

October 28, 2021

Mr. Laine Sletta  
Minnesota Solid Waste Administrators Association  
125 Charles Avenue  
St. Paul, MN 55103

Dear Mr. Sletta:

The Minnesota Pollution Control Agency (MPCA) appreciates your comments and has included responses to your questions and comments. It is important to understand the Metro Certificate of Need (CON) process differs from CON in Greater Minnesota. The MPCA opens an application period in the Twin Cities Metro Area (TCMA) when system capacity becomes constrained. All metro landfills are then eligible to apply. In Greater Minnesota, each individual landfill applies independently, and is evaluated individually. This is the reason for the decision being for four facilities at the same time.

Landfilling vs. management at a point higher on the hierarchy

1. Is this a retraction of adhering to the state's solid waste hierarchy? In the past, CON has been used to encourage the movement of wastes up the hierarchy.

The MPCA remains fully committed to the Waste Management Hierarchy. The purpose of CON is to identify how much land disposal is expected in the coming years. The MPCA has carefully (along with county input) determined how much capacity is needed for the coming years. There is a greater need for land disposal in the Twin Cities Metro Area (TCMA) due to the 2019 closure of the Great River Energy (GRE) waste to energy facility. In addition, the TCMA, currently has a recycling rate of 49% as a region, so there is still a significant amount of material that is discarded for either waste to energy facilities or land disposal.

2. Is the Agency position not to encourage the use of waste-to-energy facilities (WTE) with capacity to accept additional waste?

The waste to energy facilities in the TCMA are currently operating at their maximum permitted capacities. This was a requirement/prerequisite to opening up the CON process for the TCMA. The MPCA remains committed to supporting the waste to energy infrastructure in the State.

3. Why is the Agency considering the increased capacity of the Burnsville landfill in an Environmental Justice (EJ) area when the Hennepin Energy Recovery Center (HERC), also in an EJ area, has an unused 212 tons per day design capacity? Seems counter to the state mandate to process before landfilling.

HERC is currently operating at full permitted capacity. There is no proposal before the MPCA requesting its expansion. Thus, resource recovery is being prioritized over landfilling. Even with an expansion of HERC, additional landfill capacity would be necessary to serve the needs of TCMA.

4. The Agency has for years included requirements in Greater Minnesota landfill permits to not accept metro MSW. Now wastes will be exported from the metro area while Rich Valley and Dem-Con obtain their permits. Why the change in policy without discussions with Greater Minnesota counties?

The requirement for Greater Minnesota landfill permits is that they do not accept metro Municipal Solid Waste (MSW), unless they have language stating how they will comply with the Restriction on Disposal (ROD) for Metro Waste. The ROD language states that landfills in Minnesota cannot accept metro waste unless the waste to energy facilities are operating at full capacity. If the landfill is able to comply with that requirement, all landfills in Minnesota can accept TCMA waste.

5. What steps will the Agency be taking to promote additional processing capacity during the seven year timeline?

The MPCA approach to waste processing is consistent. The MPCA will continue to support its rightful place in the waste hierarchy, while also striving to reduce, reuse, recycle, and compost to the extent practicable. If new waste to energy capacity becomes available, the MPCA will support it.

#### Equitable treatment of all landfills seeking CON

6. Did the Agency approve updates to the solid waste management plans for each of the counties that have reassigned wastes? Have all the solid waste plans been modified using the usual public processes?

TCMA county solid waste plans do not specify which landfill they utilize. The TCMA is largely a privately run system, so waste flows change over time. The CON Rule and the Metro Policy Plan, both clearly state that in cases where county plans do not state where the waste goes, that county letters can be used by the MPCA to allocate waste. This is the process that was followed. Any landfill (or even green field proposed landfills) can request to accept MSW via CON.

7. Two of the four landfills allocated MSW tons are currently demolition / industrial landfills. By what authority was CON requested and will be allocated to non-MSW landfills?

Authority is granted in MN Stat 473.823 and the criteria and standards section of the Metro Policy Plan. Facilities located outside of the TCMA need to follow the process in MN Rule 9515. In this instance, the MPCA determined that it was appropriate to allow Dem-Con and Rich Valley to accept MSW, largely due to the closure of the GRE waste to energy facility, which resulted in nearly 325,000 additional tons per year going to land disposal. These two facilities will not be able to accept MSW until they go through environmental review and the permitting process. At which point they will not solely be Construction and Demolition facilities, they will be MSW facilities and held to the same standard as all other MSW landfills.

8. What are the definitions used by the Agency to determine dependent and/or independent CON? Will this set a precedent for other non-MSW landfills in Greater Minnesota requesting CON?

MPCA doesn't understand the question posed about dependent or independent CON. However, rule is clear that counties have a very large role to play with regard to issuing CON. In order for the

facility to receive CON, counties have to agree that waste either needs to go to the facility, or that waste already does go to the facility in question. The MPCA does not believe that a new precedent has been set in this regard.

9. Will the Dem-Con and Rich Valley sites be required to meet all the requirements for municipal solid waste landfills, especially those of Minnesota Rules 7035 and 7001 that pertain to siting an MSW landfill?

The Dem-Con and Rich Valley facilities will be required to meet all of the requirements of MSW landfills. They must complete the permitting and environmental review process before they can accept any MSW at their facilities.

Technical and site-specific concerns with municipal solid waste (MSW) in construction and demolition or industrial (CD&I) landfills

10. Will MSW be combined with construction or demolition waste and/or industrial waste in cells at these two sites? If not, will MSW be permitted to be disposed of in existing lined demolition or industrial cells at these sites?

Specific details pertaining to the placement of waste will be worked out during the permitting process at each individual facility. With that said, Dem-Con and Rich Valley will be held to the same standard as every other MSW landfill in the state. Other MSW landfill complexes also take in demolition debris and industrial solid waste, so it will be handled the same way.

11. If these sites will not be constructing separate MSW facilities, what process will the Agency take to conduct environmental review and/or review of existing technical design standards of the demolition or industrial landfills to allow MSW disposal? Or will exemptions to current statute and/or rule be approved?

Both Dem-Con and Rich Valley will be required to follow all existing state statute and rules, just like all other MSW landfills are required to do.

Financial considerations and liability for State

12. As a lower tax rate is assessed for demolition and industrial landfills versus that imposed at MSW facilities, what level solid waste management tax will be assessed at these facilities if MSW is received? In the past the Department of Revenue has not allowed taxes to be based on the material being received, but charge the tax by the classification of the facility. Will these two facilities now be required to charge the CD&I wastes they take in at the MSW rate?

Tax revenue will be required to be assessed as it is at other MSW facilities. If they complete the permitting process, both Dem-Con and Rich Valley facilities will be permitted MSW landfills subject to the same requirements of all other MSW landfills.

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13. Financial assurance is required of MSW facilities, will that be the case for these C&D or Industrial facilities?

Both Dem-Con and Rich Valley facilities will be required to have financial assurance because they will be classified as MSW landfills.

14. If the MSW cells are hydraulically down-gradient of the existing wastes, will monitoring wells be required between the two types of waste cells to prevent the state from taking on liability for the C&D or industrial wastes that may contribute to possible future environmental contamination?

This is a permitting and environmental review condition that may vary from site to site.

Potential impacts on Greater Minnesota

15. We are concerned that this will create a precedent which may affect other Minnesota counties' abilities to execute their solid waste management plans. Some counties have expressed concerns about C&D and industrial landfills accepting MSW. Vonco II is on public notice with what appears to be designed to the same specifications as the MSW landfills. Dem-Con has facilities by Grand Rapids and Willmar that could make this same move. CON and the County planning processes are important to protect the multi-million dollar investments which Greater Minnesota counties have made, as required by statute, in their integrated solid waste management systems. How does the Agency intend to address this?

The CON process is entirely dependent upon strong ties between counties utilizing the landfill in question and the MPCA. A landfill can only accept MSW if counties determine that the landfill needs to accept MSW and the MPCA approves it. Metro counties currently support the need for Dem-Con and Rich Valley to accept MSW, and thus the MPCA has chosen to also support that need.

MPCA is confident that even though the Metro and Greater Minnesota CON processes differ slightly, that this process is consistent with the way CON is granted in Greater Minnesota. Counties have a big role in CON allocation and the Metro determinations would not occur without county support for each of these facilities.

MPCA hopes that this letter alleviates the Greater Minnesota Counties concerns about CON in the TCMA and we appreciate our continued partnership with regard to managing waste in Minnesota.

Sincerely,

*David J. Benke*

*This document has been electronically signed.*

David J. Benke  
Division Director

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