



Minnesota Solid Waste Administrators Association | 125 Charles Avenue, St. Paul, MN 55103-2108 | www.mn-swaa.org

September 19, 2024

David Benke, Division Director
Pollution Control Agency
520 Lafayette Road North
St Paul, MN 55155
(Delivered via e-mail)

Re: Construction and Demolition Rulemaking Comments

Dear Director Benke:

The Minnesota Solid Waste Administrators Association (SWAA) appreciates the recent meetings hosted by the Minnesota Pollution Control Agency (MPCA) regarding potential construction and demolition (C&D) rule revisions and their impacts. SWAA wanted to provide the MPCA with our collective feedback as you are reviewing what you heard at the meetings.

Solid waste administrators across the state have numerous concerns with the C&D rule revisions associated with the proposed changes to existing Minnesota Rule 7035.2825. Many of the proposed rule changes, as described during the recent regional meetings, seem to create a one-size-fits-all approach to managing C&D waste disposal in Minnesota that has not thoroughly analyzed socioeconomic impacts and costs, and also does not propose realistic transition time to reach the desired outcomes. Based on the major tenets of rules as presented by the MPCA, we believe that pushing forward with the rulemaking without adjustments will have numerous unintended consequences that would result in a net negative outcome for Minnesota residents, businesses, and those responsible for waste management at a local level. We seek to be constructive with input, fully understand the impacts of the new rule, and ensure there is a realistic plan for how this waste stream will be managed differently in the future.

Below we outline our concerns with the rule as it has been presented so far. We are concerned that oversights in all of these areas in the proposed rule will negatively affect Minnesota counties, businesses, and residents. We seek to bring these matters to your attention and open a dialogue to create a rule that protects Minnesota's valuable natural resources but also ensures that we can effectively and affordably manage C&D waste within the state.

Below you will find the topics and descriptions of our collective concerns about the rule being proposed:

MPCA PERMITTING:

Facility permitting is already a bottleneck for all aspects of municipal solid waste (MSW) and C&D waste facilities. Historically, the MPCA has needed between four and seven years just to process a landfill permit reissuance which is not even a new permitted facility. The proposed rule changes will result in even more need for facility permitting done in a timely manner. There are many facilities across the state that are already waiting for closure certificates, permit renewals, and permit modifications. **The transition period proposed in the revised rules is highly contingent on TIMELY issuance of permits.** How is the state prepared to take on the addition of all the permit changes and additions that will be needed based on the proposed C&D rule changes? The fact that the wait period for any new facility will require even longer to permit must be considered. **Allowing additional time is essential to permit and oversee construction of new facilities, expansions, and modifications to comply with new rules.**

ECONOMIC CONSIDERATIONS:

We are concerned rule changes will produce negative impacts on the solid waste system with unintended consequences impacting small businesses, contractors, and residents throughout Minnesota. Handling of C&D materials not only affects the end-of-life disposal aspect but also affects the upstream process of the construction industry, particularly the housing industry. **We have yet to see a thorough analysis of the socio-economic effects the new proposed rules will have on the cost of construction and demolition, particularly with the housing industry and all stakeholders involved.**

Costs to manage C&D waste in greater Minnesota will be disproportionately greater than in the metro due to:

- Lower waste volumes to share the cost to build and operate facilities.
- Longer distance between facilities increases the hauling costs and associated greenhouse gas emissions.
- Fewer options for leachate treatment increases hauling costs and associated greenhouse gas emissions.
- Significantly older structures being demolished with less remodeling and deconstruction options.
- Less demand for recycled or re-used materials.
- Areas with little to no demand for redevelopment opportunities.
- Areas with little to no private development support.
- Less new construction occurring.

These socio-economic impacts may very well also lead to an increase, beyond the current problem, with undocumented illegal burn and burial of demolished buildings.

Owners of facilities have made substantial investments in their C&D disposal facility. Businesses have modeled their financial planning based on available demolition landfill capacity. These investments are based on long range financial forecasts and are dependent on the facility operating to capacity to re-capture the investment. These facilities need to be able to recoup investments and regionally secure investments in new infrastructure to comply with new rules. In addition, new rules will additionally burden publicly owned facilities with the costs of contingency funds while privately owned landfills are allowed to operate with a letter of credit.

C&D waste supports a number of industries and jobs throughout the state. These businesses and jobs need to be considered when making significant changes, including:

- Landfill staffing.
- Hauler contractors.
- Demolition contractors.
- Renovation contractors.
- Local Hardware and home improvement centers.

COST:

By statute, cost needs to be considered as part of the decision-making process. The MPCA recently funded a study showing the cost of the proposed rules. We all share a common desire to reduce, reuse, and recycle to promote a healthier future Minnesota. However, Minnesota faces many growing challenges, including mental health, drug addiction, climate change, economic development, and employment, which all converge during decision making. **Minnesota does not have unlimited resources and needs to weigh all things together.** We believe that the solutions presented by the MPCA are not cost effective and the true costs to Minnesota residents have not been thoroughly analyzed.

TRANSITION PHASE:

The timelines being considered to change how we manage C&D waste must take into consideration the planning and implementation phases outlined in the rule. The rule timelines to close a facility are not long enough to optimize site capacity, raise financial assurance, etc. **C & D facility closures should not occur all at once, as more time is needed regionally to secure investments in new infrastructure and develop/refine new processes, including deconstruction and recycling options for materials.**

The proposed rule changes have been described as giving existing C&D landfills two-year and four-to-seven-year transition periods, with incentives for early closure at the two-year mark. This leaves an unrealistic timeframe to form regional partnerships, finance capital improvements, perform hydrogeologic assessments to site regional C&D landfills, modify or close existing landfills, retain consultants for design of proper facilities/alternatives, obtain proper permits, and finally to bid and construct new landfills in accordance with the new rules.

The revised rules and MPCA's vision rely heavily on alternatives to landfilling C&D waste and waste reduction alternatives. However, currently in much of the state there are not enough deconstruction resources nor reuse and recycling markets developed to quickly and substantially change the processes that would meet the proposed transition timelines of the proposed rules. **These changes and resources take time and need to come first, not after unintended consequences have already developed.**

DEBRIS MANAGEMENT DURING NATURAL DISASTERS:

The proposed rules eliminate *Permit by Rule*, which then affects emergency management and contingency plans for many communities across the state for demolition debris management when the next natural disaster strikes. Debris during and immediately after natural disaster events must be managed quickly in the most cost effective and efficient manner. This debris is often not MSW but demolition waste that simply cannot be reused or recycled. True environmental and health risks must be evaluated as to this aspect of the rule changes. Have emergency managers, emergency responders, and public health/environmental officials for state, counties and local communities been consulted on this proposed rule revision? **This piece of the proposed C&D rules leaves state and local communities ill-prepared to manage waste surges from natural disasters that are becoming increasingly common with climate change.**

SOLID WASTE MANAGEMENT TAX:

The many tax impacts of the proposed rule have not adequately been addressed. Under current tax law, one such impact of the proposed rule is that C&D waste will be taxed at MSW rates if they are co-disposed. **This results in a varied fee, but commonly would be as high as \$9/ton (a 450% increase), which creates a bias that is not taxing waste in a manner proportionate to environmental and health risk.**

Rural Minnesota solid waste landfills will be most affected. In many areas of the state, the lower demolition landfill tax rate will promote transporting waste out of a county or out of the state to large, private demolition/industrial landfills. This results in more waste that will not be disposed of under Minnesota's environmental regulations and increases liability for Minnesota's counties.

SOLID WASTE MANAGEMENT PLANNING:

Minnesota Rule 9215, specifically 9215.0690, outlines the requirements for preparing solid waste management plans (SWMPs) at the county level with implementation of the plan over a 10-year period. **To date, the current SWMPs, particularly in greater Minnesota, did not or have not addressed a change in the management of C&D waste.**

SIGNIFICANCE:

The MPCA has justified its need for the proposed rules based on a report it prepared indicating that demolition landfills contaminate groundwater with arsenic, boron, and manganese. **These three elements happen to be naturally occurring in Minnesota, but the report justifies its conclusion based on correlation and it ignores geochemistry and causation.** While the MPCA solves the statewide problem with lining landfills, its' report does not review case history or site-specific risk-based analysis. What are the concentrations of arsenic, boron, and manganese near existing lined MSW, demolition and industrial landfills? Are other factors in the area affecting those concentrations?

MSW AND INDUSTRIAL LANDFILLS:

The proposed standards for C&D landfills are consistent with current requirements for MSW and industrial landfills. It stands to reason, with the revisions currently being described, that the most cost-effective solution in some cases will be to comingle disposal of C&D, MSW and industrial waste. Thoughtful consideration has not been given to the full effects for co-disposal. For example, MSW landfills do not have approved CON for the additional capacity and in many cases are already facing capacity issues. In addition, C&D waste is not counted as part of the statewide recycling goals for SCORE. **If C&D waste is disposed of as MSW, this will make the state's recycling goals even more difficult to achieve.**

PUBLIC INPUT:

The MPCA's environmental justice framework defines meaningful engagement and states that public contributions can influence the regulatory agency's decision and community concerns are considered in the decision-making process.

As cited within the *MPCA's Environmental Justice Framework* (May 2022), "Meaningful involvement happens when:

- *People have an opportunity to participate in decisions about activities that may affect their environment and/or health;*
- *The public's contribution can influence the regulatory agency's decision;*
- *Community concerns are considered in the decision-making process; and*
- *The decision makers seek out and facilitate the involvement of those potentially affected.*
- *Communities of color, Indigenous communities, and low-income residents have a right to live in conditions that support a healthy and fulfilling life. The MPCA is committed to using its authority and influence to identify and support opportunities that improve environmental conditions and reverse generations of environmental inequities in areas of concern, enhancing environmental quality, and providing economic opportunities for future generations of Minnesotans."*

While the agency has done some outreach and sought to engage some stakeholders, that involvement has not been meaningful as the concerns raised seem to continually be set aside, unaddressed. The Rule Advisory Panel (RAP) was created to shape the future rule. Based on the past five years of correspondence with the MPCA, the RAP's input has been overwhelmingly ignored. Much of the input given has focused on economics and impacts on residents and businesses - many of which are those affected and in areas where environmental justice is a concern. We are concerned the proposed rule changes will produce negative impacts on the solid waste system that will produce unintended consequences impacting small business, contractors, and residents throughout Minnesota.

By bringing these concerns to your attention we are hoping to engage in a meaningful dialogue that helps to shape the rule in a manner that avoids potential pitfalls and unintended consequences, prioritizes environmental health, and avoids economic hardship for Minnesota's counties, businesses, and residents. In Minnesota there is no one-size-fits-all solution to waste management. Counties need the opportunity and the time to properly explore, design, permit and construct new facilities that meet changing regulations; this process does not happen overnight and to make meaningful changes we need the time and resources from the start not after unintended consequences have developed.

If you have any questions about the information provided above please contact Brian Martinson, AMC Policy Analyst, at bmartinson@mncounties.org or 651-246-4156.

Sincerely,



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