that is available in the annual reports. Without adequate planning, this could impose significant new operational and financial burdens on both facilities and host communities, as onsite leachate treatment systems at every facility are not financially viable.

5. **Market Impacts of Lined C&D Facilities**

The addition of liners to C&D facilities is likely to shift market behavior, as these facilities will become destinations for MSW-like and industrial solid wastes, particularly with the SWMT difference, potentially diverting this material away from existing MSW facilities with more protective design and operation. Conversely, depending on the market, waste that formerly went to demolition debris landfills may now be disposed at an MSW landfill. Public MSW landfill owners are concerned about the unintended consequences of these market swings including:

- Revenue volatility.
- Difficult working face management of bulky C&D.
- Airspace utilization and construction impacts.
- Loss or unpredictability of Certificate of Need required to establish permitted airspace

➔In the SONAR, the MPCA must analyze how the market is expected to respond and whether safeguards are in place to protect the public's significant investment in MSW recycling and disposal infrastructure.

With nearly 40 years in Minnesota's solid waste industry, I value the progress made to date on this CDL rulemaking. However, more work is needed. Through the SONAR, there are areas where the MPCA must provide clarification, scientific justification, and implementation planning on these issues before proceeding with rulemaking. Aligning the solid waste tax structure with the new

regulatory framework is foundational to fairness and consistency, given that the proposed liner requirements create similar environmental liabilities across MSW, C&D, and industrial facilities. Without addressing this, the rule risks perpetuating outdated inequities and impacting almost 40 years of solid waste program and infrastructure investment.

I look forward to continued engagement in this rulemaking process. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Fred Doran', with a stylized flourish at the end.

Fred Doran, PE

fdoran@burnsmcd.com

952-290-6334

September 12, 2025

Minnesota Court of Administrative Hearings
Administrative Law Judge Kimberly J. Middendorf
520 Lafayette Road N

RE: **Revisor's ID No. R-04556**; Minnesota Pollution Control Agency Request for Comments on Possible Amendments to Rules Governing Construction and Demolition Debris Land Disposal Facilities, Minnesota Rules, Chapters 7001 (Permits) and 7035 (Solid Waste)

To whom it may concern,

I am writing in response to the draft of the *Construction and Demolition Debris Land Disposal Facility (CDL) Rule* on behalf of Lyon County. Lyon County has an unlined C&D landfill, and also operates a municipal solid waste disposal facility serving eight (8) counties in Southwest Minnesota. Lyon County and the region it serves will be negatively impacted by the proposed solid waste rule changes (referenced above) in the following ways:

- 1) Numerous closures of small publicly-owned C&D facilities have occurred in our region; resulting in a dramatic increase of C&D debris arriving at our facility. This demonstrates the important public service disposal need of these facilities to be in close proximity to the communities they serve. (i.e. within reasonable transport distance). Greater Minnesota has fewer alternatives for transportation to other facilities compared to urban areas, and fewer economical alternatives to land disposal (e.g. recycling / reuse) due to fewer operating facilities that could process materials for reuse, less demand (locally) for materials that can be salvaged from C&D land disposal, and excessive transportation to reliable facilities.
- 2) The remaining permitted capacity of Lyon County's C&D Facility is estimated to be about 38,000 cubic yards. At the current tipping fee of \$ 36.00 / ton, and using a factor of 1000 pounds per cubic yard (as per consulting engineers) closing this facility prematurely will result in an estimated loss of \$684,000 in revenue. This financial loss will require the County to levy additional tax against its residents in order to fund closure cost of the C&D facility. The financial plan for the facility was to accrue closure revenue over the life of the facility; which would be cut short 15-20 years following approval of these rule changes.
- 3) In Southwest Minnesota there are no entities planning or proposing to construct a lined C&D Facility. Once C&D disposal facilities close, options to manage and process C&D waste are excessively expensive. Previous reviews of alternatives have demonstrated it is not financially practical to construct a material recovery facility in Southwest Minnesota for C&D debris. Therefore C&D waste would either need to be a) transported to a lined C&D landfill, or C&D processing facility, or b) disposed of as MSW at the Lyon County MSW landfill.
 - a. Lyon County is 110 miles one-way from the closest lined facility. At 17 tons of C&D waste maximum per transport trailer (53') per trip (as per environmental consulting engineers) cost for disposal would increase from \$36.00 per ton to \$71.00 per ton (increase due to transportation), and would add an estimated 107.04 metric tons of CO₂ to greenhouse gas emissions. (calculation method used for 1-way trip based on 2024 Lyon County received C&D tons using a calculation from the Environmental Defense Fund - <https://business.edf.org/insights/green-freight-math-how-to-calculate-emissions-for-a-truck-move/>)
 - b. Lyon County received 6,014 tons of C&D waste in 2024. If buried in the MSW landfill this would increase the total MSW waste volumes by 10%. At this rate, Lyon

County's MSW landfill capacity would be unnecessarily reduced 4-5 years negatively impacting the residents and businesses we serve in the 8-County area.

- 4) Regarding Certificate of Need (CON) Lyon County is not currently satisfied with the response from the State on how adjustment will be made for additional C&D debris volume that will be disposed of in the MSW landfill. The Lyon County MSW permit (submitted 3/17/2023 and still not issued) will be mid-cycle when C&D facilities close. Therefore, the CON previously issued the Lyon County MSW landfill will be exceeded before the end of the permit. (Please recall the additional 6,014 tons of C&D that would be disposed in the MSW landfill). Lyon County has not been given any conclusive understanding from the State as to how whether or not additional CON will be granted following C&D landfill closures; leaving a cloud of uncertainty over the landfill about its ability to continue operation.
- 5) One final point to consider is regarding the ability of communities in Greater Minnesota to respond with appropriate, best management practices in response to large-volume events including aging commercial buildings to be demolished, or natural disasters resulting in large volumes of residential home waste (e.g. the July 1, 2011 storm that damaged hundreds of roofs in the region). We estimate that Southwest Minnesota C&D facility closure will result in the loss of over 100,000 cubic yards of airspace due to pre-mature closure of facilities; significantly cutting short the options for local communities – especially those in population decline – to respond to important community needs.

As a member of the Rule Advisory Panel (RAP) I stated in several meetings that the “scientific” groundwater study conducted by the State (used as basis for these rule changes) did not provided adequate evidence to support the MPCA’s position that all unlined C&D facilities are negatively impacting groundwater. My personal review of the groundwater data used in the State’s evaluation showed at least 1/3 of the evaluated facilities to have positive trends toward lessening releases of arsenic, boron, or manganese (the three parameters reviewed) over the time period covered in this study. This point emphasizes that not all unlined facilities are contamination threats to the environment. I propose for your consideration that a variance mechanism be implemented for facilities that believe they ought to be allowed to continue to operate based on their existing good performance of site management.

Very few workable options have been presented by the State for how Greater Minnesota is expected to meet the terms of this rule and provide a similar essential service to residents with continuing to burden existing MSW facilities. Any proposed solutions - for example a ‘hub-and-spoke’ model that was often referenced in RAP meetings - have proved too costly and have not gained state funding support, which makes them nonviable options. Without adequate funding and support from the state and the MPCA, this rule is going to have far-reaching effects for all of Minnesota’s waste disposal systems - counties and public facilities are going to be stuck paying for it.

Thank you for the opportunity to comment on this important rule.

Sincerely,

Roger Schroeder
Lyon County Environmental Administrator
504 Fairgrounds Road, Marshall, MN 56258
(507) 532-1306

From: [Ringhofer, Heidi \(MPCA\)](#)
To: [Moore, William \(He/Him/His\) \(OAH\)](#); [Wenger, Maggie \(MPCA\)](#); [Letnes, Yolanda \(She/Her/Hers\) \(MPCA\)](#); [Farnan, Timothy \(MPCA\)](#)
Cc: [Buck, Jon \(MPCA\)](#); [Benke, David J \(MPCA\)](#)
Subject: FW: C&D Rule Responses - State of MN System Not Letting Me Submit
Date: Friday, September 12, 2025 4:27:52 PM
Attachments: [Appendix C - 2005 Guidance.pdf](#)
[Polk County Comments on MPCA Draft C&D Rule - 09-11-25.docx](#)
Importance: High

FYI

From: Jon Steiner <jon.steiner@polkcountymn.gov>
Sent: Friday, September 12, 2025 4:26 PM
To: Buck, Jon (MPCA) <Jon.Buck@state.mn.us>; Ringhofer, Heidi (MPCA) <Heidi.Ringhofer@state.mn.us>
Subject: C&D Rule Responses - State of MN System Not Letting Me Submit
Importance: High

This message may be from an external email source.

Do not select links or open attachments unless verified. Report all suspicious emails to Minnesota IT Services Security Operations Center.

Hi Jon & Heidi,

I am sending this to you before the deadline and hope the MPCA considers it. I have had trouble registering for the account, and have even had my IT whitelist the address so the confirmation email would come through to no avail.

Enclosed, please find my comments.

I will continue trying to upload, but am about out of time.

Thanks,

Jon

Please Note: Polk County's email has changed to @polkcountymn.gov. Please update your records to reflect this.

Disclaimer: Information in this message or an attachment may be government data and thereby subject to the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, may be subject to attorney-client or work product privilege, may be confidential, privileged, proprietary, or otherwise protected, and the unauthorized review, copying, retransmission, or other use or disclosure of the information is strictly

prohibited. If you are not the intended recipient of this message, please immediately notify the sender of the transmission error and then promptly delete this message from your computer system.

NOTICE: This email (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521. This email may be confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution, or copying of this communication is strictly prohibited. Please reply back to the sender that you have received this message in error, then delete it. Thank you

Polk County Comments on MPCA Draft C&D Rules – 9/12/25

The following comments are offered to the MPCA in response for its call for input on the draft C&D Rules. Rather than create a long list of detailed and nuanced responses to each element of the draft Rule, which I'm certain others will do, I have instead chosen to address larger conceptual issues, irregularities and inconsistencies between the effort overall as well as major themes of the draft Rule.

As will follow, the comments provided highlight steps that have been missed, assertions not clearly proven, and the predicate for the draft Rule as written called into question. Though I, and many others realize the need to update the Rules, we believe the changes to be 'tweaks' to the current Rule rather than rules that abolish the entire rural C&D collection and disposal system. Most C&D material in MN is managed on a lined system, which both the material generated and the disposal facilities are in the metro area having volumes and populations to spread the huge capital and operational costs over in an economical manner. Any impact from improper disposal would have a high likelihood of impacting large populations. The opposite is true for the small, rural communities relying on the system this draft Rule would impact. These are relatively small volumes of material scattered over large geographic areas used by communities that don't have the volume or population density to absorb the large capital and operational costs associated with compliance with the draft Rule.

I believe the MPCA already has the tools in place to close those few facilities that truly have permit exceedances of environmental standards related to C&D materials. You either close them down now, or you work with them to build out the final slopes before their permit expires because it won't be renewed. The cost to provide those limited C&D facilities that need to close with an alternative would be much cheaper for the MPCA, State of MN and all surrounding communities than doing so for all unlined C&D Landfills that would be forced to close under the draft Rule.

Premise for C&D Rule Revision:

- This is not the first attempt by the MPCA to make sweeping changes to the unlined C&D Rules. The first attempt occurred in the late 1990's/early 2000's. It was unsuccessful for many of the same reasons that are raised in this effort. The result of the prior initiative was the creation of the 2005 MPCA Guidance Document. This was a compromise that was well received by all parties – including the MPCA. It acknowledged the one important point which this rulemaking initiative fails to address: accounting for the social and economic impacts of the public (i.e. how it impacts those with limited or insufficient means). At no point in this rulemaking effort has the MPCA engaged these communities or provided an analysis of the impact upon these communities to stakeholders. The draft C&D Rules should be paused until this requirement is completed and has been vetted by the stakeholders and any adjustment to the draft rules occurred before proceeding.
- The MPCA bases the need to revise these Rules – which is expected/assumed will result in the closure of most of the rural, unlined C&D Landfills in MN – upon the premise that most of these

facilities have ‘groundwater impacts’. That term is not defined, has no basis in C&D regulatory or permit language, is overly vague and misleading.

- The regulatory terms that should be used include “exceedance of permitted limit” and “intervention limit” which is defined as 25% of the permitted limit. These are defined terms in C&D-related Rule and Permit language. The use of an undefined and arbitrary term can have whatever meaning the entity interpreting it wants it to have, and doesn’t allow the entities held to those standards to prove or disprove any claim made in reference to it. Undefined terms, with no basis in current regulation or permit language, should not be used as the basis for making sweeping, widespread, excessively costly and overly burdensome Rules which would result in catastrophic impact to MN facilities and the public they serve.
- The SONAR for rulemaking (MS 14.131) could be paraphrased as requiring that the Rule change proposed be the least intrusive and burdensome means to accomplish the necessary goal, all alternatives to the Rule be considered and ruled-out, and the impact of implementing the Rule v. not implementing the Rule be determined. That all unlined C&D Landfills would be required to upgrade to lined facilities with leachate collection or close was predetermined at the beginning of the Rulemaking effort. There was little to no serious discussion about any alternatives to a liner/leachate system for these small, rural unlined C&D Landfills (ex. Synthetic covers over exposed waste, aggregating many days of small C&D loads until all of it could be placed in the Landfill and covered to reduce exposure, preferred natural soils in the siting process, etc.). The endpoint of the rulemaking effort was predetermined, and the process oriented to justify that decision – just the opposite of how a rulemaking process is supposed to occur.
- The “exceedance of permitted limit” would be grounds for major corrective actions or facility closure. Under current Rule, the MPCA already has those powers bestowed upon them. A new Rule is not needed for the MPCA to address ‘groundwater impacts’ that are above the legal regulatory limit. No new Rule is required for the MPCA to address and eliminate those illegal groundwater impacts.
- Being above the “intervention limit” (or IL) is not a violation of the Rule or their permit and not grounds for major remediation/corrective actions or facility closure. It is widely believed that the MPCA’s definition of “groundwater impact” is the IL. Very few unlined C&D Landfills have exceedances of permitted limits due to direct landfill-related contributions to the groundwater. Many of the unlined C&D Landfills will exceed the Intervention Limit to varying frequencies and levels. IL exceedances are not out of compliance with the Permit or MN Law.
- Another premise told to the Rule Advisory Panel (RAP) for why MN was adopting new C&D Landfill Rules was that other States already required the C&D Landfills in their States to be lined due to ‘groundwater impacts’. MN was behind them, and this effort was to just ‘catch up’. When the RAP requested information on what these other states allowed in those C&D Landfills that were impacting groundwater it was realized that they allowed materials such as railroad ties, power

poles, pressure treated wood, etc. into them – all materials associated with heavy metals and other environmentally damaging compounds. MN Law does not allow for that in its unlined C&D Landfills – in MN those materials are only allowed to go to an Industrial or Municipal Solid Waste (i.e. lined) Landfill. In short: MN was justifying changing the C&D Landfill Rules to address an issue other States had experienced for which MN Rule had already prevented from occurring (chemically treated wood in unlined landfills).

- The RAP was formed with the stated purpose to advise the MPCA on Rules and to build consensus around those Rules. When consensus could not be reached, the MPCA would attempt to use the input to formulate the Rules. At no point did the RAP reach consensus on any element of the Rule. In fact, a large part of the RAP (approximately 50%) were not in favor of the direction the MPCA was going with the Rules and the RAP soon after was suspended. Two meetings were held later in which the RAP was solicited for general feedback on ‘concepts’ provided at the meeting and was again suspended. The RAP has never been asked to review the draft C&D Rules to see if there was consensus, or even a simple majority that would support the draft C&D Rules.

Issues with Cover Requirements:

- The draft Rule timeline for closure is punitive. In a small, rural unlined C&D Landfill – which takes in less than a 0.1% of the C&D generated in the State annually – poses no substantial long-term environmental risk that would justify changing the closure standards and costs simply because it takes another 1-3 years to close based on where it is in its permit cycle and physical landfill development (elevation and slope).
- The draft Rule timelines for closure create a financial hardship on small, rural C&D Landfills to afford closure. Financial assurance and closure cost set-asides have not, and are not currently, required for C&D Landfills. Most C&D Landfills planned to continue operations but for the impact of the MPCA’s draft Rule requirements. As such they did not set aside money for a rapid, unplanned closure. Given the timelines proposed in the draft Rule, and the small volumes received, it’s a financial hardship to raise the money in the limited time given and limited volumes received.
- Another financial hardship of the draft Rule timelines for small, rural C&D Landfills is that the cost to close increases faster and higher than the C&D Landfill revenues received would. (Ex. If the cost for the Landfill to close under their permit requirement – i.e. least costly – is \$200,000, and the Landfill only receives \$50,000 in annual revenue, by the time the Landfill takes in the \$200,000 necessary to close the draft Rule timeline will require a more stringent and costlier closure standard that could easily now cost \$400,000 to close.) The draft Rules do not recognize and address the undue burden of this requirement on small, rural unlined facilities.
- Many rural unlined C&D Landfills are subsidized to encourage legal disposal. Often times this is due to the area being underserved or unable to economically bear the full cost of legal disposal.

The draft Rules – with their escalating closure requirement and proportionally escalating associated costs – places and undue financial burden on the communities and populace least able to afford them.

- The draft Rules related to the timeline to install final cover on unlined facilities that opt to close are arbitrary. The schedule proposed is fixed and does not allow for evaluation of alternatives after the completion of the rulemaking effort is complete and the Rule requirements are finalized.
- The draft Rule timelines to install final cover on small, rural unlined facilities are fixed and not practical or in many cases feasible. C&D generation is not steady and predictable like MSW. A disaster or large demolition project – which is where much of the rural C&D volumes are generated - may happen a few times one year and not again for many other years. Likewise, proper slopes and elevations are required to be achieved before final cover can occur. So a facility wishing to close immediately may be required to continue operation for years just to reach finished elevation and legal slopes before cover can occur. Timelines should be established for each facility based on achieving these fill requirements rather than an arbitrary calendar date.
- The MPCA's proposed cover requirement for C&D Landfills – which increases the closure level and cost over a short amount of time – does not appear to be based on environmental risk or damage. Its widely speculated that this appears to be a deliberate tactic designed to scare communities and facilities into making decisions and starting closure work prior to Rule completion.
- The MPCA has previously, and stated they plan to again in 2026, try to secure funds for assisting communities with closure-related costs. While well-intentioned, there is not only no guarantee this is successful, but based on the inability to secure those funds when State budgets were in better shape, it is assumed less likely in 2026 than in previous years. Further problematic is that the draft Rule timelines, the draft Rule timelines for closure as cheaply as possible, access to legislative funding timelines if money is appropriated and the fact any costs incurred prior to financial contract execution for those funds are ineligible for coverage are all at odds. The MPCA's own intentions to provide financial assistance are thwarted by its own draft Rules timelines.

Issues with Liner & Leachate Collection Requirements:

- Strict adherence to this requirement, even where a small, rural unlined C&D Landfill was documenting no exceedances of regulatory limits, should reasonably be known would create a financial hardship and forced closure. The takeaway is the intent of the draft Rule was designed not necessarily for environmental protection but rather to eliminate many of the Unlined C&D Landfills regardless of their compliance history.
- The costs for small, rural unlined C&D Landfills to transition to a lined C&D landfill are significant, and the volumes associated relatively small. Though the MPCA has proposed allowing a natural clay liner in lieu of a synthetic liner, the term is misleading. A natural clay liner is not in situ clay in

its natural state – it is an excavated clay tested for its properties, then replaced in multiple ‘lifts’ in which its repeatedly compacted to a specified thickness and permeability and overlain with additional ‘lifts’ of the same until the specified thickness is achieved. To my knowledge, nobody has looked at using natural, undisturbed in situ clay soils (not excavated, replaced and compacted) in which the bottom is sloped to drain to a leachate collection system which would be much easier, cheaper and quite possibly nearly as effective at protecting the environment as the more engineered system would achieve. When you factor in the small volumes and relatively minor potential impacts this would seem a much more feasible option to achieve comparable results with very little environmental risk.

- Lined landfills are required to establish 6’ of ‘select waste’ over the liner before winter in order to protect the liner from damage due to freezing. Select waste generally is material that doesn’t have long, bulky, sharp or irregular shapes that when compacted would potentially penetrate and puncture the liner and allow leachate to enter the groundwater. Most C&D materials are long boards, pipes, conduit, rebar, concrete chunks, etc. that would reasonably be expected not be used as ‘select waste’. Getting enough ‘select waste’ to entirely cover a lined C&D Landfill cell of reasonable size would be a practical difficulty for small, rural C&D landfills.
- The management options for leachate from small, rural unlined C&D Landfills is uncertain and runs contrary to other MPCA initiatives. These facilities have never collected or managed leachate. There would be great uncertainty for small communities with wastewater systems to agree to accept it. Given the MPCA has identified C&D materials as sources of PFAS this task is more daunting. Given the guidance from MPCA to wastewater treatment facilities with regard to PFAS (i.e. identify your largest PFAS generators and work with them to reduce or remove them from your systems) most wastewater systems will not readily accept C&D Leachate. It again demands the answer to the question: does the environmental damage and actual risk to the public from small, rural unlined C&D Landfill leachate outweigh the potential environmental damage from the illegal burial, dumping and burning of the same C&D materials if no convenient and affordable legal option is available ? To my knowledge the MPCA has not conducted such an assessment nor provided it to the RAP or other stakeholder forums. This should have been done before the C&D Rulemaking effort began to determine if the solution is worse than the problem.

Other or General Comments and Concerns:

- The 9 County Group in NW MN was conducting a Study on an alternative C&D system (i.e. Hub & Spoke System) to replace the unlined C&D Landfill system in current use. A set of questions (enclosed) was submitted via email to the MPCA to help guide those efforts. These were topics in which current Rules or Permit Conditions posed a potential barrier to implementing such a system. Those questions were never answered on the rationale that MPCA cannot comment on what it would or would not do regarding future Rules. Since then neither the RAP nor MPCA (in these draft Rules) has addressed those questions. This Rulemaking effort is that Rulemaking opportunity if it wishes to support such alternative systems.

- All Landfill permits contain language in which a citation is used. In many instances the language in the citation appears much different than the language in the permit. In some cases the meaning in the permit language doesn't match or goes well beyond the meaning in the cited Rule. In some cases the permit language citation is referencing a Rule requirement for an entirely different class of Landfill and no equivalent can be found in the Rule for the actual Landfill class being permitted (i.e. an MSW Landfill requirement is being placed on a C&D Landfill). I've been told this was because the Rules had become so outdated. Not only does this practice circumvent the intent of the Rulemaking process, but I cannot see where the MPCA has now aligned those topics into the draft Rules in order to eliminate the stated need to continue that practice going forward.
- During the Rulemaking process, the RAP was told its scope was related only to C&D and not Industrial Landfills or MSW Landfills. No discussion on issues related to Industrial Landfills was allowed by MPCA and no discussion by that RAP group on those Industrial Landfills occurred. As the RAP Group continued, and the MPCA's focus on Rules for lined C&D Landfills became more clear, it was asked of the MPCA if they could identify any difference or advantage between a lined C&D Landfill and an Industrial Landfill. No answer was provided that identified the answer. During the three (3) MPCA meetings in August 2025 MPCA staff have indicated that if the draft C&D Rules were to be adopted that Industrial Landfills would be re-permitted at their next permit cycle as C&D Landfills. That should not happen. At no point was the RAP group, C&D or Industrial Landfills, nor the public ever told that by considering MPCA's draft C&D Rules that they were also considering the future Industrial Landfill Rules, too.
- In relation to the point above regarding the MPCA's August meetings, it was also stated by MPCA staff that there would be an allowance for putrescible waste to be put into a lined C&D Landfill once the draft C&D Rules were adopted. It was presumed that – and later an MPCA staff person stated that – this provision did not allow for household putrescible waste to be put in them, only industrial putrescible waste. This should not happen. Putrescible solid waste should only be allowed in MSW Landfills – not Industrial and certainly not C&D Landfills.
- Related to the three (3) August 2025 MPCA meetings, it is disturbing to hear staff speaking of special categories of waste being able to 'slide' from one class to another, and or one category of Landfill being replaced by another at the next permit cycle. These disclosures were not made at any point in the Rulemaking effort until the draft Rules are out and these public comments are being solicited. These things seem to have been discussed and determined by MPCA after stakeholder input was received, have not been made commonly known and lacking in transparency to the stakeholders. It also begs the question, "what else is impacted by this draft Rule that has not been disclosed but is known/assumed by MPCA staff or a select few?"
- MPCA has tried to secure Bond funds to assist in the cost of unlined C&D Landfill closure and limited attempt to secure some funds for parts of an alternative system. Though those attempts are appreciated, they were unsuccessful. Future attempts likewise would be appreciated, but

likely will be unsuccessful or only partially successful. However, these attempts represent the only attempts for MPCA to indicate an alternative to the current system of unlined C&D Landfills for small, rural communities – many of which the State of MN classifies as underserved or disadvantaged. The MPCA should suspend its draft C&D Rules, and any effort to institute them by Permit process, not only until a practical, affordable and realistic alternative is identified, but until the alternative is put into service. Taking away a legal option and not replacing it with an equivalent alternative is reckless, irresponsible and will result in more environmental damage from the resulting illegal disposal than what the MPCA believes the unlined C&D Landfill would have done.



Demolition Landfill Guidance

Water/Solid Waste #5.04, August 2005

Solid Waste Program

Contents

Background	1
Purpose	1
Location Standards	1
Facility Classification ...	2
Site Evaluation	3
Acceptable Waste	4
Waste Screening	5
Industrial Solid Waste Management Plan	6
Groundwater Monitoring.....	7
Liners	8
Limited Availability Landfills	8
Contact Information	9
Stakeholders List.....	9
Appendix A: Parameters List for Sampling of Ground Water Monitoring Network..	10
Appendix B: Best Management Practices for Waste-screening Procedures.....	12
Appendix C: Implementation Plan.....	13

Background

The State Solid Waste Rules allow the Minnesota Pollution Control Agency (MPCA) Commissioner considerable discretion to set site evaluation, design, monitoring, and operational requirements for demolition landfills. The exercise of this discretion has resulted in a lack of consistency in the way that the MPCA has applied these requirements to demolition landfills throughout the state.

Ground water monitoring requirements have become an emerging issue with regard to assessing impacts from demolition landfills. Historically, the hypothesis in the professional arena has been that only inert materials are deposited at demolition landfills; thus, there is no impact to ground water quality, and therefore no need for ground water monitoring.

In 2003, the MPCA decided to test this hypothesis by evaluating the limited amount of ground water monitoring data from demolition landfills. The results of this evaluation indicated that some demolition landfills do impact ground water quality. Therefore, a more thorough approach is needed relative to hydrogeologic evaluations, and in determining groundwater monitoring requirements when siting and managing demolition landfills.

Purpose

This guidance is intended to provide improved consistency and predictability in how the MPCA, counties, facility owners, and facility operators manage demolition landfills under the existing solid waste management rules in the following areas:

- locating the facility;
- developing initial site evaluation information;
- determining facility classification;
- identification of an acceptable waste list;
- appropriate waste-screening procedures;
- contents of an Industrial Solid Waste Management Plan;
- need for ground water monitoring; and,
- liner requirements.

This guidance will be applied to all new and existing demolition landfills in accordance with the implementation plan included in appendix C.

Location Standards

The single most effective action that owners/operators of demolition landfills can take is to locate demolition landfills in areas that will inherently protect ground water and surface water from the



risks of contamination. Prohibited locations which must be avoided include active karst topography, flood plains and other areas likely to result in groundwater contamination. The following are the basic landfill location standards that apply to demolition landfills:

Minn. R. 7035.2555 LOCATION STANDARDS, provides the following location restrictions on all solid waste management facilities.

*Subpart 1. **Floodplains.** An owner or operator may not locate a new solid waste management facility in a floodplain.*

*Subp. 2. **Other location standards.** An owner or operator may not establish or construct a solid waste management facility in the following areas:*

A. within a shoreland or wild and scenic river land use district governed by chapters 6105 and 6120;

B. within a wetland; or

C. within a location where emissions of air pollutants would violate the ambient air quality standards in chapters 7005, 7007, 7009, 7011, 7017, 7019, and 7028 and parts [7023.0100](#) to [7023.0120](#).

In addition, Minn. R. 7035.2825 provides the following location restrictions on permitted demolition debris land disposal facilities.

*Subp. 7. **Location standards for permitted facilities.** The owner or operator of a permitted demolition debris land disposal facility must not locate the facility on a site:*

A. with active karst features including sinkholes, disappearing streams, and caves; or

B. where the topography, geology, or soil is inadequate for protection of ground or surface water.

To better determine what is meant by “floodplain,” reference should be made to the 100-year floodplain as shown on maps provided by the Federal Emergency Management Act (FEMA). Other setback distances that are applied to landfill siting based on the above rule references are 1,000 feet from a lake and 300 feet from a river, stream or creek.

Because the Solid Waste Rules prohibit the placement of demolition landfills in areas that would result in groundwater contamination, an existing permitted landfill that does not meet the location standards above will not be re-permitted. The owner/operator may request a variance to these location standards under the process outlined in Minn. R. 7000.7000. If a variance is requested, MPCA staff will consult with the commissioner as to whether the request is appropriate and will discuss the need for additional site investigation, monitoring, and/or environmentally protective measures based on the specific site circumstances.

Facility Classification

One of the bigger problems with the current demolition landfill rules is that they are open ended and leave a great deal of facility requirements to Commissioner discretion. This does not work well to promote consistency in management requirements given the many variables and permutations that exist between publicly owned and privately owned, large operations and small operations, metro sites and rural sites, etc. Therefore, several meetings were held in June and August of 2005 to discuss an appropriate approach to take with demolition landfills. It was agreed that a three-class system approach to demolition landfills was warranted. Based on these meetings and subsequent discussions, the following classification system for demolition landfills was developed.



Demolition Landfills	Class I	Class II	Class III
Site Evaluation	All sites will need to conduct a site evaluation to verify that location standards are met, soils are evaluated, depth to the water table is identified, and groundwater flow direction is defined (See Site Evaluation section.).		
Acceptable Wastes	Acceptable C&D Waste List (See list in Acceptable Waste section.)	Acceptable C&D Waste List + Incidental nonrecyclable packaging consisting of paper, cardboard and plastic + Demo-like industrial wastes comprised of wood, concrete, porcelain fixtures, shingles, or window glass	All C&D wastes + Most industrial wastes
Waste Screening	Stringent screening is required.	Screening is required.	Screening is required.
Industrial Solid Waste Management Plan (ISWMP) Contents	Describe screening procedures, address asbestos-containing materials (ACM) if applicable.	Describe screening procedures and identify additional C&D wastes and specific demo-like industrial wastes to be accepted; address ACM if applicable. Develop waste acceptance criteria.	Describe screening procedures and identify additional C&D wastes and specific industrial wastes to be accepted; address ACM if applicable. Develop waste acceptance criteria.
Groundwater Monitoring	Determined by decision matrix in the Groundwater Monitoring section.	Yes	Yes
Liner	No	Determined by decision matrix in the Liner section.	Yes
Reclassification	NA	If the facility takes more than 50% industrial waste based on annual gate receipts, it should be reclassified as an industrial landfill.	

Site Evaluation

When permitting or re-permitting a demolition landfill, specific tasks associated with a site evaluation must be completed to determine whether

the site meets the location standards. The site evaluation will more precisely identify potential risks, as well as help identify the need for long-term ground water monitoring. If an owner/operator is applying for the re-issuance of an existing permit,



all the information specified below must be on record or must be established prior to permit re-issuance.

The permit application shall include:

- verification that the site meets the location standards;
- sufficient documentation to establish the separation distance between the lowest fill elevation and the water table;
- sufficient information to establish groundwater flow direction; and
- a description of the on-site soils.

Site-specific conditions may be defined through the use of existing soil borings, test pits, or any other MPCA-approved method. The level of detail will be dictated by the geologic complexity of the site.

For re-permitting of existing facilities and the permitting of new facilities, the need for a hydrogeologic evaluation will be based upon the data submitted in the Site Evaluation Report. The number of borings in the hydrogeologic evaluation should be sufficient to enable interpretations that reasonably anticipate groundwater flow and pollutant migration.

Acceptable Waste

Minn. R. 7035.0300 provides the following definitions:

Subp. 30. Demolition debris. *"Demolition debris" means solid waste resulting from the demolition of buildings, roads, and other structures including concrete, brick, bituminous concrete, untreated wood, masonry, glass, trees, rock, and plastic building parts. Demolition debris does not include asbestos wastes.*

Subp. 31. Demolition debris land disposal facility. *"Demolition debris land disposal facility" means a site used to dispose of demolition debris.*

Minn. Stat. 115A.03 provides the following definition:

Subd. 7. Construction debris. *"Construction debris" means waste building materials, packaging, and rubble resulting from construction, remodeling, repair, and demolition of buildings and roads.*

As can be seen by these definitions, demolition debris is a much smaller subset of the larger overarching category of construction debris. Therefore, the demolition debris land disposal facility rules were written to address the proper disposal of this smaller universe of waste. This is verified by the discussion in the Statement of Need and Reasonableness (SONAR) for Minn. R. 7035.0300, subp. 30, *"In the past, unusable construction materials were included in the definition of demolition debris. Construction materials are waste supplies resulting from the construction, remodeling, and repair of buildings and roads. This material will consist of waste paints, building putty, packaging, sealants, oils, etc. This definition is needed to clarify that construction waste is not considered to be demolition debris and must be handled differently."*

This separation of construction debris and demolition debris has been an issue between the MPCA and facility owners/operators. Strict adherence and enforcement of these rules in the acceptance of waste at demolition debris land disposal facilities has not been consistently implemented by MPCA staff. Owners/operators have expressed their concern regarding the ability to identify the origin of materials. For example, how can one tell by looking at a 2x4 whether it is coming from the demolition of a structure as compared to the construction or remodeling of a structure, or, for that matter, from an industry, such as a cabinetmaker or mobile home manufacturer? This has led to the evolution of a much broader interpretation by staff and owner/operators as to what constitutes acceptable waste for disposal at demolition landfills. During the



last rule revision effort, the rule advisory committee came to consensus on a revised definition for “construction and demolition (C&D) debris” which included lists of materials as being acceptable as well as unacceptable for disposal at demolition debris land disposal facilities.

For the purpose of implementation of this guidance, **“construction and demolition (C&D) debris”** means materials resulting from the alteration, construction, destruction, rehabilitation, or repair of physical structures, such as houses, buildings, industrial or commercial facilities, and roadways. This definition also includes wastes generated from land-clearing activities.

The MPCA has developed a list of C&D wastes that may be accepted by any demolition landfill which is referred to as the “Acceptable C&D Waste List”:

Acceptable C&D Waste List

- Bituminous concrete (includes asphalt pavement and blacktop)
- Concrete (including rerod)
- Stone
- Uncontaminated soil
- Masonry (bricks, stucco and plaster)
- Untreated wood (including painted, stained and/or varnished dimensional lumber, pallets, tree stumps, grubbing, root balls, particle board, plywood, fencing and dock materials)
- Siding (Includes vinyl, masonite, untreated wood, aluminum and steel.)
- Wall coverings
- Electrical wiring and components
- Roofing materials
- Duct work
- Wall board, sheet rock
- Built-in cabinetry
- Plumbing fixtures
- Affixed carpet and padding
- Ceramic items

- Conduit and pipes
- Glass (limited to window and door glass from buildings and structures)
- Insulation (Includes fiberglass, mineral wool, cellulose, polystyrene and newspaper.)
- Plastic building parts
- Sheathing
- Molded fiberglass
- Rubber
- Drain tile
- Recognizable portions of burned structures
- Metal
- Ceiling tile
- Wood and vinyl flooring
- Asbestos-containing materials (pursuant to an approved ISWMP)

Class I demolition landfills will be limited to taking only those C&D wastes listed above.

Class II demolition landfills may take the C&D wastes listed above, incidental nonrecyclable packaging consisting of paper, cardboard and plastic, and limited demo-like industrial waste. Demo-like industrial waste accepted by Class II demolition landfills is limited in composition to wood, concrete, porcelain fixtures, shingles or window glass. These additional waste types need to be identified in the facility’s ISWMP.

Class III demolition landfills may accept all C&D wastes and most industrial wastes as defined by the facility’s ISWMP.

Waste Screening

All owners/operators need to establish a waste screening area where incoming loads would first be dumped and sorted through to remove unacceptable materials prior to pushing the waste into the working



face. Most Class I demolition landfills will not have groundwater monitoring. Therefore, waste screening and sorting at Class I demolition landfills will be paramount to ensuring that only acceptable materials are disposed in them. Groundwater monitoring will be conducted at all Class II demolition landfills; however, liners will not be required for most of these facilities. Therefore, waste screening is also an important feature for Class II and III demolition landfills.

Best management practices for waste screening procedures are provided in appendix B.

Industrial Solid Waste Management Plan

All owners/operators need to submit an Industrial Solid Waste Management Plan (ISWMP) pursuant to 7035.2535 subp 5. If a demolition landfill is accepting anything other than those wastes identified in the Acceptable C&D Waste List, the owner/operator needs to specifically identify those wastes in the landfill's ISWMP as required by Minn. R. 7035.2535, subp. 5. Item A(2) of this subpart requires the ISWMP to include, but not be limited to, *a procedure for evaluating waste characteristics, including the specific analyses that may be required for specific wastes, and the criteria used to determine when analyses are necessary, the frequency of testing, and analytical methods to be used.*

The frequency and number of samples required will depend on the variability of the waste proposed for acceptance. For a new facility, the testing should be completed before the waste is accepted so that these characteristics may be factored into the design and monitoring requirements for the facility. For existing facilities, waste must be evaluated prior to acceptance and at regular intervals throughout the life of the facility, but at least during each re-permitting event, to determine the need for changes in the facility's design or monitoring requirements. It may be necessary to establish a compliance schedule for

existing facilities for conducting an analysis of wastes currently accepted at the facility.

The ISWMP shall include waste-acceptance criteria and procedures for rejecting waste that does not meet the acceptance criteria. Each facility is responsible for determining its own waste-acceptance criteria. For MSW landfills, which are required to have composite liners, the acceptance criterion is that the waste passes the Toxicity Characteristic Leach Procedure (TCLP) test (i.e., that it not be a hazardous waste). Since most of our demolition landfills do not have liners, simply testing to determine whether a waste is hazardous or not does not provide adequate protection of the environment. Therefore, the TCLP would not be an appropriate acceptance criterion to be used. In the past, facilities have proposed many different acceptance criteria for use in their ISWMPs. Here are a few examples of the acceptance criteria that have been approved previously:

- 50% (or some other fraction) of the hazardous waste limits based on either TCLP or Synthetic Precipitation Leach Procedure (SPLP) testing;
- 10 times (or some other multiplier) of the drinking water standards [Health Risk Limit (HRL) or Maximum Contaminant Level (MCL)];
- Soil Reference Value (SRV) – residential or industrial; and,
- Soil Leaching Value (SLV) – residential or industrial.

The proposed waste acceptance criteria must be justified by the permittee, to verify that the site is adequately designed, located and monitored to accept the wastes proposed for disposal. If the best available information and data indicate that the facility is not protective of the environment, given the proposed waste-acceptance criteria, the facility may be required to either lower its proposed waste-acceptance criteria or change the facility design to ensure protection of the environment. This decision will be made on a case-by-case basis using the best available data and information. Input parameters would be included in



the permit application along with the results of the modeling.

If during the life of the facility, a new industry moves into the area and asks a landfill to accept its wastes, the following decision matrix should help the landfill decide whether it may take the waste.

Industrial Solid Waste Matrix		Is the waste identified in the facility's ISWMP as an acceptable material?	
		Yes	No
Do test results of the waste indicate that it will meet the acceptance criteria identified in the facility's ISWMP?	Yes	OK to accept waste.	If facility would like to accept waste, a revised ISWMP* must be submitted to the MPCA for review and approval prior to acceptance. Otherwise, DO NOT ACCEPT WASTE.
	No	DO NOT ACCEPT WASTE.	DO NOT ACCEPT WASTE.

*The MPCA will provide templates and forms to ease the process of writing and modifying ISWMPs.

Groundwater Monitoring

Based on the limited amount of groundwater-monitoring data collected from demolition landfills, it has been noted that some demolition landfills do impact groundwater quality. Based on discussions with stakeholders, it was agreed that facilities that accept only those materials identified on the Acceptable C&D Waste List risk to the environment may be minimal. However, there may be risk factors that would trigger the need for groundwater monitoring at these facilities. Facilities that accept wastes beyond the Acceptable C&D Waste List pose a greater threat to the environment. Therefore, all Class II and III landfills should conduct groundwater monitoring. For Class I landfills, the decision

Groundwater Monitoring Decision Matrix*		Soil Type		
		Clay	Silt	Sand
Depth to Water Table	5 feet or more	No	Yes or provide justification	Yes or provide justification
	At least 10 feet	No	No	Yes or provide justification

*This matrix was developed using the MPCA Tier II SLV model.

matrix above should be used to determine whether groundwater monitoring may be required. This matrix was developed utilizing the MPCA Tier II Soil Leach Value (SLV) model. The permittee may propose an alternative model. Input parameters would be included in the permit application along with the results of the modeling.

Many models exist for determining the fate of contaminants in a groundwater-flow regime. The facility owner/operator shall be responsible for selecting a model to use. Input data for the model must be identified with proper site-specific justification provided for the values selected. A facility's owner/operator is encouraged to work closely with the MPCA hydrogeologist assigned to the site when selecting a groundwater model and in identifying input data for the model.

To initiate a consistent approach to groundwater monitoring, the following criteria should be used to establish an effective groundwater-monitoring program at a demolition landfill.

Ground Water Monitoring Network

1. A minimum of 3 piezometers and/or groundwater-monitoring wells must be installed to establish groundwater flow direction. The piezometers must be triangulated around the existing or proposed site and surveyed to a relative datum.



2. Groundwater-flow direction will be established by monitoring groundwater-level measurements on a semi-monthly basis (twice each month) for a one-to three-month period depending on site-specific hydrogeology. The number of measurements required may be changed based on local hydrogeologic conditions.
3. Based on the groundwater-flow direction established above, a minimum of three monitoring wells must be installed, one up-gradient and two down-gradient of the existing or proposed location. Additional wells may be required, depending on the location of human and/or environmental receptors relative to the landfill.
4. Down-gradient wells should be placed within the property boundary, but not farther than 200 feet from the edge of the waste fill area.
5. Wells should be screened in the water table as dictated by site-specific conditions.

Monitoring Frequency

1. Routine sampling, limited to spring, summer and fall events, shall take place for a minimum of three years. This sampling is in addition to the required baseline sampling.
2. Monitoring parameters for this time period shall include the Parameter Lists identified in appendix A.
3. After the initial three-year time period, the permittee may request a modification to both the monitoring frequency and the parameter list.

Liners

Class I landfills will not have liners.

All Class III landfills should have liners.

For Class II landfills, the following decision matrix should be used to determine whether a liner may be required.

Liner Decision Matrix		Soil Type		
		Clay	Silt	Sand
Depth to Water Table	5 feet or more	No	Run model.	Yes
	At least 10 feet	No	Run model.	Run model

Many models exist for evaluating the need for a landfill to have a liner. The facility owner/operator is responsible for selecting a model to use.

The U.S. Environmental Protection Agency Industrial Waste Management Evaluation Model (IWEM) may be used to determine whether a liner is needed. The MPCA has prepared a fact sheet, *Guidance of Industrial Waste Management Evaluation Model (IWEM)*, that describes how to use this model. The guidance will be posted soon on the MPCA's Web page. The permittee may propose an alternative model. Input parameters would be included in the permit application along with the results of the modeling.

If modeling indicates the need to install a liner, the MPCA has prepared *Guidance for Liner Design for Demolition Debris or Industrial Solid Waste Landfills* for reference in designing liner systems.

Limited Availability Landfills

The MPCA acknowledges that some demolition landfills accept an extremely small quantity of waste on an annual basis. These Class I facilities are located in remote areas and exist solely to provide a service to the community so as to avoid or eliminate illegal dumping. As such, additional environmental-protective measures, such as groundwater monitoring or liners, may be too expensive to allow these landfills to operate. The MPCA will make every attempt to ensure that these factors are considered when determining the need for additional environmental-protective measures at these sites.



Contact Information

For more information on demolition landfills, the first point of contact should be the MPCA solid waste engineer assigned to the region in which your facility is located:

Todd County
Veit Companies
Waste Management Inc.
Western Stearns Demolition Landfill

MPCA Office	Engineer, Phone No.
Duluth:	Brett Ballavance, (218) 723-4837
Brainerd:	Dan Vleck, (218) 855-5007
Detroit Lakes:	Kathy Holland-Hanson, (218) 846-0470
Marshall/Willmar	Tony Bello, (651) 296-7272
Rochester	Sherri Nachtigal, (507) 280-2997
Twin Cities Metro	Mike Lynn, (651) 296-8584 Geoff Strack, (651) 296-7716

The engineer should be able to identify the appropriate hydrogeologist assigned to your site.

Stakeholders List

The MPCA thanks the representatives from the following stakeholders for their participation in developing this guidance document:

BFI
Crow Wing County
Dem-Con Landfill
Grinning Bear Demolition Landfill
Hubbard County
Lake County
McLeod County
Minnesota Office of Environmental Assistance
National Solid Wastes Management Association
Olmsted County
Ottertail County
ProSource Technologies
Rock County
RW Beck
Sherburne County
SKB Environmental
St Louis County



Appendix A

Parameter Lists for Sampling of Ground Water Monitoring Network

MDH 468 List

Analytes

1,1,1,2-Tetrachloroethane
1,1,1-Trichloroethane
1,1,2,2-Tetrachloroethane
1,1,2-Trichloroethane
1,1,2-Trichlorotrifluoroethane
1,1-Dichloroethane
1,1-Dichloroethylene (Vinylidene chloride)
1,1-Dichloropropene
1,2-Dichloroethylene (trans)
1,2,3-Trichlorobenzene
1,2,3-Trichloropropane
1,2,4-Trichlorobenzene
1,2,4-Trimethylbenzene
1,2-Dibromoethane (Ethylene dibromide or EDB)
1,2-Dichlorobenzene (ortho-)
1,2-Dichloroethane
1,2-Dichloroethylene (cis-)
1,2-Dichloropropane
1,3,5-Trimethylbenzene
1,3-Dichlorobenzene (meta-)
1,3-Dichloropropane
1,3-Dichloropropene (cis + trans)
1,4-Dichlorobenzene (para-)
2,2-Dichloropropane
2-Chlorotoluene (ortho-)
4-Chlorotoluene (para-)
Acetone
Allyl chloride (3 chloropropene)
Benzene
Bromobenzene
Bromochloromethane (Chlorobromomethane)
Bromodichloromethane (Dichlorobromomethane)

Bromoform
Bromomethane (Methyl bromide)
Carbon tetrachloride
Chlorobenzene (monochlorobenzene)
Chlorodibromomethane (Dibromochloromethane)
Chloroethane
Chloroform
Chloromethane (Methyl chloride)
Cumene (Isopropylbenzene)
Dibromochloropropane (DBCP)
Dibromomethane (Methylene bromide)
Dichlorodifluoromethane
Dichlorofluoromethane
Dichloromethane (Methylene chloride)
Ethyl benzene
Ethyl ether
Hexachlorobutadiene
Methyl ethyl ketone (MEK)
Methyl isobutyl ketone (4-Methyl-2-pentanone)
Methyl tertiary-butyl ether (MTBE)
Naphthalene
n-Butyl benzene
n-Propyl benzene
p-Isopropyltoluene
sec-Butyl benzene
Styrene
tert-Butyl benzene
Tetrachloroethylene (Perchloroethylene)
Tetrahydrofuran
Toluene
Trichloroethylene (TCE)
Trichlorofluoromethane
Vinyl chloride (chloroethene)
Xylenes (mixture of o, m, p)

Inorganics

Alkalinity, total as calcium carbonate
Ammonia Nitrogen

(continued on next page)



Inorganics (cont.)

Arsenic, dissolved
Barium, dissolved
Boron, dissolved
Cadmium, dissolved
Chloride
Chromium, total dissolved
Copper, dissolved
Iron, dissolved
Lead, dissolved
Manganese, dissolved
Mercury, dissolved
Nitrate + Nitrite, as N
Sodium, dissolved
Sulfate
Suspended Solids, total
Appearance (b);
Dissolved Oxygen, field
pH (a)
Specific Conductance (a)
Temperature (a)
Turbidity, field
Water Elevation (c)

- (a) Two measurements: in field, immediately after obtaining sample, and in laboratory.
- (b) Visual observation in field and laboratory, noting conditions, such as the following, if present:
color, cloudiness, floating films, other liquid or gas phases, odor.
- (c) As measured in field before pumping or bailing.



Appendix B

Best Management Practices for Waste-screening Procedures

The unacceptable wastes must then be transferred to an appropriate disposal facility as needed.

Loads containing only acceptable material (see above list) may be deposited directly into the tipping area. Any load containing other materials or unacceptable materials or industrial waste must first be dumped in a Waste Screening Area (WSA) to remove unacceptable materials prior to pushing the waste into the working face.

- Ideally, the operator should pre-inspect each dumpster before it enters the WSA. Dumpsters that contain unacceptable materials should be diverted to another waste facility authorized to accept those materials, or the dumpsters should be dumped in the WSA for the removal of unacceptable material.
- The WSA does not need to be in a fixed location, but can be moved as the site is developed. The WSA should be located within 50 feet of the active working face.
- The operator must separate the WSA from the active working face. This may be accomplished by using physical barriers, such as logs, chains or cones. The operator is responsible for properly delineating and maintaining the two dumping areas as the working face moves.
- The operator shall not place more waste in the WSA than can be managed in a working day.
- The operator shall inspect and remove unacceptable material from waste dumped in the WSA and move the inspected and cleaned waste to the tipping area of the landfill on a weekly basis.
- Upon discovery, unacceptable wastes must be removed from the loads and stored appropriately.



Appendix C

Implementation Plan

This appendix serves as the implementation plan (plan) for the demolition landfill guidance document (guidance). The plan explains that the guidance applies to proposed, new facilities as well as to existing facilities. This document will be used to guide the MPCA decision making process. Occasionally decisions will be made that fall outside of the general guidelines described in this document. This level of flexibility is necessary to effectively make decisions for the wide variety of situations that exist across the state. Groundwater data will be tracked to increase knowledge of how demolition landfills affect the environment, and a biennial groundwater report will be produced which will summarize groundwater monitoring information.

PROPOSED FACILITIES - For proposed facilities, the guidance document will be used to help determine the facility classification (Class I, II, or III) and subsequently the need for monitoring. Initially, for new, proposed facilities, a site evaluation will be done which will determine the site suitability as it relates to location standards. The site evaluation will also identify site soil conditions, water table and general hydrogeology of the area. The extent of the hydrogeologic investigation will largely be dictated by the materials expected to be disposed of at the site.

EXISTING FACILITIES - Existing facilities will be reviewed per the guidance document as their current permits expire. Similar to what is done for proposed facilities, existing facilities will be evaluated in terms of location standards, depth to ground water, soil types, types of waste received, nearby receptors, etc.; and will be assigned a facility classification for the purpose of evaluating the need for groundwater monitoring.

If a currently operating facility does not meet location standards as set out by rule, a variance from the rule will be necessary from the MPCA prior to

re-permitting. For facilities that may wish to change their operations before their current permit expiration date, Industrial Solid Waste Management Plan (ISWMP) templates will be available from the MPCA. A permit modification could be done after receipt of the new ISWMP, which, if approved, would allow the facilities to receive other waste types.

MPCA HYDROLOGIST AND ENGINEERING FORUMS - In most cases, proposed and existing sites will be peer reviewed at MPCA hydrologist forums. The purpose of the forums will be to discuss site conditions, facility classification, and unique site features that may create special concerns, past decisions on similar sites, etc. The forum process will help ensure that evaluations are done in a more consistent manner. The engineering staff hold similar forums at which technical issues related to solid waste permits are discussed, in order to help set more consistent permit conditions on a statewide basis.

ELECTRONIC DATA - Groundwater monitoring data will be submitted electronically. The MPCA intends to make these data available to owners and operators through the MPCA's Web site at a future date. This will enable owners and operators to easily track and view the data.

GROUNDWATER STATUS REPORT - As the amount of data from groundwater wells at demolition landfill increases, the MPCA will provide a biennial report summarizing the information and noting any trends, etc. The report will be made available to all demolition landfill owners and operators.

TRAINING - The MPCA will incorporate the relevant portions of this document into the Demolition Landfill Operator Certification Training.

ISWMP TEMPLATES - The MPCA will create and distribute templates for a Class I and Class II Demolition Landfill ISWMP. An ISWMP modification form letter will also be created to simplify the ISWMP modification process.

Jon Steiner

From: Jon Steiner
Sent: Sunday, February 5, 2023 2:39 PM
To: 'Benke, David J (MPCA)'; 'sarah.kilgriff@state.mn.us'; Ringhofer, Heidi (MPCA); 'Kroening, Heidi (MPCA)'; David Crowell (MPCA); Salo, Aaron (MPCA); Jeannie Given; 'samantha.adams@state.mn.us'
Cc: Brian Olson (brian.olson@co.beltrami.mn.us); 'Jeff Woodford (Cass County) (jeff.woodford@co.cass.mn.us)'; 'Dan Hecht'; 'Josh Holte'; 'CJ Holl'; Josh Johnston; Garry Johanson (garry.johanson@co.norman.mn.us); kacenv@co.red-lake.mn.us; Jacob Snyder; Feia, Andrew
Subject: Request of MPCA Input - Hub & Spoke Related Questions
Attachments: Hub & Spoke Questions - MPCA Feedback - 02-05-23.docx
Importance: High

Hi,

Enclosed, please find a document which provides a brief overview of the 9 County Group's initiative with regard to Hub & Spoke systems, and critical questions which need answers for the Group to proceed. The 9 County Group is currently undertaking a Study funded in part by the MPCA to identify the costs of upgrading our existing unlined C&D Landfills to having a liner/leachate collection v. construction of multiple Spokes at these sites to continue to serve the public. This information would be used to either confirm SWA assumptions/educate if assumptions are incorrect, and to educate and inform Commissioners/public to support decisions to be made. In regard to Hub & Spoke systems, within MN there is no path currently provided for doing this work. There are no regulations, construction or operational guidelines in existence for these facilities – and those examples which pertain to similar facilities (Transfer Stations & Industrial Landfills) have provisions which could hinder development of these new systems.

We are at the point where decisions have to be made on our end. To do so requires input from those on the regulatory and assistance side of the equation, to go on record as to what and how the MPCA would provide relief, define guardrails, and identify areas of assistance to take the Hub & Spoke systems from Conceptual to Tangible. Each of you on this email would seem to have a role – in one form or the other – into this process. We are hopeful that the MPCA has anticipated and prepared for many of these questions already and can provide a quick turn-around. Many of these issues were identified in conversations going back to Mike Mondaloch's insistence over 8 years ago that Hub & Spoke was the answer to his assertion that unlined landfills would not be re-permitted and would need to close, or Greg Kvaal's more recent push that Citizen Convenience Centers (he referred to them in questionnaires as CCC's) were the answer to closing unlined landfills as part of the Stakeholder process 3 years ago, or even the 9 County Groups application to do this study when our initial Grant proposal was submitted almost a year ago.

If you would each please provide this feedback via email, copied to all on this email. If the answers to each of the questions can trickle in, one answer at a time, that would be best. The last thing we'd want to see is the responses delayed until all questions can be answered, or some group/cmte is convened to do so. Again, the expectation would be much of this has been contemplated and discussed internally at MPCA either ahead of, or in response to, those assertions of Mr. Mondaloch/Mr. Kvaal years ago. As such, it would be much preferred to have answers to questions arrive in real-time – as some answers immediately are better than all answer much later. We can always go back and reassess any particular answer later. However, time is of the essence.

If you feel someone who needs to be involved in this initiative and was not on the email, please feel free to forward to them and CC the rest of us so they are included in all correspondence.

Thank you in advance for your input.

9 COUNTY GROUP – MPCA HUB & SPOKE QUESTIONS

Background:

The 9 County Group is comprised of the following Counties: Beltrami, Cass, Clearwater, Hubbard, Mahanomen, Marshall, Norman, Polk and Red Lake. Within and around this Group are 3 tribal nations: Leach Lake, Red Lake and White Earth. There are currently 14 unlined C&D Landfills within those Counties (not including tribal). Of those, 9 are publicly owned, 5 are privately owned/operated. Between concerns over the new C&D Rules, capacity/permit constraints and future uncertainty these 9 Counties formed the aforementioned Group to try to solve these issues and move their programs forward. The Hub & Spoke concept was thrown out by MPCA 8 years ago as a possible solution, then parroted again by the MPCA staff on the stalled C&D Rules Stakeholder process. However, during that time, there has been no effort to define, study, or move that Hub & Spoke concept from a theoretical to practical option.

The 9 County Group has taken up the initiative to do so. Having applied for, and having been funded to do, a study on the costs to line a C&D Landfill v. cost to construct a Spoke, and to define and assign costs to various levels of Spokes to serve that purpose. Since the application to do that Study, the EPA has released a solicitation for SWIFR Grants. One of the identified eligible uses of SWIFR funds is for the construction of a Hub & Spoke system. The 9 County Group is currently in the process of the Study, but also jumping forward on this unexpected opportunity to apply for funding through the EPA for Spokes.

Because the MPCA has not, to this point, done much research, preparation or work on the Hub & Spoke systems, this process undertaken by the 9 County Group becomes more challenging. Current rules and regulations do not allow for, and pose operational obstacles to, many of the activities associated with Hub & Spoke-types of systems. Many of these activities contemplated in the Hub & Spoke project the MPCA itself either promotes or would like to see implemented. In order to plan these systems, and in order to actually operate the systems contemplated, the MPCA needs to go on record as to its intentions to create new rules, issue MOU's or provide variances for these activities if they are to become successful. It should be understood by all that the amount of relief provided by the MPCA will have a direct proportional correlation to the scope of work the Hubs & Spokes will realize (i.e. MPCA will not see increases in waste diversion if it does not give regulatory relief to allow facilities to do so). This understanding needs to be top-to-bottom within all of the affected areas of the MPCA. Below is a list of some of those questions to which the 9 County Group needs answers to both complete the Study and/or implement a SWIFR Grant if awarded.

Questions to MPCA:

- 1) How would PCA permit these Spokes (TS Permit, PBR TS Permit, other)?
- 2) How will PCA Permit Hubs ? (Lined Class 3 C&D, Lined Class 2 Industrial ?)
- 3) If the Hubs are permitted as a lined Industrial Landfill, what materials would the MPCA allow to be placed in the facility ?
- 4) Will PCA allow deviation from the design requirements for Transfer Stations for these Hub & Spoke facilities ? (Ceiling heights, construction standards, impervious surface, etc.)
- 5) What ancillary permits (air, stormwater, recycling, CSBUD, etc.) does MPCA foresee with the Spokes ? Hubs ?
- 6) What types of reports (TS, Recycling, Ewaste, etc.) does the MPCA foresee with the Spokes ? Hubs ?

- 7) Assuming all Spokes would either accept separated fractions of the C&D stream or would do basic sortation to remove select C&D fractions from the wastestream, would MPCA prefer to see separated fractions of the C&D stream (concrete, shingles, clean wood, gypsum board, etc.) aggregated into large volumes prior to processing at multiple Spokes or an even larger aggregated volume at the Hubs ?
- 8) If a Spoke is separating recyclable or reusable fractions of the C&D stream, what requirements or relief can PCA offer as it relates to on-site storage timelines ?
- 9) If a Spoke is separating recyclable or reusable fractions of the C&D stream, what requirements or relief can PCA offer as it relates to on-site storage volumes ?
- 10) Would MPCA allow a Spoke to manage materials via outside storage ? (Incoming C&D, aggregated materials, etc.) ? If so, under what conditions ?
- 11) Would MPCA allow a Hub to manage materials via outside storage ? (Incoming C&D, aggregated materials, etc.) ? If so, under what conditions ?
- 12) Assuming either Spokes - or Hubs and Spokes – will accept other type of materials (HHW, Ewaste, special wastes) is the MPCA willing to allow deviations for storage volumes, timelines, etc. to make these practical ?
- 13) Will PCA allow size reduction at the spoke? If so, to what extent and with what conditions ?
- 14) What other requirements, or conversely allowances, can be made for Spokes and/or Hubs with regard to processing those materials diverted from the wastestream (crushing, grinding, shredding, etc.) ?
- 15) What other relief, incentive or assurance can PCA offer to promote, encourage or assist in making this Hub & Spoke initiative a success which has not been addressed in the questions/answers above ?

Jon Steiner

From: Jon Steiner
Sent: Wednesday, February 15, 2023 11:46 AM
To: Adams, Samantha (MPCA); Kilgriff, Sarah D (MPCA); Benke, David J (MPCA); Ringhofer, Heidi (MPCA); Crowell, David (MPCA)
Cc: andrew.feia@stantec.com; Brian Olson; 'Jeff Woodford (Cass County) (jeff.woodford@co.cass.mn.us)'; Dan Hecht; Josh Holte; CJ Hall Mahnomen Co ; Josh Johnston; Garry Johanson; Jacob Snyder; 'kacenv@co.red-lake.mn.us'
Subject: 9 Co Mtg - Hub & Spoke - Follow-up on MPCA Questions
Importance: High

Hi Samantha & all,

The 9 Co group working on the Regional Hub & Spoke Study and SWIFR posed a number of questions to MPCA to help in planning and implementing a regional Hub & Spoke infrastructure in NW Mn. As the projects are moving very fast (SWIFR proposals due today) a lot of assumptions are made. However, as the process moves forward, any deviation from assumptions or contrary view of needed flexibility will only become more profound as these plans are built-out. MPCA provided a response to the questions, but as explained in a phone conversation between Samantha and I, the response is limited by existing law/rule and not really indicative of what MPCA may want or intend. There are also a lot of questions/clarifications needed by MPCA to identify specific standards which require relief and provide more accurate answers.

Samantha indicated a desire to further engage in those conversations, and a meeting being more ideal than email/video. We whole-heartedly agree.

As the next meeting of the 9 Co group will occur next Weds (2/22/23), and Heidi R is expected to be in attendance, we discussed on our video call today offering to extend the meeting (the SWIFR will be submitted by then) into the afternoon for such a discussion to occur. All in attendance on the call agreed, and I was asked to extend the offer.

Samantha: would you be able to attend the meeting in Fosston next Weds ? I believe Heidi will be in attendance, and if you wisht to bring others with you that would be fine. I think we could have some very constructive conversation – and it would give you some insight – around what is being considered, what is needed, and the rationale guiding various decisions. I think it will also shed light on why relief in one area impacts multiple decisions/considerations/guidance/outcomes in others.

Dave C. is the regional planner, so I think it makes sense that he attend if possible. Perhaps between yourself, Dave C and Heidi R that a sufficient conduit between the 9 Co Group and MPCA mgmt./tech staff could be established, as it isn't practical or feasible to bring all levels of MPCA to such meetings, nor would it be productive. However, as we discussed it is very important to the success of this project – and all other projects that are expected to follow – that there is a top-to-bottom commitment at MPCA to clear obstacles, provide relief or make accommodation where necessary to establish this new type of system. To do so, we need to identify those obstacles or issues to work through them before – not after – the system is designed, funded, planned and constructed.

Let us know if this works for you.

On behalf of our Group, thank you,

Jon