

# Metropolitan Waste Disposal Restrictions Report



## Legislative Charge

### *Laws of Minnesota 2012, chapter 272, section 93, METROPOLITAN WASTE DISPOSAL RESTRICTIONS REPORT*

By August 1, 2012, the commissioner of the Pollution Control Agency shall prepare a report on how compliance with Minnesota Statutes, section 473.848, may be achieved. The commissioner must allow interested parties at least 30 days to review and comment on the report. Written comments received from interested parties and the commissioner's responses to the comments must be included in the report. By October 1, 2012, the report, comments, and responses shall be submitted to the chairs and ranking minority members of the senate and house of representatives committees with jurisdiction over environmental policy and finance. The agency may not require compliance with Minnesota Statutes, section 473.848, before February 15, 2013.

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# Executive Summary

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The Minnesota Pollution Control Agency (MPCA) prepared the Metropolitan Waste Disposal Restrictions Report (Report) to outline how the state could achieve compliance with Minnesota Statutes, section 473.848, restriction on disposal, as required by recent legislation (Laws of Minnesota 2012, chapter 272, section 93). The Report outlines the requirements of Minn. Stat. § 473.848, the current framework of solid waste management in the metropolitan area and the conditions necessary to obtain compliance with waste disposal restrictions. In addition, the report identifies potential impacts related to achieving compliance and contains comments from interested parties.

The Minnesota Legislature established a solid waste hierarchy in Minn. Stat. § 115A.02 (b). The hierarchy identifies an order of preference for managing wastes with land disposal as the least preferred method. In addition, a roadmap for implementing these alternatives to land disposal is outlined in the Metropolitan Landfill Abatement Act (Minn. Stat. §§ 473.841-.849) and related statutes (e.g. Minn. Stat § 473.149). The U.S. Environmental Protection Agency's (EPA) waste hierarchy also favors materials recovery and combustion for energy recovery over land disposal. **Pages 2-5**

In 2010, MPCA developed the Metropolitan Solid Waste Management Policy Plan 2010 to 2030 (Policy Plan) to implement these statutes. The development process included extensive public and stakeholder participation. The Policy Plan emphasizes moving waste up the hierarchy. It includes aggressive goals of 4 to 6 percent reduction in metropolitan waste over the 20 years of the Policy Plan, and a 54-60 percent recycling rate and 9-15 percent organics recovery rate by 2030. **Pages 5-8**

According to the Policy Plan, after source reduction, reuse, recycling, and organics recovery, by 2030, the remaining mixed waste would proceed to resource recovery (at existing operating waste to energy facilities) at a 24-28 percent rate, and finally the remaining 1-9 percent would go to land disposal (at landfills). The Policy Plan specifies that resource recovery facilities capable of processing mixed waste (waste to energy facilities) must be operating at full capacity before any waste generated in the metropolitan area can be land disposed (Minn. Stat. § 473.848). When the MPCA revised the Policy Plan in 2010 (the first revision under the authority transferred to the MPCA in 2005), the MPCA adopted in the Plan, under authority in Minn. Stat. § 473.848, subd. 4, standards for determining when waste is unprocessable and procedures for expediting county certification required under Minn. Stat. § 473.848, subd. 2, before unprocessed metropolitan MMSW can be land disposed. **Pages 5-8 and Page 22**

Although the requirement in Minn. Stat. § 473.848 on restrictions on disposal has been in statute since 1985, enforcement of this statute is now possible and necessary for three reasons.

First, the MPCA has concluded that operating resource recovery facilities at capacity is necessary to conserve landfill capacity and implement state policy governing waste management in the metropolitan area. More specifically, implementation of the law supports the solid waste management hierarchy and maximizes renewable energy generation from waste using existing facilities. More than one million tons of metropolitan waste can be processed each year by the region's four resource recovery facilities. Without resource recovery, land disposal would more than double. **Pages 5-8**

In addition, the gap between resource recovery facility capacity and actual use in the metropolitan area has grown in recent years. In 2002, all available capacity was being used and in 2011, nearly 140,000 tons per year of processing capacity went unused. The growing gap could lead to closure of existing resource recovery facilities. The cost to replace the four facilities that function as the metropolitan resource recovery system would be approximately one billion dollars. **Pages 10-15**

Finally, in 2005, the Legislature consolidated state oversight of solid waste management into the MPCA. Therefore, for the first time, planning (including revisions to the Policy Plan), regulation, permitting and enforcement of metropolitan area waste management falls under one authority. **Page 5**

After careful review of input from interested parties, MPCA believes that no significant operational barriers exist to obtaining compliance. Large amounts of processible waste are generated and collected near the resource recovery facilities and transfer stations serving them. In addition, for more than two decades the parties have arranged waste deliveries without instructions from MPCA. Therefore, it is reasonable to require landfills and resource recovery facilities to comply with Minn. Stat. § 473.848 as outlined in the Report. **Pages 21-24**

Several potential impacts associated with enforcing restrictions on landfill disposal of waste generated in the metropolitan area are anticipated. Some of the most significant include the following:

**General Public:** In 2009, MPCA commissioned a study on residential waste services arrangements and found that there was no relationship between fees assessed for household garbage collection and where the waste ended up (landfill or resource recovery facility). **Page 20**

**Landfill Operators:** If compliance with Minn. Stat. § 473.848 was fully met, in 2011, there would be an average 11 percent reduction in waste landfilled. Since only 140,000 tons would shift from landfills to resource recovery facilities, the impact on each landfill would be small. MPCA has estimated the reductions would range from four percent decrease in total waste delivered to the Spruce Ridge facility to 29 percent decrease in total waste delivered to the Elk River landfill. These estimated reductions are small in comparison to the reduction in waste to be landfilled when the metropolitan recycling and organics recovery goals are achieved.

**Host Communities:** Four of the seven cities and counties hosting landfills expressed concerns about reduced annual payment of fees from landfills. MPCA believes that communities would benefit from the extension of the useful life of the landfills, which would conserve land for other uses and reduce risk liability. MPCA also believes that the total payment of fees to several host communities may be modestly lower on an annual basis, but that total payments may increase if the landfill life is increased by imposing a restriction on disposal of metropolitan MMSW. Similarly, any reduction in landfill gas generation would be modest and spread over decades of landfill gas generation from in-place waste and new land disposal. **Pages 18-20**

**Resource Recovery Facilities:** The facilities would run at full capacity providing increased benefits associated with recycling and energy recovery from MMSW. These additional benefits include energy and resource conservation, reductions in pollution and greenhouse gases, and increased economic activity and jobs. **Pages 13-16**

In summary, the MPCA finds compliance with Minn. Stat. § 473.848 achievable. The benefits of implementing the state's solid waste management hierarchy and landfill abatement policies, coupled with limited negative impacts resulting from compliance, make enforcement of the restriction on disposal of metropolitan area waste a necessary decision.

## Legislative Policy and Purpose

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The Minnesota Legislature has established a clear direction for solid waste management in Minnesota. In particular, the Waste Management Act (Chapter 115A) and the Metropolitan Landfill Abatement Act (Chapter 473.841-849), both establish a framework for moving Minnesota from a land disposal (landfill) based solid waste system to a system based on prevention and recovery of waste. The Waste Management Act outlines solid waste management practices and an order of preference (the waste management hierarchy). It prescribes adoption of a "systems" approach integrating all six primary waste management practices in order of preference.

Minn. Stat. § 115A.02 states:

*The waste management goal of the state is to foster an integrated waste management system in a manner appropriate to the characteristics of the waste stream and thereby, protect the state's land, air, water, and other natural resources and the public health. The following waste management practices are in order of preference:*

*(1) waste reduction and reuse*

*(2) waste recycling*

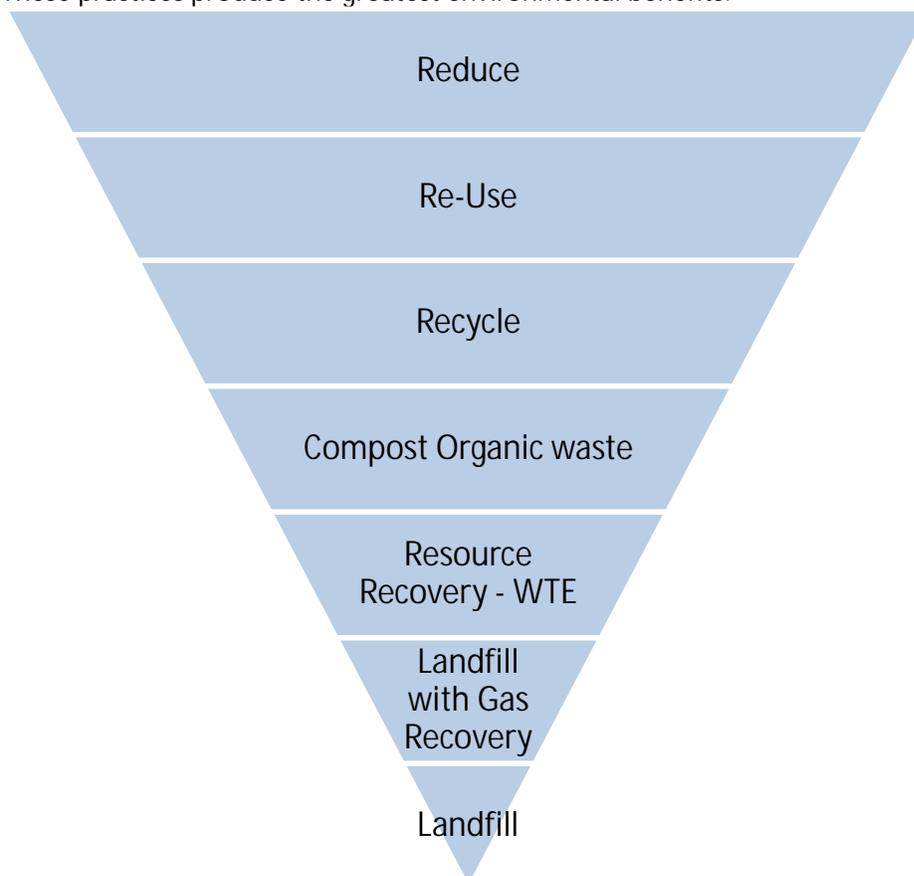
*(3) composting of source-separated compostable materials, including but not limited to, yard waste and food waste*

*(4) resource recovery through mixed municipal solid waste composting or incineration*

*(5) land disposal which produces no measurable methane gas or which involves the retrieval of methane gas as a fuel for the production of energy to be used on site or for sale*

*(6) land disposal which produces measurable methane and which does not involve the retrieval of methane gas as a fuel for the production of energy to be used on site or for sale.*

In addition, more recent scientific research on energy and pollution and greenhouse gas reduction from solid waste management has validated the structure of the hierarchy in terms of environmental benefits. The chart below depicts the solid waste management hierarchy, and emphasizes the need to focus efforts at the top, by encouraging the generator to reduce waste generation and separate materials for diversion. These practices produce the greatest environmental benefits.



State solid waste laws consistently emphasize resource and energy recovery and landfill abatement as twin goals. The law requires that feasible and prudent alternatives to land disposal should be implemented.

Furthermore, state law indicates that cost alone does not justify rejecting an alternative to land disposal (Minn. Stat. §§ 473.823, subd. 6; 115A.917).

The Waste Management Act's declaration of policy and purposes (listed below) sets a clear direction and anticipates the need to resolve issues related to resource recovery and land disposal facilities:

*115A.02 LEGISLATIVE DECLARATION OF POLICY; PURPOSES*

(a) It is the goal of this chapter to protect the state's land, air, water, and other natural resources and the public health by improving waste management in the state to serve the following purposes:

- (1) reduction in the amount and toxicity of waste generated*
- (2) separation and recovery of materials and energy from waste*
- (3) reduction in indiscriminate dependence on disposal of waste*
- (4) coordination of solid waste management among political subdivisions*
- (5) orderly and deliberate development and financial security of waste facilities including disposal facilities.*

Pursuant to this purpose, the Legislature put in place a policy structure to support it, including the solid waste management tax, the Metropolitan Landfill Abatement tax, SCORE and Metropolitan Landfill Abatement Account funding mechanisms, requirements for public entities, solid waste planning, and other similar tools currently in use by the MPCA and local governments.

Even as the primary legislative purpose was to build integrated waste management systems that minimized the need for and practice of land disposal of solid waste, the Legislature recognized the need to develop facilities, including landfills (Minn. Stat. § 115A.02, subd. a item 5). Because there is a need for land disposal capacity, it is important to conserve it and use landfills only as necessary. The Legislature also recognized that building waste facilities is expensive and challenging and several state laws, therefore, guide the orderly and deliberate development and utilization of resource recovery and disposal facilities.

Minn. Stat. ch. 473 sets out a framework for implementing a solid waste management system in the metropolitan area of Minnesota. This framework conforms with the solid waste hierarchy aims to achieve high levels of materials and energy recovery. The aim is to implement alternatives to land disposal. It requires MPCA to formulate an overall policy plan directing all solid waste stakeholders in the metropolitan area to implement the waste management hierarchy. MPCA's first Metropolitan Solid Waste Management Policy Plan (Policy Plan), adopted in 2011, calls for large increases in source reduction, reuse, recycling and organic materials recovery and large reductions in land disposal of trash.

To further these aims, the Metropolitan Landfill Abatement Act also requires that processible waste shall not be land disposed. Resource recovery facilities recover recyclables and convert waste to energy and are the preferred alternative to landfilling under the legislative waste management hierarchy.

Minn. Stat. § 473.848 requires the MPCA to report to the Legislature on the quantity of unprocessed waste that is land disposed, the reasons the waste was not processed, to propose a strategy for reducing land disposal, and to outline progress made by metropolitan counties. MPCA provides this information as part of the Solid Waste Policy Report. The law also authorizes MPCA to adopt standards for determining when waste is unprocessable and procedures for expediting certification and reporting of land disposal of waste. The MPCA adopted specific standards defining waste as unprocessable in the new Policy Plan.

Minn. Stat. § 473.848, subd. 1(a), prohibits the disposal of unprocessed MMSW unless the metropolitan counties have certified that the waste is unprocessable in accordance with the criteria in the Policy Plan. The counties have adopted the Policy Plan's standards and support MPCA enforcement of restriction on disposal through amendments to facility permits.

Minn. Stat. § 473.848, subd. 5, defines that a waste is unprocessed if it has not, after collection and before disposal, undergone separation of materials for resource recovery through recycling, incineration for energy production, production and use of refuse-derived fuel, composting or any combination of these processes so that the weight of the waste remaining that must be disposed of in a mixed municipal solid waste disposal facility is not more than 35 percent of the weight before processing. All four resource recovery facilities serving the metropolitan area exceed this standard for materials and energy recovery.

In 2005, the Legislature consolidated state administration and oversight of solid waste into the MPCA. This change in duties has required MPCA to examine compliance with all aspects of the Metropolitan Landfill Abatement Act including the restriction on disposal requirements in Minn. Stat. § 473.848. Previously, significant portions of the Waste Management Act and the Metropolitan Landfill Abatement Act had been administered by the Waste Management Board, the Metropolitan Council, the Office of Waste Management (OWM), or the Office of Environmental Assistance (OEA). Consolidation of duties allowed MPCA to integrate planning, oversight, financial assistance, reporting, permitting, and enforcement. Previously, coordination of actions was encumbered by fragmentation of authority and duties.

## Metropolitan Solid Waste Management Policy Plan 2010 to 2030

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The Minnesota Pollution Control Agency is responsible for implementing Minn. Stat. § 115A (the Waste Management Act) and administering provisions of Minn. Stat. §§ 473.841 through 849 (Metropolitan Landfill Abatement Act). Together, these laws outline waste management in the seven-county metropolitan area of Minnesota. MPCA's duties include administering Minn. Stat. § 473.149, which is the preparation and adoption of the [Metropolitan Solid Waste Management Policy Plan](#) (Policy Plan).

The current Policy Plan covers a planning period from 2010 to 2030 and establishes goals, policies and objectives to significantly improve the solid waste management system serving the people of the seven-county metropolitan area.

Three of the most notable elements of the plan include:

- Ambitious increases in recycling and organic waste recovery. For example, over the planning period, the Policy Plan sets out objectives that will increase recycling from 41 percent (2008) to 54-60 percent, increase organic waste recovery from two percent (2008) to 9-15 percent, and reduce land disposal to nine percent or less.
- Clear and measurable objectives to significantly expand waste reduction and reuse. For example, the Policy Plan calls for source reduction and reuse to account for four to six percent of solid waste management over the course of the 20-year plan.
- Expanded accountability for participation of the public, businesses and institutions in the metropolitan area in reducing the need for and practice of land disposal (landfills). The Policy Plan emphasizes accountability by all parties for implementing the plan and its system objectives.

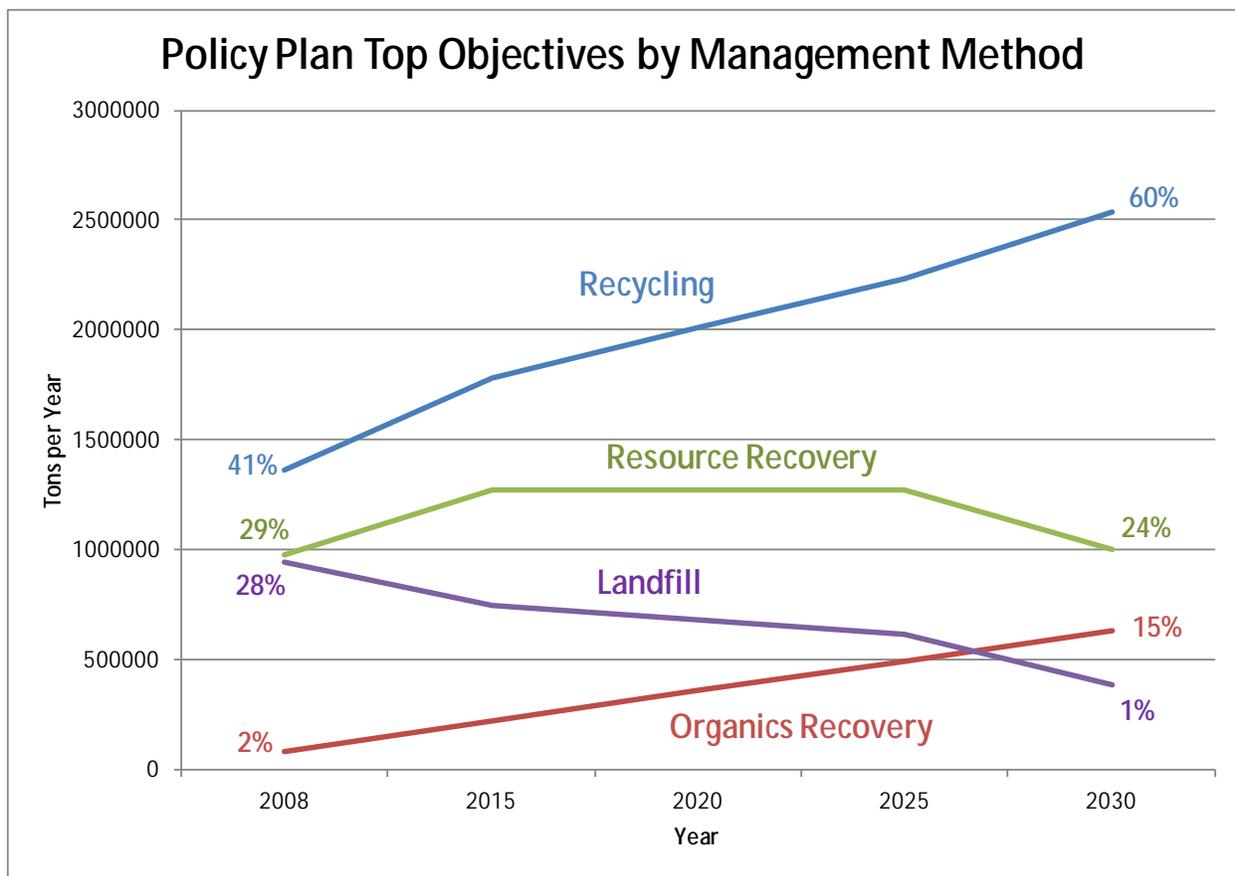
The following table shows the Policy Plan's system objectives in 2020 and 2030 compared to the base year 2008:

Metropolitan System Objectives			
Management Method	2008 System	2020	2030
Source Reduction (cumulative)	-	2-4%	4-6%
Recycling	41%	47-51%	54-60%
Organics Recovery	2%	4-8%	9-15%
Resource Recovery	29%	32-33%	24-28%
Landfill	28%	8-17%	1-9%

The point of achieving these goals is to improve Minnesota's economy and environment while reducing the liabilities related to land disposal. Achieving the Policy Plan's goals would have the following direct or indirect affects:

- Reduce environmental and economic risks of land disposal
- Conserve energy and generate renewable energy
- Reduce greenhouse gases
- Support economic development by providing secondary materials such as food, paper, metals, glass and plastics to Minnesota manufacturers
- Reduce pollution of Minnesota's land, water and air
- Coordinate efforts between political subdivisions, waste generators and the waste industry to reduce unnecessary land disposal of metropolitan solid waste
- Promote the orderly and deliberate development and financial surety of waste facilities, including landfills

The following graph shows how the Policy Plan's top objectives for recycling, organic materials recovery, resource recovery of Mixed Municipal Solid Waste (MMSW) and land disposal change from the base year out to 2030. Note that waste generation is increasing over the same time period and source reduction objectives are also accounted for. Although MPCA's Policy Plan is ambitious regarding the increases in diversion of waste to recycling and organics recovery, waste composition studies consistently indicate that these levels are achievable.



**Note: From 2008 to 2030, total waste generation is projected to increase by approximately 870,000 tons from 3,357,000 tons in 2008 to 4,225,000 tons in 2030, assuming waste reduction objectives are achieved.**

Achieving the Policy Plan’s objectives for reduction, reuse, recycling and organic materials recovery will drastically reduce land disposal of MMSW. Between 2008 and 2030 the Policy Plan shows recycling and organic recovery increasing steadily and land disposal decreasing from 28 percent to one percent. MPCA’s Policy Plan forecasts that the most diversion of MMSW from landfills will occur due to recycling and organic materials recovery. This diversion is much larger than the diversion of MMSW due to obtaining compliance with restriction on disposal.

For example, in 2011, compliance with the restriction on disposal requirements would have diverted an additional 140,000 tons from landfills. Comparatively, if the metropolitan area had obtained 1 percent in source reduction, 50 percent recycling, and 6 percent organic materials recovery (reasonable and realistic increases), then an additional 359,000 tons of MMSW would have been diverted from landfills. This represents more than double the diversion achieved through compliance with restriction on disposal. The total potential diversion of almost 500,000 tons from land disposal achieved through an integrated solid waste management system is significant.

In addition to setting aggressive source reduction, recycling, and organics recovery goals, the Policy Plan clearly outlines that compliance with restriction on disposal requirements is an important component of the metropolitan integrated solid waste management system. MPCA recognized that processible metropolitan area generated waste was being disposed of in landfills in violation of state law. Processible waste that is now being landfilled could be processed. There is capacity in the resource recovery system to be able to process this waste. MPCA formally expressed its intent to enforce the restriction on disposal in Minn. Stat. § 473.848 in the Policy Plan. Another key aspect of the Policy Plan is the expectation that no new resource recovery facilities would be needed to obtain the Policy Plan’s waste management

objectives. Instead, it anticipated and assumed full use of the resource recovery facilities now serving the metropolitan area.

The MPCA adopted the Policy Plan on April 6, 2011. The Policy Plan was developed after MPCA spent more than two years performing extensive consultations with industry groups, environmental groups, local governments and others. MPCA conducted a solid waste policy stakeholder process in 2009, held consultations with metropolitan area counties from 2008 through 2011, and implemented a 60-day public comment process beginning in September 2010. Hundreds of hours were spent in consultation with interested parties concerning the objectives in the Policy Plan.

## Governance of Seven County Metropolitan Solid Waste Management System

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The seven metropolitan counties - Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington - have duties under the Waste Management Act and the Metropolitan Landfill Abatement Act, ranging from adopting Solid Waste Management Master Plans (Master Plans) to implementing landfill abatement programs to enforcing local regulations.

The seven metropolitan counties developed and adopted new Master Plans in 2012 and MPCA approved them on May 24, 2012 (after MPCA adopted the Policy Plan). The counties are required to adopt plans that demonstrate that their programs and policies meet the specific measurable goals outlined in the Policy Plan.

Several aspects of the new Master Plans have been designed to support MPCA's compliance strategy related to restriction on disposal. These include:

- Adopting the Policy Plan framework for obtaining compliance with the restriction on disposal. The Master Plans make it clear that the metropolitan resource recovery facilities need to be used at their full capacity in order to certify MMSW as unprocessable and proceed with land disposal of MMSW generated in the metropolitan area.
- Including a statement that counties will certify MMSW as unprocessable only in accordance with the criteria in the Policy Plan.
- Continuing to license haulers and facilities and require reporting of essential information.
- Implementing and supporting initiatives to assure that cities, school districts, the Metropolitan Council, the state, and other public entities specify to waste haulers that the MMSW that they generate is sent to resource recovery facilities in compliance with Minn. Stat. §115A.471.

In 2011, the seven metropolitan counties obtained higher levels of recycling and resource recovery as compared to 2010. However, more than three quarters of a million tons of unprocessed metro MMSW was land disposed. A large portion of this waste could have been reduced, recycled, recovered as organic materials, or sent to resource recovery facilities. There appears to be no shortage of waste for operating both resource recovery facilities and land disposal facilities. In 2011, 140,000 tons of MMSW would have been available to be processed at resource recovery facilities if landfills were in compliance with the restriction on disposal requirements in the statute.

2011 Metropolitan County reported recycling, resource recovery facility and landfill statistics:

County	Recycling rate w/o credits*	Recycled tons	Resource recovery tons	MMSW landfill tons	MMSW landfilled out of state tons
Anoka	42%	141,052	135,208	55,908	3,027
Carver	47%	44,031	5,394	42,858	1
Dakota	52%	239,639	45,751	169,754	7,757
Hennepin	42%	572,618	412,747	348,825	3,685
Ramsey	48%	297,863	222,030	93,621	47,800
Scott	49%	56,589	15,018	44,289	0
Washington	49%	92,311	82,140	11,289	5,092
Totals	45%	1,444,103	918,288	766,544	67,362

\*Credits added to county recycling rates include 5 percent for providing yard waste management and three percent for implementing source reduction and re-use programs.

## Mixed Municipal Solid Waste Land Disposal and Resource Recovery Facilities Governed by Restriction on Disposal

Mixed Municipal Solid Waste remains for disposal even after large portions of the waste stream are separated by the generator for reuse, special management (household hazardous waste), recycling, and/or organic recovery. This is the waste stream that is governed by the restriction on disposal requirements in Minn. Stat. § 473.848, if it is generated in the metropolitan area and managed in Minnesota. Until more waste generators adopt management practices that recover and divert a larger portion of MMSW, it is likely that Minnesota will generate MMSW for the foreseeable future.

In 2011, more than three million tons of municipal solid waste (MSW) was generated in the metropolitan area of Minnesota alone. MSW includes MMSW and source separated items like recyclables and organic waste. In 2011, more than 45 percent of metropolitan MSW was recycled and diverted to outlets for source separated organic materials such as composting, animal feed, and food rescue. Smaller amounts were re-used or diverted to special management as problem materials (tires, Household Hazardous Waste, appliances, etc.).

Yet, after those wastes were diverted, 1,752,194 tons of MMSW remained for disposal. This was an increase from 2010 levels, and represents more than 5,300 tons per day or almost 600 garbage truckloads per day. A small amount of MMSW was shipped out of state for disposal. Most MMSW managed in the metropolitan area was delivered to four landfills and to four resource recovery facilities. The table below shows the eight facilities (landfills and resource recovery facilities) currently subject to the restriction on disposal.

Facility	MMSW tons received in 2011	Permit #	type	Location - County
Spruce Ridge Landfill	233,162	SW-6	Land disposal	Rural McLeod County
Pine Bend Landfill	273,766	SW-45	Land disposal	Inver Grove Heights - Dakota
Burnsville Landfill	271,347	SW-56	Land disposal	Burnsville -Dakota
Elk River Landfill	265,987	SW-74	Land disposal	Elk River - Sherburne
Great River Energy (GRE)	200,349	SW-305	Resource recovery	Elk River - Sherburne
Hennepin Energy Recovery Center (HERC)	363,434	SW-396	Resource recovery	Minneapolis - Hennepin
Resource Recovery Technologies (RRT)	393,501	SW-286	Resource recovery	Newport - Washington
City of Red Wing	20,687	SW-637	Resource recovery	Red Wing - Goodhue

Four of the primary MMSW facilities are located inside the seven county metropolitan area. Four are located outside the seven county metropolitan area. The location of the facilities, local licensing and reporting requirements, and the flow of MMSW to the facilities across county boundaries have, in the past, made it difficult for one or a group of metropolitan counties to implement or regulate the restrictions on disposal. Allied Waste, Waste Management, Veolia, , and other firms own and operate landfills in Iowa, Wisconsin, and/or the Dakotas that could accept metropolitan area MMSW and other solid waste. Waste haulers may also decide to ship metropolitan MMSW out of state as a result of MPCA's proposed compliance plan.

## Land disposal facilities

The four disposal facilities accepting metropolitan area MMSW currently serve or may serve other regions of Minnesota. The landfills have operated for more than twenty years. Various types of solid waste are deposited into lined and covered landfill "cells". Gas is generated by decomposing waste in the cells. A portion of the gas is released to the atmosphere and a portion is collected to reduce air pollution and migration of landfill gas underground and off the landfill site. Gas recovery has been shown to reduce groundwater pollution. Leachate, or free liquids in the landfill cells, is collected on a liner below the landfill and treated on site, sent to a wastewater treatment facility, or pumped back into the waste (leachate recirculation).

The landfills accept many types of waste for disposal such as MMSW, contaminated soil, industrial waste, construction debris and demolition materials. Minnesota statutes and the individual landfills classify waste for land disposal into several categories. Only MMSW generated in the metropolitan area is governed and restricted from disposal by Minn. Stat. § 473.848. MMSW not generated in the metropolitan area and other categories of non-MMSW can be accepted and land disposed without this restriction.

Landfill volumes are elastic and may vary significantly from year to year. MMSW from the metro area, MMSW from greater Minnesota, industrial waste, construction waste, demotion waste, and other waste types vary year to year.

The **Spruce Ridge** Landfill is located west of the metropolitan area in rural McLeod County. It is owned and operated by a subsidiary of Waste Management Inc. Over the past ten years no more than 32% the MMSW disposed by the facility was metropolitan area unprocessed waste. In addition to MMSW, the landfill takes industrial waste and liquid waste. The landfill produces landfill gas. A portion of the collected landfill gas that is captured is incinerated to produce electricity and sold to the City of Glencoe. Landfill gas will be generated by the waste already in place for decades into the future.



McLeod County finances their comprehensive waste management programs entirely using fees obtained from waste deposited into the landfill. The county fee is indexed based on waste delivery. The landfill may have the capacity to accept an additional six million tons of waste. This would mean that the landfill could function for decades assuming moderate progress is made in achieving the Policy Plan's objectives.

Spruce Ridge is located more than 50 miles from the center of the metropolitan area. None of the four resource recovery facilities is near the landfill. Most of the waste land disposed at Spruce Ridge is not governed by restriction on disposal because the waste is generated outside of the metropolitan area in Wright, Meeker, and other greater Minnesota Counties. It is unlikely that this landfill would experience large reductions of metropolitan MMSW delivery because metropolitan MMSW generated closer to resource recovery facilities would be diverted from landfills first.

The **Pine Bend** Landfill is located in Inver Grove Heights (Dakota County). Over the past three years more than 90 percent of the MMSW disposed at the facility was metropolitan area unprocessed waste. It is owned by a subsidiary of Allied Waste. The landfill produces landfill gas. In 2011, according to the facility annual report, almost 100 percent of the collected landfill gas was incinerated in an engine. Landfill gas will be generated by the waste already in place for decades into the future. The landfill pays voluntary "host fees" to the City of Inver Grove Heights



and Dakota County that support various public service programs in those areas. The county fee has both a fixed and volume based component. The county is currently renegotiating its fee agreement. The landfill may have the capacity to accept an additional four million tons of waste. This would mean that the landfill could function for decades assuming moderate progress is made in achieving the Policy Plan's objectives.

Pine Bend is located near the Newport RRT resource recovery facility and is the nearest landfill to the City of Red Wing resource recovery facility. Processible MMSW that is delivered to these resource recovery facilities would likely be relatively small because these facilities have a reasonably small available capacity. Therefore, MPCA would estimate a moderate (10 percent) decrease in waste flow to the Pine Bend Landfill.



The **Burnsville** Landfill is located in northwest Burnsville in Dakota County. It is owned and operated by a subsidiary of Waste Management Inc. Over the past three years more than 95 percent of the MMSW disposed by the facility was metropolitan area unprocessed waste. The landfill produces landfill gas. In 2011, about one third of the collected landfill gas was incinerated in engines and the remaining two thirds was incinerated via flares. Landfill gas will be generated by the waste already in place for decades into the future. The landfill pays voluntary “host fees” to the City of Burnsville and Dakota County that support various public service programs in those areas. The county fee has both a fixed and volume based component. The county is currently renegotiating its fee agreement. The landfill may have the capacity to accept an additional 3.5 million tons of waste. This would mean that the landfill could function for decades assuming moderate progress is made in achieving the Policy Plan’s objectives.

The Burnsville landfill is located near the Newport RRT resource recovery facility and is the nearest landfill to the HERC resource recovery facility. The available capacity of these facilities is relatively small and therefore, MPCA would estimate a moderate (10 percent) decrease in waste flow to the Burnsville Landfill.



The **Elk River** Landfill is located north of the metropolitan area in Elk River (Sherburne County). It is four miles north of the GRE resource recovery facility in Elk River. It is owned and operated by a subsidiary of Waste Management Inc. Over the past three years more than 90 percent of the MMSW disposed was metropolitan area unprocessed waste. The landfill produces landfill gas. In



2011, about 40 percent of the collected gas was incinerated in engines and 60 percent was incinerated via flares. Landfill gas will be generated by the waste already in place for decades into the future. The landfill pays fees authorized by Minn. Stat. § 115A.919 and 115A.921 to Sherburne County and the City of Elk River respectively. The landfill may have the capacity to accept an additional eight million tons of waste. This would mean that the landfill could function for decades assuming moderate progress is made in achieving the Policy Plan’s objectives.



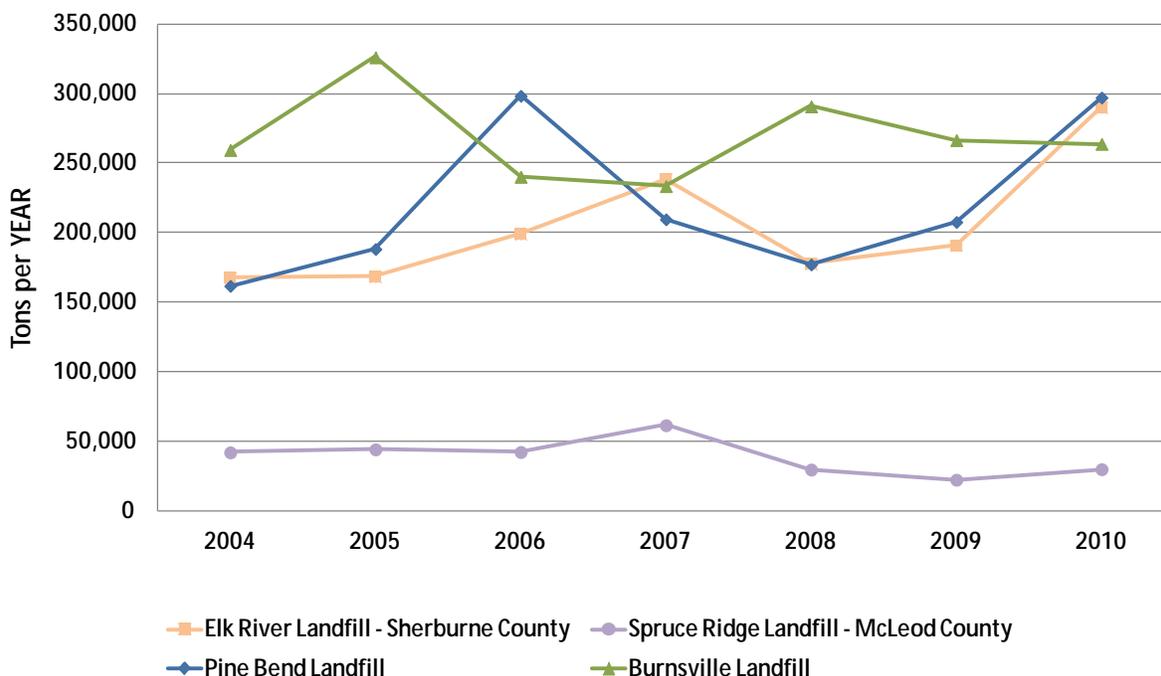
The Elk River landfill is located very near the GRE resource recovery facility in Elk River and near the HERC resource recovery facility. The GRE Elk River

resource recovery facility has a significant amount of available capacity and therefore, MPCA would estimate a (29 percent) decrease in waste flow to the Elk River Landfill.

Three of the four affected landfills are owned by Waste Management Inc., and therefore, Waste Management Inc. would experience the greatest savings in landfill space and extended landfill site life due to the shift of MMSW to resource recovery facilities.

The table below shows the fluctuations in delivery of metropolitan MMSW to landfills over the period from 2004 to 2010. The delivery of unprocessed metropolitan MMSW to landfills has increased.

## Metropolitan MMSW to MN Landfills (2004 to 2010)



## Resource recovery facilities

Four metropolitan resource recovery facilities serve the metropolitan area. Several of these facilities accept MMSW from counties outside the metropolitan area. Together the operating capacity of the four facilities is more than 1.13 million tons per year. All four resource recovery or “processing facilities” have more than 20 years of operating history. Together, they have diverted in excess of 24 million tons of MMSW from landfills, the equivalent of four Spruce Ridge Landfills (8.3 million cubic yard capacity each). All four resource recovery facilities recover recyclables from the waste processed, and convert MMSW to renewable energy.

The operating capacity of several of the resource recovery facilities is somewhat variable month to month and year to year depending upon the composition of the MMSW received and the operational availability of resource recovery facilities (waste processing and waste-to-energy systems).

The MPCA commissioned a study in 2007 to identify critical issues related to Minnesota’s MMSW resource recovery system (*Minnesota Resource Recovery Association Road Map*, HDR, 2007). The report outlined the replacement cost of resource recovery facilities currently serving Minnesota. The study indicated that since the original development of the four metropolitan area facilities, the development costs and the cost to erect new resource recovery facilities has increased significantly. MPCA estimates that just the capital cost alone to replace metropolitan resource recovery capacity exceeds \$950 million. Therefore, MPCA has concluded that retaining and fully utilizing existing facility capacity is a strategic objective. Retaining the current resource recovery system appears to be a good investment versus spending more than \$1 billion (when development costs are included) to replace the facilities at some later date.

Closure of one or more resource recovery facilities would divert delivery of MMSW from resource recovery facilities to landfills. If all four facilities closed, the diversion of MMSW would more than double the amount of waste deposited into landfills. The failure of the metropolitan area to use resource recovery facilities would result in filling the present landfills at twice the current rate and the need to develop new landfills and further expand the landfills now operating. Over the period of the Policy Plan, the failure of the metropolitan resource recovery system would shift over 20 millions tons of MMSW into landfills. Since resource recovery facilities also separate out and recycle materials from MMSW, facility closures would also reduce the state's recycling rate.

The MPCA recently examined literature and national research into the performance of waste-to-energy facilities in the United States (US) in comparison to US landfills equipped with the most advanced landfill gas to energy systems. MPCA's analysis did not take into account the significant added benefits related to recycling of commodities which is performed by all of Minnesota's resource recovery facilities. Even without adding recycling into the analysis, the MPCA concluded that waste-to-energy is far superior to even the very best landfill in terms of pollution reduction, energy production, and long term liability. MPCA concluded that each of the four metropolitan area resource recovery facilities is ten times more efficient in converting waste to energy than the most effective landfill gas system. Moreover, resource recovery facilities do not create long term liability and perpetual care costs (see Appendix D).

The MPCA has extensive experience with the legacy costs of landfills through administration of the Closed Landfill Program. Through 2011, MPCA has spent over \$366,000,000 at 112 landfills in the state.

The **Great River Energy (GRE)** resource recovery facility is located north of the metropolitan area in Elk River (Sherburne County). It is owned and operated by GRE. The facility has operated for more than 20



years. Over the past three years, more than 90 percent of the MMSW delivered was metropolitan area unprocessed waste. Sherburne County accounted for the remaining MMSW. The facility produces refuse derived fuel (RDF) that is incinerated for electricity. The operating capacity is in part limited by the ability of GRE to market RDF to its Elk River power station that is dedicated to convert waste to electrical power. The facility also sorts waste to recover recyclables. The facility pays a host fee to the City of Elk River. The

facility currently has a stated operating capacity of 300,000 tons per year. The facility has significant available capacity, about 100,000 tons in 2011.

The **Hennepin Energy Recovery Center (HERC)** resource recovery facility is located in downtown Minneapolis adjacent to the Target Field. It is owned by Hennepin County and operated by Covanta. The facility has operated for more than 20 years. Over the past three years, 100 percent of the MMSW delivered was metropolitan area unprocessed waste. The facility burns MMSW to produce electricity and thermal energy. The facility also recovers metals from the ash for recycling. The facility pays no host fees. The facility currently has an operating (permitted) capacity of 365,000 tons per year. HERC has virtually no MMSW available capacity.



The **Resource Recovery Technologies (RRT)** resource recovery facility is located in Newport (Washington



County). It is owned and operated by RRT. The facility has operated for more than 20 years. Over the past three years, more than 90 percent of the MMSW delivered was metropolitan area unprocessed waste. Several southern Minnesota counties accounted for the remaining MMSW. The facility produces refuse derived fuel (RDF) that is incinerated for electricity. The operating capacity is partly limited by the capacity of RRT to market RDF to two dedicated Xcel energy power plants that convert the RDF to electrical power. The facility also sorts waste to recover recyclables. The facility pays no host fees. The facility currently has a stated operating capacity of 430,000 tons per year. RRT's MMSW available capacity is

moderate, about 30,000 tons per year.

The **City of Red Wing** resource recovery facility is located southeast of the metropolitan area in the City of Red Wing (Goodhue County). It is owned and operated by the City of Red Wing. The facility has operated for more than 20 years. Over the past three years, 30-40 percent of the MMSW delivered was metropolitan area unprocessed waste (Dakota County). Goodhue and Wabasha Counties accounted for the remaining MMSW. The facility begins by sorting MMSW to recover recyclables and remove non-combustible materials. The facility produces process steam for industrial leather processing by incinerating waste. The facility pays no host fees. The facility currently has an operating capacity of 30,000 tons per year. Red Wing's MMSW available capacity is small in comparison to the region but large given its total permitted capacity, about 10,000 tons per year.



## Mixed Municipal Solid Waste available processing capacity

The table below shows the four resource recovery facilities that currently receive metropolitan MMSW. It shows permitted capacity which is the maximum annual throughput (per MPCA permit), 2011 annual operating capacity, 2011 MMSW delivery, and the gap in waste delivery versus the available operating capacity.

The data in the table below is from MPCA facility annual reports. SCORE data and Certification Report data from metro Counties may not be entirely consistent with the facilities actual gate receipts. It is the MMSW tons delivered that determines whether or not the resource recovery facilities are operating at capacity.

RR Facility	Permit Capacity (tons/year)	2011 Operating Capacity (tons/year)	2011 MMSW Delivery (tons/year)	2011 Unused Capacity (tons/year)
HERC	365,000	365,000	365,000	0
GRE	500,000	300,000	200,349	99,651
RRT	540,000	430,000	399,810	30,190
City of Red Wing	30,000	30,000	20,687	9,313
Total	1,435,000	1,125,000	985,846	139,154

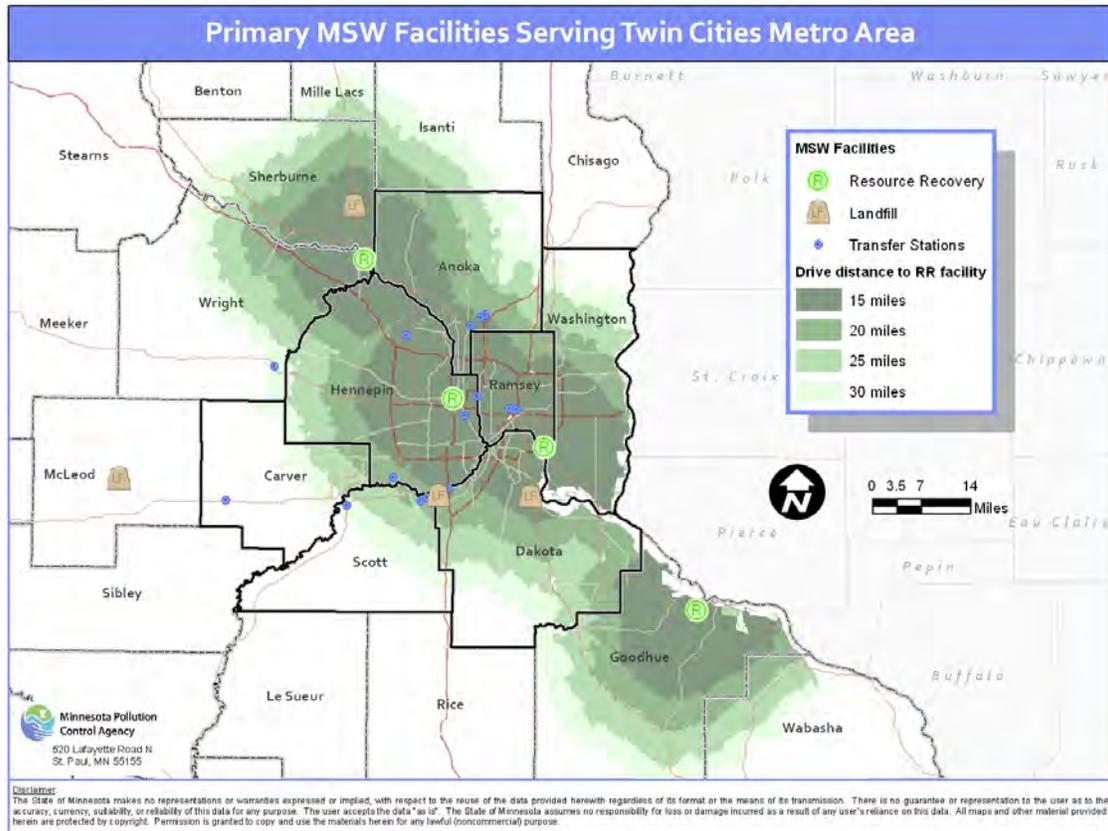
## Mixed Municipal Solid Waste delivery considerations

The MPCA believes that implementation of the restriction on disposal requirements in statute is feasible and will result in greater processing of waste through resource recovery and may actually reduce MMSW transportation costs. MMSW resource recovery facilities are not located in remote locations. The map below shows that MMSW is generated in sufficient amounts near the four facilities to fill the facilities' respective operating capacities. In addition, a substantial amount of MMSW is handled by transfer facilities that accept MMSW from waste collection trucks and subsequently reload MMSW into larger semi-trailers. Therefore, MPCA does not anticipate the need to move MMSW long distances. For example, there would be no need to transport MMSW from southern Dakota County across the metropolitan area to supply MMSW to the GRE facility in Elk River. By the same token, it is anticipated that only a small amount of metropolitan MMSW will be diverted from the Spruce Ridge landfill in McLeod County because there is no resource recovery facility anywhere near the landfill.

In the past, Metropolitan Counties have used various tools to ensure that MMSW was processed using resource recovery. Generally, until the past several years, these measures have been sufficient to utilize the operating capacity of resource recovery facilities. County measures to direct MMSW to resource recovery have included:

- Incentive payments to MMSW resource recovery facilities
- Subsidy payments made to MMSW waste haulers
- Contracts for the delivery of MMSW
- Initiatives to organize MMSW collection
- Initiatives to direct MMSW generated by public entities

The owners and operators of land disposal facilities, resource recovery facilities, and transfer stations communicate about MMSW flow extensively now. Almost 90% of the available capacity for resource recovery facilities is already filled through voluntary arrangements. Operators communicate to arrange MMSW flow from waste haulers and transfer facilities to landfills and resource recovery. In addition, resource recovery facilities arrange disposal of residuals and ash with operators of disposal facilities. For the past 20 years of operation, resource recovery facilities have also built effective lines of communication with haulers to re-direct MMSW delivery to landfills during periods of scheduled and unscheduled outages, when MMSW cannot be delivered. These are times when resource recovery facilities cannot process MMSW due to required repair and maintenance. Resource recovery facilities have limited storage capacity, so bypass periods are necessary. MPCA believes that implementation of the restriction on disposal requirements will be very smoothly integrated with other MMSW delivery considerations especially with robust lines of communication already in place and operating.



Some background information on why MMSW is delivered to one facility and not another might help inform the reader that multiple considerations are in place for waste generators, waste haulers, local units of government, and the State of Minnesota. The restriction on disposal requirements of Minn. Stat. § 473.848 is only one additional factor in MMSW delivery.

Currently four primary factors govern waste flows:

- Hauler preference
- Location and logistics
- Pricing and incentives
- Specification by waste generators

#### *Hauler preference*

MMSW haulers may prefer emptying their waste collection trucks at land disposal or transfer facilities that they own and operate as opposed to facilities owned by other firms or public facilities. Owning all essential components of a waste management business - collection trucks, transfer stations, recycling centers, and land disposal facilities - is called vertical integration. Vertical integration is practiced by Minnesota's largest waste firms. These companies haul waste and typically own MMSW disposal facilities in Minnesota and neighboring states.

#### *Location and logistics*

Where MMSW is generated relates directly to the disposal site selected. Collection trucks fill up and must be emptied so routing schemes contribute heavily to where waste flows. MMSW haulers choose convenient locations to empty trucks so the trucks can be returned to collection duty as soon as possible.

Haulers often use transfer stations to more effectively deploy collection trucks. Then the choice of landfill or processing facility destination is left to the transfer station operator.

### *Pricing and incentives*

MMSW disposal/processing prices or “tipping fees” are another primary consideration behind where waste flows. MMSW haulers will generally seek the lowest tipping fees. However, several counties offer financial incentives to haulers to use resource recovery facilities. Although the costs and prices vary, without government subsidies, the actual tipping fees charged to haulers are generally lower at landfills than resource recovery facilities.

Several metropolitan area counties have systems that pay subsidies to MMSW haulers that deliver waste to resource recovery facilities instead of land disposal facilities. Some counties have discontinued subsidy programs and others have expressed a desire to reduce or eliminate subsidies in favor of a “merchant” or market approach to MMSW disposal. However, all seven metropolitan counties strongly favor resource recovery facilities and waste processing over land disposal.

### *Specification by waste generators*

The last factor driving the flow of MMSW is the fact that MMSW generators can specify where (a landfill or resource recovery facility) MMSW haulers dispose of their trash. Generators instructing haulers to use one facility over another is extremely rare in the marketplace of MMSW collection service. Generators specify the location of MMSW disposal generally in one of the following two circumstances:

First, some public entities specify where MMSW will be disposed in accordance with Minn. Stat. § 115A.471. The direction from the public entity is made to the waste hauler to assure that the public entity is in compliance with the MPCA’s Policy Plan and/or the specific County Solid Waste Management Master Plan. However, voluntary compliance with public entity requirements is not consistent from county to county.

Second, some private MMSW generators specify where MMSW haulers shall deposit their MMSW. This generally occurs if the firm or institution has concerns about long term liability related to landfill clean-up or has participated in litigation regarding pollution from solid waste landfills. Another motivation of some MMSW generators is to ensure that materials and information contained in the waste that could be retrieved and misused is destroyed. In most cases these private generators direct haul to processing facilities or WTE facilities.

MPCA concludes that, in addition to all the other factors that must be considered by waste generators and waste haulers, the restriction on disposal requirement is a relatively simple and straightforward statutory limitation on landfills that accept metropolitan MMSW. MPCA does not view the permit condition at landfills and resource recovery facilities as creating anti-trust or anti-competitive conditions. Waste haulers have options for disposal and facilities have clear requirements for compliance. So too, the landfills and resource recovery facilities have known that the restriction on disposal governed MMSW management in the metropolitan area for decades. Therefore, any contract that the facilities entered should have been written to allow the parties to comply with all provisions of Minn. Stat. §§ 115A and 473.

## **Fees paid by facilities to cities and counties**

The MPCA received input and comments regarding the estimated impact on several communities occurring from MPCA proposed enforcement of restriction on disposal. These comments focused on fees cities and counties receive from landfills. To understand the comments it may be helpful to explain more about city and county fees.

The Waste Management Act gives counties and cities considerable authority to impose fees on landfills within their jurisdiction (Minn. Stat. § 115A.919, § 115A.921, & § 400.08). These statutorily authorized fees are subject to certain limits and “ear mark” funds paid to the city and county so that they are used for solid waste purposes. The use of funds is broadly limited to solid waste management programs, landfill abatement purposes, and the mitigation of the long term impacts of landfill operations (although cities may use a portion of the fee collected for any general fund purpose). These fees can be imposed by the city or county without the consent of the landfill owner/operator. McLeod County uses this fee approach. The fees that McLeod County collects from the Spruce Ridge landfill pay for the County’s outstanding recycling and landfill abatement programs. Sherburne County also collects this type of fee but also funds solid waste programs using other funding sources.

Some cities and one county in Minnesota have chosen to negotiate voluntary “host community” fees through a contract with the landfill owner/operator. The contracts often note that the voluntary fee agreement is being executed in lieu of the city or county imposing the statutory fee. Under these arrangements, the city or county is free to spend the fees as they see fit without the restrictions imposed by statute. These contracts may also set fee schedules without the restrictions on the amount or schedule of charges set out in applicable state statutes. Dakota County (several landfills), the City of Burnsville (Burnsville Landfill), and the City of Inver Grove Heights (Pine Bend Landfill) use this voluntary host fee arrangement. Terms may include an annual fee, a monthly fee, and/or fees indexed based on the deposit of MMSW and other types of waste. Several communities also receive complementary services from the landfill owner/operator provided under these agreements. These may include waste disposal services at public venues, community clean up days, and/or problem material disposal.

MPCA estimates that any annual reduction in fee payments would be deferred and not lost. The restriction on disposal would prolong landfill life and the period for which annual base charges could be collected by the host community and extend the years during which a community could negotiate services to be provided by the landfill owner/operator.

Almost all of Minnesota’s counties use some type of solid waste fees to support their solid waste management programs. Most use a combination of fees and revenues from state grants to fund their recycling and other landfill abatement programs. Only two counties (Dakota and McLeod) exclusively use landfill fee authority or facility fees collected under a host community agreement to fund the county share of solid waste program expenses.

Burnsville and Inver Grove Heights used the MPCA’s estimated metropolitan MMSW diversion estimate to calculate an estimated annual reduction in the fees that may be paid to the City if restriction on disposal of metropolitan MMSW were enforced by MPCA. For example, the City of Burnsville estimated that if the restriction were in place in 2011, then the fees paid would have been reduced from \$930,000 to \$810,000. Similarly, the City of Inver Grove Heights estimated a reduction of \$160,000 to the 2011 payments from \$2.3 million in fees to \$2.14 million.

McLeod County submitted an estimate to MPCA forecasting a very large reduction in fees because the County assumed that all metro MMSW would be diverted away from the Spruce Ridge Landfill. This assumption is not consistent with MPCA estimated small diversion of metropolitan MMSW (estimate around 4%), since waste located closer to the resource recovery facilities is expected to close the processing gap. McLeod County reported that in 2011, there was a large increase in metropolitan MMSW from the years 2007 through 2010. This is consistent with MPCA’s information concerning a shift away from resource recovery facilities. In 2011, MMSW delivery increased by over 25% from 153,360 tons to 211,593 tons. McLeod County’s breakdown of total MMSW delivered to Spruce Ridge in 2011 included:

- 211,593 tons of MMSW delivered to the Spruce Ridge landfill overall.
- 142,755 tons of MMSW from 12 non-metropolitan Counties including Wright , Stearns, Kandiyohi, LeSueur, and McLeod County. This MMSW is not regulated by the restriction on disposal. This non-

metropolitan MMSW accounts for 68% of the MMSW that McLeod County reported to MPCA as delivered to Spruce Ridge in 2011.

- 67,085 tons of MMSW from 4 metropolitan counties including Carver and Hennepin. This is MMSW that is regulated by the restriction on disposal. This accounts for 32% of the MMSW that McLeod County reported to MPCA as delivered to Spruce Ridge in 2011.
- McLeod County reports collecting \$8.16 per ton or \$1,726,599 in 2011.

If MPCA is correct in the assumption that restriction on disposal would divert about 4% of the MMSW from Spruce Ridge Landfill, then McLeod County's fees would drop from \$1,726,599 to \$1,657,535.

MPCA also received comments from Glencoe Light and Power Commission regarding the Commission's electrical power purchases of renewable energy produced by the Spruce Ridge Landfill as a result of the landfill's gas incineration systems. The comment stated that because landfill gas generation is linearly connected to waste deposition, if the total waste deposited at the landfill is decreased by 1% (over the life of the landfill), then the gas generation would decrease by a corresponding amount. The comment also stated that there would be a lag in a reduction in gas production over many years because the waste does not immediately emit its full potential of methane. As reported in the landfill's 2010 annual report to MPCA, approximately 20% of the gas produced was flared, and thus was not used to produce energy. If gas production increases, it can't be assumed that it will all be used to produce energy; each additional engine requires a certain fixed amount of additional gas generation. The gas being incinerated by the landfill is being generated by waste deposited into the landfill over the past decade.

MPCA has carefully reviewed the input from communities on potential impacts, including those that expressed opposition (e.g. McLeod County and Glencoe Light and Power Commission) and those that expressed support (e.g. City of Elk River and Dakota County) for enforcing the restrictions on disposal of metropolitan MMSW. MPCA believes that the impacts are outweighed by the likely positive aspects related to lengthening the useful life of landfills, potentially increasing "host community fees", and spreading the payment of fees and generation of methane over a longer period of time.

## Mixed Municipal Solid Waste service pricing

The MPCA has limited information on MMSW service pricing. However, in 2009, MPCA commissioned a study of residential MMSW service arrangements (Analysis of Waste Collection Service Arrangement, June 2009) and found that there was no relationship between MMSW service charges levied by waste haulers for MMSW residential service and where the hauler delivered the residential MMSW collected. The study showed that in almost all cities studied, organized collection resulted in lower prices. Second, the study indicated that organized collection was highly correlated with MMSW delivery to resource recovery facilities in the metropolitan area. MPCA has initiated research on how non-residential MMSW service pricing may be affected by the enforcement of restriction on disposal. At the time of MPCA's completion of this report, MPCA's review of billings has shown that there is no trend indicating that higher or lower MMSW service charges are correlated with landfill disposal or resource recovery.

## Restriction on Disposal – Compliance Plan

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The MPCA began considering a compliance strategy to implement the statutory restriction on disposal after the Agency was assigned the duty to administer the Metropolitan Landfill Abatement Act in 2005. MPCA began formally discussing a compliance strategy that could implement the restriction on disposal through resource recovery and landfill permits in 2009. Both landfills and resource recovery facility permits already require the operators to comply with all applicable provisions of Minn. Stat. chs. 115A and 473. However,

the present land disposal and resource recovery facility permits do not specify how facilities should operate in order to demonstrate compliance.

The substance of MPCA's proposal for implementing the restriction on disposal requirement is that landfill permits be amended to restrict landfills from accepting unprocessed metropolitan MMSW unless the waste has been certified by the county as unprocessable. The Policy Plan contains criteria for counties certifying when a waste is unprocessable. A waste is unprocessable when all reasonably available capacity within the Twin Cities Metropolitan Area processing system is fully utilized. In determining reasonably available capacity, the criteria in the Policy Plan provides that consideration will be given to the specific geographic area that typically support each of the processing facilities that serve the metropolitan area. Currently, the four landfills serving the metropolitan area would have this operating condition added to their permit to operate. For consistency, the remaining landfills in the state and all new landfills would also have this condition added to their permit to operate when the MPCA learns that unprocessed metropolitan MMSW is being taken to such landfills for disposal.

MPCA's proposal would also amend resource recovery facility permits to require that MMSW delivered to be processed could not be landfilled if another resource recovery facility could process the waste. The resource recovery facilities would also be required to certify waste as unprocessable if MMSW had to be bypassed and landfilled.

The MPCA proposes that permit conditions will require monthly reports from resource recovery facilities and landfills that receive metropolitan area MMSW. The permit modification would also specifically require that facilities comply with the restriction on disposal as outlined in Minn. Stat. § 473.848 and the criteria in the Policy Plan related to disposal of unprocessed metropolitan MMSW. Monthly reports from resource recovery facilities would inform MPCA as to MMSW delivery and capacity. If one or more resource recovery facilities did not have MMSW delivery equivalent to operating capacity, the landfills would be restricted from accepting metropolitan area MMSW.

It is clear that at the present time resource recovery facilities and land disposal facilities are not in compliance with the restriction on disposal. Permit modifications are needed.

The MPCA proposes to specify the duties of facilities in terms of their compliance with Minn. Stat. § 473.848. In 2011, and early 2012, MPCA proposed to facility operators that facility permits would be modified to require monthly reports from resource recovery facilities and landfills that receive metropolitan area MMSW and that permits be modified to comply with the restriction on disposal as outlined in Minn. Stat. § 473.848 and the criteria in the Policy Plan related to disposal of unprocessed metropolitan MMSW.

The text of draft permit modifications and reporting forms, as they were proposed to facilities in late 2011 and early 2012, are attached in Appendix B and C.

Several conditions lead to MPCA's decision to formally move toward obtaining compliance with the restriction on disposal requirements of Minn. Stat. § 473.848:

## **Reorganization**

Consolidation of statewide authority for solid waste management made it possible for MPCA to begin to develop an effective plan for gaining compliance with the restriction on disposal. Up until 2005, the authority for administering Minn. Stat. chs. 473 and 115A, and administering solid waste facility permits were divided among several Executive branch agencies. In 2005, the Legislature consolidated all duties within the MPCA.

## Clear and consistent standards

The basis of MPCA's strategy for gaining compliance with the restriction on disposal required MPCA to adopt standards for determining when waste is unprocessable and procedures for expediting certification and reporting of unprocessed waste. These duties are assigned to MPCA and outlined in Minn. Stat. § 473.848, subd. 4. The MPCA crafted a clear definition and criteria in the Policy Plan for determining when waste is "unprocessable". In the Policy Plan's Appendix D "Review Criteria", the MPCA stated that MMSW generated in the metropolitan area is unprocessable (and thereby, allowed to be disposed of in or on the land) only when all reasonably available capacity within the Twin Cities Metropolitan Area resource recovery processing system is fully used at 100 percent of its operating capacity. The criteria provided that in determining reasonably available capacity, consideration would be given to the specific geographic area that typically supports each of the processing facilities that serves the metropolitan area.

## County master plans and certification

All seven 2012 county Solid Waste Management Master Plans adopt the MPCA's Policy Plan's approach to implementing the restriction on disposal requirements. Each county's Master Plan states that the county will perform certification in cooperation with MPCA and use the criteria and standards related to restriction on disposal as outlined in Policy Plan. All of the metropolitan counties expressed their support for MPCA gaining compliance with Minn. Stat. § 473.848 using monthly reporting. Several metropolitan counties commented that they had tried and failed to enforce Minn. Stat. § 473.848. Their authority ended at county boundaries. County regulation of waste haulers alone was not seen as an effective method of gaining compliance with the restriction on disposal since most counties did not host a processing facility. MMSW is hauled into and out of counties making their ability to restrict disposal unmanageable.

## Permits governing landfills and resource recovery facilities

Essentially the entities most able to ensure compliance with the restriction on disposal requirements are facilities engaged in MMSW resource recovery and MMSW disposal. In Minnesota, these activities require permits from MPCA. Resource recovery facilities and landfills must obtain state solid waste permits. These permits require compliance with applicable state laws. MPCA permits generally require compliance with Minn. Stat. Chapters 115A and 473. However, MPCA permits have not previously specified how MMSW processing and land disposal facilities are to comply with the restriction on disposal requirements in Minn. Stat. § 473.848.

## Accountability for disposal

The MPCA needed to determine principal accountability for MMSW disposal. Disposal is defined in the Waste Management Act, Minn. Stat. § 115A.03 as follows:

- **Subd. 9 Disposal or dispose.**
- *"Disposal" or "dispose" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that the waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including groundwaters.*
- **Subd. 10 Disposal facility.**
- *"Disposal facility" means a waste facility permitted by the agency that is designed or operated for the purpose of disposing of waste on or in the land, together with any appurtenant facilities needed to process waste for disposal or transfer to another waste facility.*

Therefore, in obtaining compliance with the restriction on disposal requirement, MPCA views permitted landfills as the entity primarily accountable for "disposal" of MMSW generated in the metropolitan area. Currently, the four permitted MMSW landfills serving the metropolitan area are the primary facilities

receiving “unprocessed MMSW” in violation of the restriction on disposal. Waste generators, metropolitan local units of government, and most MMSW haulers do not engage in MMSW disposal. These entities are engaged primarily in MMSW waste collection and patronize both resource recovery and disposal facilities.

### **Proposed permit modifications and reporting to implement the restriction on disposal**

The MPCA has formulated permit modifications for MMSW resource recovery and MMSW land disposal facilities (landfills) that accept metropolitan area MMSW. The proposed permit conditions were crafted to be consistent with the Minn. Stat. § 473.848 and the Policy Plan. The proposed permit modifications are designed to be workable for the owners and operators and for waste haulers using the facilities. The proposed permit modifications lay out facility restriction on disposal compliance and reporting requirements (Appendix C). The MPCA has proposed that resource recovery facilities and landfills report information regarding their management of metropolitan MMSW (Appendix B). Monthly reporting of MMSW delivery, origin, and disposition are the key to compliance management. Both MMSW resource recovery facilities and landfills already gather the information contained in the report. Several of the facilities already prepare monthly reports to other entities for other purposes. In consultation with representatives from each of the facilities, none of the owners or operators asserted that reporting was not workable.

### **Resource recovery facility permits**

Resource recovery facilities would see the addition of several permit conditions that require specific actions, including:

- *Submit a monthly summary of MMSW delivery, processing, and disposal.*
- *Provide information demonstrating that the facility performed “processing” through recycling, incineration for energy production, production and use of refuse-derived fuel, composting, or any combination of these processes so that the weight of the waste remaining that must be disposed of in a MMSW disposal facility is not more than 35 percent of the weight before processing, on an annual average.*
- *Certify that waste that the facility cannot process is in fact “unprocessible”.*
- *Assure that if MMSW is delivered to the facility and the waste cannot be processed, it is transferred to another metropolitan resource recovery facility that has capacity for recovery, if available.*

### **Land disposal (landfill) permits**

Land disposal facilities (MMSW landfills) would see modifications to their permit that would require specific actions, including:

- *Submit a monthly MMSW delivery report.*
- *Prohibit the disposal of processible metropolitan MMSW.*
- *Restrict land disposal of MMSW generated in the metropolitan area to MMSW that is “unprocessible”.*

Once permit modifications are in place and reports from facilities are submitted, the MPCA will review reports from MMSW landfills and resource recovery facilities to determine if MMSW that is bypassing resource recovery facilities is being accepted at land disposal facilities in violation of the permit. If so, MPCA will attempt to resolve the violation. If not, MPCA will take no action and continue to monitor monthly.

Compliance with the restriction on disposal will not be difficult for waste haulers, transfer stations, land disposal facilities and resource recovery facilities to achieve. Owners and operators of landfills and resource recovery facilities already communicate and work with each other to arrange residual disposal from resource recovery facilities, assist hauler and transfer stations to arrange waste deliveries, and work cooperatively during scheduled and un-scheduled outages of resource recovery facilities. It is reasonable to

anticipate that land disposal facilities' operators can readily obtain the information and take the actions needed to comply with the restriction on disposal.

The MPCA does not need to direct MMSW deliveries. The facility owners are responsible for complying with the restriction on disposal requirement by not taking metropolitan MMSW that is processible. Haulers and counties, and others who manage metropolitan MMSW, are responsible for making delivery arrangements that comply with the restriction on disposal. However, MPCA does need to monitor and assure metro MMSW management is in compliance with the restriction on disposal and other applicable laws through the reporting requirements in the permits.

The MPCA believes that the time required to complete permitting could be 8 to 16 months. Delay would cause tens of thousands of tons of processible MMSW to be landfilled. Permitting delays would increase land disposal, reduce renewable energy production and reduce recovery of ferrous and non-ferrous metals from MMSW. Unit costs for resource recovery facilities (cost per ton of MMSW) may increase if resource recovery facilities continue to operate below capacity.

The MPCA recommends that Legislative leaders retain the restriction on disposal requirements in Minn. Stat. § 473.848 as an essential element of effective waste management policy for Minnesota and support obtaining compliance without further delay.

# APPENDIX A

## Frequently Asked Questions

# Frequently Asked Questions

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The following are frequently asked questions regarding the MPCA's compliance strategy for restrictions on disposal:

- Q: Who is affected by the restriction on disposal requirements in Minn. Stat. § 473.848?
- A: Landfills and resource recovery facility owners and operators that have MPCA permits and that accept mixed municipal solid waste (MMSW) generated in the metropolitan area. Indirectly, MMSW haulers that bypass resource recovery facilities are also affected.
- Q: Why are resource recovery facilities preferable to new landfills with gas systems?
- A: Minnesota's support for resource recovery over land disposal with gas systems is supported by clear and unequivocal State policy, US EPA policy, the most recent research and analysis on how the technologies perform, and MPCA's experience with the long term costs and environmental impacts from dozens of open and closed landfills. WTE is superior to the best performing landfills, even those that collect landfill gas and burn it to produce energy. For example, resource recovery systems recover ten times the energy from each ton of waste and pull recyclables out of trash. Minnesota's long standing preference for WTE over landfills is supported by evidence and performance (see Appendix D in the Report).
- Q: Is the shortage at resource recovery facilities really a problem?
- A: Yes. Three of the four metropolitan resource recovery facilities have expressed concerns to the MPCA that the failure to comply with the restriction on disposal has affected their operations and if the bypassing continues, they may be forced to close. This would mean millions of tons would be landfilled needlessly. It would also mean the loss of jobs, renewable power, and recyclables. The cost to replace the system is estimated to be over \$1.0 billion dollars.
- Q: Will cities and counties that receive landfill taxes and fees suffer lost revenues if landfills comply with the law?
- A: Maybe. If so, MPCA's analysis indicates that the impact will be small. In 2011, only 139,154 tons of metropolitan MMSW would have been diverted from landfills to resource recovery facilities. If spread among the landfills, this equates to about ten percent of the waste landfilled. Local units of government have broad flexibility with the level of host fees and taxes. Extending the life of landfills may actually increase fees or at least spread payments over a longer period of time.
- Q: Will haulers, resource recovery facilities, and landfill owners know what to do to comply?
- A: Yes. The operators of resource recovery facilities, landfills, transfer stations and haulers work together and communicate regularly now. For more than two decades most resource recovery facilities operated at capacity. There is no reason to believe that implementing the restriction on disposal requirements will encumber decades of effective communications and operations.
- Q: Will resource recovery facilities gobble up all the MMSW?
- A: No, the four landfills serving the metropolitan area received more than 1.4 million tons of MMSW and other waste in 2011. More than 700,000 tons of that waste was unprocessed MMSW. The 2011 unused available MMSW processing capacity was 139,154. So, compliance with the restriction on disposal requirements will not put landfills out of business because of a shortage of waste.
- Q: Why enforce the law now?
- A: For the first time in decades, three resource recovery facilities serving the metropolitan have been increasingly bypassed in favor of landfills. Enforcement of restriction on disposal would preserve landfill capacity by preventing Minnesota landfills from accepting unprocessed metropolitan

MMSW until resource recovery facilities are fully used. The 2005 merger of OEA and MPCA and the development of the 2010 Policy Plan has allowed MPCA to now effectively enforce the law. MPCA has acted now because of the importance of preserving landfill capacity and resource recovery facilities that may close if MSW bypassing to landfills continues.

Q: Will industrial waste, construction and demolition waste, and contaminated soil be diverted from landfills?

A: No, the restriction on disposal requirements apply only to MMSW.

Q: Will small waste haulers be put out of business?

A: No. Small and large haulers will be on a level playing field. Only Waste Management and Allied Waste, as landfill owners, are subject to the restriction on accepting unprocessable MMSW for disposal at their MMSW landfill operations.

Q: Why is the MPCA enforcing compliance with the restriction on disposal primarily at landfills?

A: The restriction on disposal applies to both landfills and resource recovery facilities that accept unprocessed MMSW. The MPCA is proposing to amend the permits of both landfills and resource recovery facilities to include the restriction on disposal requirement. In obtaining compliance with the restriction on disposal requirement, MPCA views permitted landfills as the entity primarily accountable for "disposal" of MMSW generated in the metropolitan area as defined in statute. Currently, the four permitted MMSW landfills serving the metropolitan area are the primary facilities receiving "unprocessed MMSW" in violation of the restriction on disposal. Resource recovery facilities arrange MMSW processing and disposal and also must be accountable for processing MMSW and compliance with the restriction on disposal. Waste generators, metropolitan local units of government, and most MMSW haulers do not engage in MMSW disposal, but are engaged primarily in MMSW waste collection and patronize both resource recovery and disposal facilities.

Q: Will metropolitan area counties "certify" loads of trash in real time and in advance of MMSW delivery to landfills, transfer stations, or resource recovery facilities?

A: No. The restriction on disposal will be implemented via 4 landfill and 4 resource recovery permits (see attachment B) and monthly reports (see attachment C) to MPCA.

Q: Will trash prices go up?

A: MPCA studies indicate residential trash service prices are not affected by MMSW destination. Other factors such as subscription versus organized collection govern prices. Initial research on nonresidential trash service pricing indicates the same.

## **APPENDIX B**

# **Proposed Restriction on Disposal Reporting Forms**



**Minnesota Pollution Control Agency**

520 Lafayette Road North  
St. Paul, MN 55155-4194

# Metropolitan MMSW Monthly Report for Resource Recovery Projects

Mixed Municipal Solid Waste (MMSW)  
Restriction on Disposal Minn. Stat. § 473.848

Doc Type: **Need from Agency taxonomy**

**Instructions:** Minnesota law requires facilities to report solid waste data to the Minnesota Pollution Control Agency (MPCA). Counties also use the data to help ensure that waste is properly managed. To assist us in those efforts, please send the signed form to the attention of Sig Scheurle by mail to the address above or fax to 651-215-0246. To submit your form electronically, please scan the signed form and send via e-mail to Sig Scheurle at [sig.scheurle@state.mn.us](mailto:sig.scheurle@state.mn.us). If you have any questions, please contact Sig Scheurle, MPCA, at 612-669-1377 or [sig.scheurle@state.mn.us](mailto:sig.scheurle@state.mn.us).

Facility name: \_\_\_\_\_ Report month and year: \_\_\_\_\_  
Solid waste permit number: SW- \_\_\_\_\_ Air quality permit number: \_\_\_\_\_

**Table 1: Mixed Municipal Solid Waste (MMSW) Received by County of Origin**

If you accept MMSW, enter the amount in **Tons only** in the table below.

	Anoka	Carver	Dakota	Henn.	Ramsey	Scott	Wash.	Other MN	Other Out of state	Total
MMSW tons										

**Table 2: Outbound Unprocessed MMSW by County of Origin and End Facility**

Enter the **Tons of MMSW from each County** that the facility transferred during the month, and list the **Name of each end facility** receiving that MMSW.

Name of MMSW end facility	Anoka	Carver	Dakota	Henn.	Ramsey	Scott	Wash.	Other MN	Other Out of state	Total

**Table 3: Outbound Other Waste to Landfill by County of Origin (Residuals, rejects, bulky waste, etc.)**

Enter the **Tons from each County** that the facility transferred during the month, and list the **Name of each end facility** receiving.

Name of end facility	Anoka	Carver	Dakota	Henn.	Ramsey	Scott	Wash.	Other MN	Other Out of state	Total

**Table 4: Outbound Other by County of Origin (Recyclables, refuse derived fuel, etc.)**

Enter the **Tons from each County** that the facility transferred during the month, and list the **Name of each end facility** receiving.

Name of end facility	Anoka	Carver	Dakota	Henn.	Ramsey	Scott	Wash.	Other MN	Other Out of state	Total

Did the resource recovery facility operate below capacity due to a shortage of MMSW deliveries?  Yes  No

**Certification:** I certify under penalty of law that this document and all attachments were prepared under my direction or supervision under a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. Further, I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

Operator name (print): \_\_\_\_\_ Title: \_\_\_\_\_  
Mailing address: \_\_\_\_\_ Phone number: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_



**Minnesota Pollution Control Agency**

520 Lafayette Road North  
St. Paul, MN 55155-4194

# Metropolitan MMSW Monthly Report for Landfills

Mixed Municipal Solid Waste (MMSW)  
Restriction on Disposal Minn. Stat. § 473.848

Doc Type: **Need from Agency taxonomy**

**Instructions:** Minnesota law requires facilities to report solid waste data to the Minnesota Pollution Control Agency (MPCA). Counties also use the data to help ensure that waste is properly managed. To assist us in those efforts, please send the signed form to the attention of Sig Scheurle by mail to the address above or fax to 651-215-0246. To submit your form electronically, please scan the signed form and send via e-mail to Sig Scheurle at [sig.scheurle@state.mn.us](mailto:sig.scheurle@state.mn.us). If you have any questions, please contact Sig Scheurle, MPCA, at 612-669-1377 or [sig.scheurle@state.mn.us](mailto:sig.scheurle@state.mn.us).

Facility name: \_\_\_\_\_ Report month and year: \_\_\_\_\_  
Solid waste permit number: SW- \_\_\_\_\_ Air quality permit number: \_\_\_\_\_

### Table 1: Mixed Municipal Solid Waste (MMSW) Disposed by County of Origin

If you disposed of MMSW, enter the amount **in tons only** in the table below.

	Anoka	Carver	Dakota	Henn.	Ramsey	Scott	Wash.	Other MN	Other Out of state	Total
MMSW tons										

### Table 2: County Certified Unprocessed MMSW by County of Origin

Enter the **tons of unprocessed MMSW from each county** that were disposed and certified by that county as unprocessable in advance during the month.

County Certified MMSW	Anoka	Carver	Dakota	Henn.	Ramsey	Scott	Wash.	Total

### Table 3: Resource Recovery Certified Unprocessed MMSW by County of Origin

Enter the **tons of unprocessed MMSW from each county** that were disposed and certified by that county as unprocessable in advance by a resource recovery facility during the month.

Resource Recovery certified MMSW	Anoka	Carver	Dakota	Henn.	Ramsey	Scott	Wash.	Total

### Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision under a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. Further, I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

Operator name (print): \_\_\_\_\_ Title: \_\_\_\_\_  
Mailing address: \_\_\_\_\_ Phone number: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**APPENDIX C**  
**Proposed Restriction On Disposal Permit**  
**Amendments**

## Restriction on Disposal in Minn. Stat. § 473.848

### Draft Paragraph for Inclusion in Permits for Resource Recovery Facilities

The Permittee shall not transfer unprocessed mixed municipal solid waste (MMSW) generated in the 7-County metropolitan area from the Facility to a disposal facility unless the Permittee certifies that no other resource recovery facility serving the metropolitan area is capable of processing the waste and that the waste is unprocessable by the Facility under Minn. Stat. § 473.848, subd. 3. The certification shall be made on each load of mixed municipal solid waste it does not process. Certification must be made in writing to any landfill to which the resource recovery facility directs MMSW for disposal. A summary report of resource recovery facility certifications must be made to the MPCA on the Metropolitan Area MMSW Monthly Report and to each county that sends its waste to the facility at intervals specified by the county. Certification of MMSW for disposal must include at least the number and size of loads certified as unprocessable, the name of the disposal site, and the reasons the waste is unprocessable. Loads certified as unprocessable must include the loads that would otherwise have been processed but were not processed because the facility was not in operation.

For the purpose of this section of the Permit, waste is defined in Minn. Stat. § 473.848, subd. 5 as "unprocessed" if it has not, after collection and before disposal, undergone separation of materials for resource recovery through recycling, incineration for energy production, production and use of refuse-derived fuel, composting, or any combination of these processes so that the weight of the waste remaining that must be disposed of in a mixed municipal solid waste disposal facility is not more than 35 percent of the weight before processing, on an annual average. Within 7 days after the end of each month, the Permittee shall submit to the MPCA a Metropolitan MMSW Monthly Report on a form prescribed by the MPCA and in accordance with the instructions on the form. The Report shall include information on the quantities by county of origin of MMSW received and processed at the Facility, and unprocessed MMSW transferred to another resource recovery facility or to a disposal facility. The Permittee shall keep a daily accounting of MMSW by county of origin, amounts received, amounts processed, and amounts transferred to another resource recovery facility or to a waste disposal facility and shall make these records available to MPCA upon request.

## Restriction on Disposal in Minn. Stat. § 473.848

### Draft Paragraph for Inclusion in Permits for Disposal Facilities

The Permittee shall not accept and dispose of at the Facility any unprocessed mixed municipal solid waste (MMSW) generated in the 7-County metropolitan area unless the county in which the waste was generated has certified that waste is unprocessable under Minn. Stat. § 473.848 and the standards for waste certification in Appendix D, Paragraph 2.c. and 2.d.iii. of the Metropolitan Solid Waste Policy Plan 2010-2030 (Policy Plan), or unless land disposal of MMSW is consistent with the standards for waste certification in Appendix D, Paragraph 2.c. and 2.d.iii. of the Metropolitan Solid Waste Policy Plan 2010-2030 (Policy Plan) or unless the waste has been certified as unprocessable by a resource recovery facility under Minn. Stat. § 473.848.

For the purpose of this section of the Permit, waste is defined in Minn. Stat. § 473.848, subd. 5 as "unprocessed" if it has not, after collection and before disposal, undergone separation of materials for resource recovery through recycling, incineration for energy production, production and use of refuse-derived fuel, composting, or any combination of these processes so that the weight of the waste remaining that must be disposed of in a mixed municipal solid waste disposal facility is not more than 35 percent of the weight before processing, on an annual average.

The Permittee may dispose of specific loads of unprocessed metropolitan MMSW coming from a resource recovery facility if each load is certified as unprocessable by the operator of the resource recovery facility.

If the MMSW does not come from a resource recovery facility, the Permittee may dispose of specific loads of unprocessed MMSW generated in the 7-County metropolitan area if there is no reasonably available capacity to process the waste at a processing facility serving the metropolitan area or if each load is certified as unprocessable by the county where the waste was generated in accordance with Minn. Stat. § 473.848 and Appendix D, Paragraphs 2.c. and 2.d.iii. of the Policy Plan. The Permittee shall keep records showing that processing facilities were not available to process the MMSW.

The Permittee shall keep a record of all loads of MMSW certified as unprocessable by a County or by a resource recovery facility operator as unprocessable.

Within 7 days after the end of each month, the Permittee shall submit to the MPCA a Metropolitan Area MMSW Monthly Report on a form prescribed by the MPCA and in accordance with the instructions on the form. The Report shall include information on the quantities of MMSW received and disposed of at the Facility by county of origin. The Permittee shall keep a daily accounting of MMSW by county of origin, amounts received, amounts recycled, and amounts disposed of and shall make these records available to MPCA upon request.

**APPENDIX D**  
**MPCA Program Management Decision**



# Minnesota Pollution Control Agency

## PROGRAM MANAGEMENT DECISION MEMO

Issue: Waste-to-Energy (WTE) in an Integrated Solid Waste Management System

Effective Date: June 14, 2010

### **DECISION**

*After a recent review of published information about the performance of WTE plants and landfills, the MPCA reaffirms that the state's waste hierarchy properly places WTE plants as one step up from landfills for dealing with waste that Minnesotans have failed to separate at the source for reuse, recycling, or composting. Notwithstanding the important role WTE can play in an integrated Solid Waste Management System, each facility must satisfy all the requirements of environmental review and the permitting process.*

### **BACKGROUND**

In 2006, the MPCA published a position paper ("MPCA Position on Waste-to-Energy," November 14, 2006) stating that waste-to-energy has an important role in the solid waste system, based in part on the following points:

- Any waste-to-energy facility operating today must meet rigorous federal air pollution standards. Today's waste-to-energy facilities have proved these can be achieved with high reliability;
- A waste-to-energy facility is part of an integrated waste management system that maximizes the recovery of materials and energy from the waste;
- Greater self-sufficiency in energy production for Minnesota and for the nation is a desirable outcome; and
- Today's citizens and businesses should manage today's waste rather than storing it in dry landfills for future generations to grapple with.

This Program Management Decision supersedes that position paper. At the request of MPCA senior managers, technical staff reviewed literature to compare WTE plants and landfills on five criteria:

- Energy recovery per ton
- Effect on recycling rates
- Costs at existing facilities
- Greenhouse-gas emissions
- Air pollution other than GHG emissions

### **RATIONALE**

As a general matter the MPCA has endorsed and will continue to endorse the concept that some portion of mixed municipal solid waste ("MMSW") now going to landfills should be going into a WTE system instead, because it is in line with the Waste Management hierarchy (see quoted statute, below). The Waste Management hierarchy in Minnesota calls for moving waste "up" a statutorily-defined hierarchy whenever practical, in light of regional circumstances. In general, the greatest benefits are achieved at the top of the hierarchy. County governments decide the combination of waste management practices that best meets their community's needs, and the particular waste management practice they want to implement at a particular point in time, as incorporated in their MPCA-approved solid waste plans. Despite guidance from the hierarchy, however, Minnesotans' dependence on landfills has grown significantly over the last 15 years. There is so much garbage going into landfills each year (2 million tons a year) that Minnesota's existing WTE plants could employ all their unused capacity without threatening goals that call for more reduction, reuse, recycling, and organics processing.

Summarizing the results of the literature review concerning WTE plants and landfills on the five criteria (For a link to more information on these topics, click [here](#)):

- Energy recovery per ton: On a per-ton of mixed municipal solid waste (MMSW) basis, waste-to-energy (WTE) is clearly superior to landfill-gas-to-energy (LFGTE) in terms of the amount of usable energy produced. This edge is even greater for high-performance WTE plants where a high proportion of metals are pulled out ahead of the combustion process, and "combined heat and power" plants of the type now being built to handle garbage in Northern Europe. Olmsted County recently added such a high-performance plant when expanding its waste-processing system. On its own, however, there is not enough municipal solid waste in Minnesota to match wind turbines as a renewable energy source: Even if 1.5 million tons of MMSW that is currently landfilled yearly were directed to an expanded WTE network, the renewable energy produced would amount to no more than a few percent of the state's total electrical consumption. (When expressed as a percentage of additional baseload electrical generation that is needed before 2025, however, the share from such a WTE expansion could be closer to ten percent.)
- Effect on recycling rates: MPCA finds no evidence that the state's WTE system and its recycling system are working at cross purposes. The most important single factor in boosting reduction and recycling appears to be a well-enforced, highly visible surcharge on the cost of mixed-waste disposal, because this sends a clear economic signal to all the handlers and generators of waste. Perhaps in part because the financing of WTE plants has been based on a fee added to tipping costs, there has been a positive correlation in the US and Europe between WTE usage and recycling rates. (With this caveat: unusually high WTE usage -- over 35 percent WTE of mixed solid waste in a region -- can place a cap on what could be achievable through additional reduction, recycling, and separated organics. But few regions in the world have attained such a high WTE usage level and the capital cost of WTE makes over-

## Waste-to-Energy Program Management Decision

sizing less likely than in the first wave of construction, when public financing was easier to obtain. )

- Costs at existing facilities: Setting aside uncertainty about the long-term costs of landfills, the out-of-pocket tipping fee charged to haulers delivering a ton of mixed waste to a large WTE plant will be at least twice as much as the tipping fee charged at a large landfill, if public subsidies for WTE are excluded. Because most of the cost of waste management is in the transportation of the waste to the disposal facility, the higher tipping fee for WTE translates into an additional cost of less than \$5 per household per month. While WTE plants produce significantly more energy per ton of waste than landfills with energy recovery, to date, such revenue has not been enough to offset fully the costs of expensive pollution control equipment required at all WTE plants. The same situation relates to all energy sources classified as renewable under Minnesota law: it is very difficult to match the low price of fossil fuels, particularly strip-mined coal.
- Greenhouse-gas emissions: On a per-ton of waste basis, WTE and landfill gas-to-energy facilities are largely indistinguishable in terms of greenhouse-gas emissions, although the calculation has large uncertainty bars. Best professional judgment suggests that a few hundred thousands of tons of greenhouse gases might be at stake depending on whether MMSW went to WTE or landfills, and depending on certain key assumptions such as the fate of carbon stored in landfills (termed “carbon sequestration”). MPCA used a methodology that assumes landfills will succeed in isolating a portion of the vegetative material that is disposed there. But under no scenario would sending 1.5 million tons to new WTE plants cut the total statewide GHG emissions by even one percent a year.
- Air pollution other than GHG emissions: Because landfill air emissions of criteria and hazardous air pollutants are modeled rather than measured, actual measurements are needed to confirm those models. Based on very limited and uncertain data and including the offsetting of emissions from Minnesota electricity production, WTE appears to be superior to LFGTE from a life-cycle point of view. The MPCA will continue to advance the scientific knowledge of air emissions and update its position as needed.

Again, these are observations based on national averages. Fortunately, site-specific data such as electricity delivery to the grid is available from Minnesota facilities. This can give insight into how the state’s WTE plants and landfills measure up and could be a subject for the Solid Waste Policy Report.

When communities consider building new facilities, MPCA staff can offer information about how to factor in waste generation trends including source reduction and reuse; opportunities to separate recyclables and organics ahead of WTE or landfilling; efficiency factors based on actual measurements rather than computer models; the role of controlled combustion in destroying materials such as pharmaceuticals that are better excluded from landfills; the role of pilot

## Waste-to-Energy Program Management Decision

projects versus proven, commercial-scale plants; the importance of engaging citizens from the earliest stages through performance monitoring; and the need to consider ambient air quality.

The MPCA's conclusions about the comparative standing of landfills will be quite limited when it comes to air emissions because there has been a persistent lack of actual data about air emissions from the surface area of landfills. While WTE plants must provide continuously or regularly monitored emission data for a specific set of air pollutants, landfills do not have to collect any continuous data from the surface of the landfill, only from the landfill-gas collection system and only if they have one. (The only exception is that rigorous air monitoring requirements do apply temporarily to landfills undergoing emergency response following odor problems or subsurface fires. Under such circumstances, air sampling covers only a limited set of compounds that need to be monitored for short-term exposures to workers and nearby residents, and thus exclude many chemicals that would ordinarily be considered in a permitting process. The MPCA is in touch with USEPA and Upper Midwest states to gather "lessons learned" on the emerging subject of how landfill upsets affect air quality.)

In conclusion, WTE plants continue to have an important role to play in the integrated solid waste management system. That said, any new facility will have to satisfy the requirements of environmental review and the permitting process. Proposals most likely to succeed will have strong community and financial support.

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### *Minnesota Waste Management Hierarchy (Minn. Stat. 115A.02b, as amended)*

"The waste management goal of the state is to foster an integrated waste management system in a manner appropriate to the characteristics of the waste stream and thereby protect the state's land, air, water, and other natural resources and the public health. The following waste management practices are in order of preference:

- (1) waste reduction and reuse;
- (2) waste recycling;
- (3) composting of source-separated compostable materials, including but not limited to, yard waste and food waste;
- (4) resource recovery through mixed municipal solid waste composting or incineration;
- (5) land disposal which produces no measurable methane gas or which involves the retrieval of methane gas as a fuel for the production of energy to be used on-site or for sale; and
- (6) land disposal which produces measurable methane and which does not involve the retrieval of methane gas as a fuel for the production of energy to be used on-site or for sale."

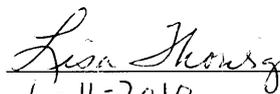
Waste-to-Energy Program Management Decision

**APPROVAL**

I have reviewed this program management decision and I concur:

Signed:   
Date: 6/14/10  
Tim Scherkenbach  
Deputy Commissioner

Signed:   
Date: 6-11-10  
David Thornton  
Assistant Commissioner

Signed:   
Date: 6-11-2010  
Lisa Thorvig  
Director, Municipal Division

Signed:   
Date: 6/14/10  
Mike Sandusky  
Director, Environmental  
Analysis and Outcomes Division

Signed:   
Date: 6-11-2010  
Dave Benke  
Director, Prevention and  
Assistance Division

Signed:   
Date: 6-14-10  
Jeff Smith  
Director, Industrial Division

**APPENDIX E**  
**MPCA Response To Public Comments**

## Response to Public Comments on the DRAFT Metropolitan Waste Disposal Restrictions Report

The following table is a summary of substantive comments made on the draft Metropolitan Waste Disposal Restrictions Report, and MPCA's responses.

- Comments are often paraphrased in this table, and similar comments are grouped together under the same identification number.
- References to table, figure, and page numbers in this document are for those in draft report that was on Public Notice from August 1 through August 31, 2012.
- Copies of the written comments received by MPCA are included in Appendix F.
- Some observations in comments on the Report that did not pose questions or suggest changes were not included in this summary.

#	Name/Organization	Comment	Response
1	Ed Homan, McLeod County Solid Waste Director	On page 11, the report states that “over the last three years 15% to 25% of the MMSW deposited at Spruce Ridge was from the Metro area”. Yet, on page 2, it is estimated that only a 4% decrease of the total waste delivered to Spruce Ridge will result from enforcement of the statute. Please provide me with an explanation of how the decrease was determined from the range on page 11, which is much higher.	MPCA estimated how waste will flow upon the application of the restriction on disposal of metropolitan MMSW in the Spruce Ridge landfill permit. MPCA staff reviewed the origin of mixed municipal solid waste (MMSW) delivered to Spruce Ridge, other landfills, and the destination of Hennepin and Anoka County MMSW. MPCA has concluded that Waste Management, Inc. (WMI) would more likely re-direct MMSW collected near the Elk River and Newport resource recovery facilities to processing and away from their two other landfills, one located in Elk River and the other located in Burnsville. Thus, if compliance with the restriction on disposal were achieved, it is logical that most of the metro MMSW collected in western Hennepin, Scott and Carver Counties would continue to flow to the Spruce Ridge MMSW Landfill. MPCA assumed that compliance with restriction on disposal would be achieved in a way that would reduce transportation costs.
2	McLeod County Board Resolution 12-CB-26	Minn. Stat. § 473.848 (Restriction on Disposal of metropolitan area mixed municipal waste) has become obsolete and is no longer consistent with waste-to-energy and recycling activities in McLeod County. The City of Glencoe has a financial commitment and partnership with	McLeod County sponsors extensive recycling, HHW, and organic materials recovery programs that have outstanding results. These programs helped reduce the amount of MMSW that McLeod County delivered to the Spruce Ridge landfill from 24,403 in 2010 to 18,214 in 2011. This was a decrease of 25% in a single year. McLeod County has chosen to fund solid waste programs using landfill revenues that are variable and subject to change as landfill

#	Name/Organization	Comment	Response
		<p>Waste Management Inc., McLeod County and Municipalities are dependent on metropolitan MMSW revenues at the Spruce Ridge landfill, and the County Board does not want to impose a solid waste fee to cover the lost revenues if restriction on disposal is enforced. Therefore, the Board requests that Governor Dayton and the legislature repeal Minn. Stat. § 473.848.</p>	<p>abatement programs are implemented throughout Minnesota. MPCA estimates that the landfill fees paid to McLeod County may be reduced due to these programs. However, because 68% of the MMSW delivered to the landfill in 2011 was generated outside the metro area and is not subject to restriction on disposal, MPCA estimates that the reduction in fees paid to the County will be small. Like McLeod County, MPCA and the seven metropolitan Counties plan to implement Minnesota's landfill abatement, resource recovery and recycling goals. Implementing landfill abatement remains the primary goals of state policy even if it reduces annual fee payments to host communities.</p>
3	<p>Ed Homan, McLeod County Solid Waste Director  David Meyer, General Manager, Glencoe Light and Power</p>	<p>Why does MPCA prefer MMSW processing at refuse derived fuel and mass burn facilities to modern landfills and landfills that generate power from recovered landfill gases?</p>	<p>MPCA's policy to strongly prefer MMSW processing to land disposal with gas systems is supported by clear and unequivocal State policy, US EPA policy, the most recent research and analysis on how the technologies perform, and MPCA's experience with the long term costs and environmental impacts from dozens of open and closed landfills. Minnesota laws (the Waste Management Act and the Metropolitan Landfill Abatement Act) clearly prefer waste processing using waste to energy (WTE) over land disposal with gas recovery. Reducing, to the absolute minimum, the role that landfills play in the waste management system has remained a primary State purpose and priority since 1980. US EPA adopted a waste hierarchy that is consistent with Minnesota law. Over 25 years of experience, data, and actual performance underlies research on the environmental impacts, the net recovery of energy, added recycling, and human health risks of landfills versus waste-to-energy. WTE is superior to the best performing landfills, even those that collect landfill gas and burn it to produce energy. The legacy costs associated with closed landfills, the unknown long-term performance of modern landfills (even those with landfill gas systems), and environmental impact analysis indicates to the MPCA that WTE have significantly less risk to the environment than MMSW landfills. In other words, MPCA has revisited Minnesota's long standing preference for WTE over landfills and found that the policy is supported by evidence and performance (see Appendix D in the Report).</p>

#	Name/Organization	Comment	Response
4	<p>Ed Homan, McLeod County Solid Waste Director</p> <p>David Meyer, General Manager, Glencoe Light and Power</p>	<p>During the MPCA's preparation of the Metropolitan Solid Waste Management Policy Plan (Policy Plan), MPCA failed to consult Glencoe Light and Power and McLeod County. The Policy Plan appears to overrule the new McLeod County Comprehensive solid waste management plan. McLeod County does not wish to be required by MPCA to use the Elk River refuse derived fuel project.</p>	<p>MPCA published a predrafting notice for the Policy Plan in the State Register inviting public comment for 45 days before preparation of the Policy Plan. During preparation of the Policy Plan, MPCA consulted Metropolitan Counties. MPCA again published a notice in the State Register when a draft report was ready for review, invited public comment for 30 days, conducted a public meeting 30 days after the notice and allowed 30 days after the public meeting for additional comments. In addition to the above required solicitation of comments, during preparation of the Policy Plan, MPCA also consulted and informed regional waste haulers, landfill owners (including Spruce Ridge landfill owner WMI), and others. MPCA sent the draft Policy Plan to interested stakeholders including Minnesota's County Solid Waste Administrators (of which McLeod County is a member), requesting comments prior to adopting the Policy Plan. Glencoe Light and Power was not individually notified by MPCA before the Policy Plan was adopted. For decades, State landfill abatement policies and programs designed to achieve full utilization of MMSW processing facilities have been stated in reports to the Legislature, metropolitan and statewide policy documents from the Association of Minnesota Counties (AMC) and state executive branch agencies, and individual county plans. The MPCA's first Policy Plan and its implementation of effective landfill abatement policies is not a change in direction. Therefore, the MPCA's policy on restriction on disposal should not be unfamiliar. The Policy Plan does not in any way govern or overrule McLeod County's discretion with respect to how the County arranges its waste management system. McLeod County may continue to landfill MMSW generated outside the metropolitan area as it has in the past without any mandate from MPCA to use a refuse derived fuel processing facility. The Policy Plan governs only Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties and the MSW generated in those counties. These seven Counties have adopted new solid waste master plans that support full use of resource recovery and landfill abatement.</p>

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5	<p>Joseph Lynch, City Administrator, City of Inver Grove Heights</p> <p>Craig Ebeling, City Manager, City of Burnsville</p> <p>Ed Homan, McLeod County Solid Waste Director</p>	<p>If the restriction on disposal is implemented and no added MMSW is delivered to the landfill, then annual payment of host fees to the City of Inver Grove Heights would be reduced by \$160,000 and to the City of Burnsville by \$120,000. County solid waste fees paid to McLeod County may also be reduced if the restriction on disposal is implemented. This may reduce the funding and effectiveness of the county household hazardous waste (HHW) program, recycling, and other solid waste programs. The County does not wish to implement other fees or taxes to defray the costs of these programs.</p>	<p>The nature of a landfill fee, as described in Minn. Stat. § 115A.919 and Minn. Stat. § 115A.921, is that revenues from the fee must be used for landfill abatement, thereby reducing the revenues collected by the county (or city) over time. The county or city may also use the fees for costs of closure, postclosure care, and response actions or for purposes of mitigating and compensating for the local risks, costs, and other adverse effects of landfills, but the understanding and intent is always that collection of the fee will reduce over time and eventually cease to exist when the landfill closes. Many other communities use alternative solid waste fees such as hauler collected fees or service fees to defray the cost of solid waste programs, either because they are not host to a landfill or because they wish to avoid the inevitable loss of revenue for their programs. Although the enforcement of restriction on disposal may reduce annual revenues from landfill fees, the same amount of money in fees will be paid over a longer period of time because of the fixed capacity of landfill space.</p>
6	<p>Ed Homan, McLeod County Solid Waste Director</p> <p>Rich Hirstein, Allied Waste Senior Area Municipal Services Manager</p> <p>Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association (NSWMA)</p> <p>Jack Perry, Briggs &amp; Morgan (on behalf of Waste Management, Inc.)</p>	<p>MPCA's restriction on disposal is waste flow control that is unconstitutional.</p>	<p>The restriction on disposal in Minn. Stat. § 473.848 is a requirement to limit land disposal of unprocessed metropolitan MMSW. Application of this restriction on disposal to landfill and resource recovery facility permits does not direct waste to particular facilities. Instead, the restriction on disposal is crafted to limit the land disposal of metropolitan MMSW in Minnesota to unprocessable waste. In other words, the restriction on disposal prohibits land disposal of MMSW generated in the metropolitan area that could be processed. The restriction on disposal is designed to reduce the need for and practice of land disposal. The restriction on disposal is proposed to be a permit condition regulating Minnesota facilities. As such, it also does not prevent waste from being taken out of state for management or disposal and is not unconstitutional flow control. Instead, it makes reasonable requirements on owners and operators of MMSW landfills and processing facilities in Minnesota that accept metropolitan MMSW. It is akin to other state restrictions on disposal of items at landfills or resource recovery facilities.</p>

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7	<p>Rich Hirstein, Allied Waste Senior Area Municipal Services Manager</p> <p>Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association (NSWMA)</p> <p>Jack Perry, Briggs &amp; Morgan (on behalf of Waste Management, Inc.)</p>	<p>The restriction on disposal converts the current resource recovery system from a market system to a government run system.</p>	<p>The restriction on disposal may result in just the opposite – less government interference. The restriction on disposal allows the market place for metropolitan MMSW resource recovery and land disposal services to function by creating nonfinancial incentives to move waste up the waste management hierarchy. Restricting land disposal and creating incentives for resource recovery may reduce the need for public subsidies.</p>
8	<p>Rich Hirstein, Allied Waste Senior Area Municipal Services Manager</p> <p>Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association (NSWMA)</p> <p>Jack Perry, Briggs &amp; Morgan (on behalf of Waste Management, Inc.)</p>	<p>The restriction on disposal creates antitrust problems</p>	<p>Until 2007, the three largest resource recovery facilities and landfills serving the metropolitan area operated in harmony and no antitrust problems arose over that time. The resource recovery facilities obtained MMSW equivalent to their operating capacity and the landfills obtained the excess MMSW. During this period, waste haulers, landfill owners, resource recovery facility owners, and some local governments crafted agreements governing MMSW. In 2008, landfills began accepting large amounts of metropolitan MMSW that was unprocessed and had bypassed resource recovery facilities. Enforcing the restriction on disposal in Minn. Stat. § 473.848 will create a stronger incentive to reduce unnecessary land disposal. However, it will not change the established framework for setting up and operating the MMSW system, and MPCA does not intend to direct the parties on how to comply with the restriction on disposal. The MPCA does not believe that there are any antitrust implementations with landfill operators informing haulers that the landfill cannot accept the waste because the waste is processible based on the availability of resource recovery capacity. Waste haulers and facilities communicate extensively about waste delivery and operational issues.</p>

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9	Rich Hirstein, Allied Waste Senior Area Municipal Services Manager	The restriction on disposal impairs existing MMSW disposal contracts	The MPCA has not seen the contracts referred to in the comment and thus, cannot comment on the specific terms of any contracts. However, resource recovery and landfill permits currently contain (and have contained in the past) a provision that requires compliance with State law, including Minn. Stat. ch. 473 and ch. 115A. Minn. Stat. § 473.848 has been in statutes since 1985. Thus, landfills and resource recovery facilities were on notice of the requirement to comply with Minn. Stat. § 473.848.
10	<p>Rich Hirstein, Allied Waste Senior Area Municipal Services Manager</p> <p>Doug Carnival, Council, Minnesota Chapter</p> <p>National Solid Wastes Management Association (NSWMA)</p> <p>Jack Perry, Briggs &amp; Morgan (on behalf of Waste Management, Inc.)</p>	MPCA has no authority to enforce Minn. Stat. § 473.848	<p>MPCA is assigned the duty and authority to implement various solid waste statutes, including the restriction on disposal in Minn. Stat. § 473.848 and the other applicable sections of the Metropolitan Landfill Abatement Act (Minn. Stat. §§ 473.841-.849). MPCA also has authority to permit and regulate solid waste facilities (see e.g. Minn. Stat. ch. 116 and Minn. R. chs 7001 and 7035) consistent with applicable state laws and rules. (see e.g. Minn. R. 7001.0150, subp. 2, which allows the MPCA to include conditions in its permits to achieve compliance with applicable Minnesota or federal statutes).</p> <p>One of the state laws applicable to landfills and to resource recovery facilities is Minn. Stat. § 473.848, which prohibits any person from disposing of mixed municipal solid waste generated in the metropolitan area unless the county has certified the waste to be unprocessable. The MPCA adopted standards and criteria in the 2011 Policy Plan for the counties to determine when a waste is unprocessable. Since both landfills and resource recovery facilities are subject to this disposal restriction and the MPCA has authority to include conditions in its permits to achieve compliance with Minnesota statutes, it is reasonable to include a requirement to comply with Minn. Stat. § 473.848 in the solid waste permit that governs the management of waste at these facilities.</p>

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11	<p>Rich Hirstein, Allied Waste Senior Area Municipal Services Manager</p> <p>Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association (NSWMA)</p>	<p>The restriction on disposal effectively gives advantages to metropolitan MMSW haulers that do not own landfills, market advantages to haulers with landfills, and market advantages to waste haulers operating in areas that are far away from processing facilities and therefore may not deliver to resource recovery facilities. How will MPCA decide how to fairly and equitably enforce the restriction on disposal?</p>	<p>Minn. Stat. § 473.848 creates a restriction on the disposal of unprocessed metro MMSW at landfills. As a facility restriction, it may affect facility owners/operators that also have waste collection businesses more than it affects independent haulers. Although independent haulers may have more bargaining power with land disposal facilities, large haulers who may also own landfills have the sophistication to make alternative waste management arrangements. MPCA will not direct MMSW haulers to facilities or prescribe delivery contracts. In 2011, almost 900,000 tons were delivered to resource recovery facilities and 800,000 tons went to landfills without MPCA directing traffic. In 2011, less than 150,000 tons would have been affected by the restriction on disposal out of approximately 1,700,000 tons of metro MMSW generated. The MPCA believes that that market participants will work out the most effective methods to achieve compliance with the restriction on disposal. MPCA anticipates that small shifts of MMSW will not disrupt the market for MMSW processing and disposal.</p>
12	<p>Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association (NSWMA)</p> <p>Jack Perry, Briggs &amp; Morgan (on behalf of Waste Management, Inc.)</p>	<p>What does MPCA mean in the Policy Plan by reasonably available processing capacity?</p>	<p>The standard for county certification (Policy Plan, Appendix D) provides that a waste is unprocessable (and thus can be landfilled) when all reasonably available capacity within the Twin City Metropolitan Area processing system is fully utilized at 100 percent of its operating capacity. In determining reasonably available capacity, the standard provides that consideration will be given to the specific geographic area that typically supports each of the processing facilities that serves the area. The Policy Plan lists four facilities that are part of the current metropolitan resource recovery system – HERC, RRT Newport, GRE Elk River and the City of Red Wing. The MPCA will determine the operating capacity for each facility on an annual basis. The annual capacity was determined by reviewing operating history, design criteria, and permitted capacity and is stated in the Report. Haulers (and resource recovery facilities who have processible waste that it cannot process) need to work out waste management arrangements. Delivery arrangements to resource recovery facilities may be affected such things as scheduled and</p>

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			<p>unscheduled outages, downtime or facility closure, which may make the capacity at a particular the facility not reasonably available. MPCA’s proposed monthly facility reporting framework will monitor MMSW delivery and indicate whether or not processible MMSW is bypassing resource recovery facilities and being disposed of in landfills. All four resource recovery facilities are located such that the surrounding areas have MMSW generation that far exceeds the operating capacity of that facility.</p>
13	<p>Rich Hirstein, Allied Waste Senior Area Municipal Services Manager</p>	<p>Opening landfill permits creates “due process” concerns.</p>	<p>Procedures for amending landfill and resource recovery permits are outlined in MPCA rules (see e.g. Minn. R. chs. 7000 and 7001). MPCA’s prescribed process of permit amendment allows input and review of the permit conditions by the permittee and the public and the same opportunities for due process rights that are available to a permittee and the public when the original permit was issued.</p>
14	<p>Rich Hirstein, Allied Waste Senior Area Municipal Services Manager</p> <p>Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association (NSWMA)</p>	<p>Restriction on disposal compliance will result in re-routing trucks and therefore, create added fuel consumption, road wear and tear, and greenhouse gas releases.</p>	<p>Waste Management, Allied Waste and independent haulers may re-route trucks and operate transfer stations as they determine is appropriate to achieve compliance with the restriction on disposal requirement. However, it appears that in many areas the resource recovery facilities are closer to MMSW generation than the four landfills where waste is now disposed of, and therefore, re-routing to comply with the restriction on disposal may instead lower transportation costs and road wear and tear associated with MMSW management instead of increasing it. If the haulers decide to shift metropolitan MMSW to out of state landfills, then transportation costs and impacts will increase.</p>
15	<p>Rich Hirstein, Allied Waste Senior Area Municipal Services Manager</p> <p>Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association (NSWMA)</p>	<p>Who is subject to achieving compliance with restriction on disposal? Which waste haulers will be required to deliver waste to the City of Red Wing?</p>	<p>The landfills and resource recovery facilities that accept mixed municipal solid waste generated in the metropolitan area will be required in their solid waste facility permits to comply with the restriction on disposal. MPCA has identified the four landfills and four resource recovery facilities that are subject to restriction on disposal. In determining reasonably available capacity, consideration will be given to the specific geographic area that typically supports each of the processing facilities, including the Red Wing facility. The Metropolitan Counties are required to</p>

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			<p>comply with the standards adopted by the MPCA in the Policy Plan (Appendix D) for certifying waste as unprocessable. Landfills and resource recovery facilities that do not accept MMSW generated in the metropolitan area are not subject to the restriction on disposal requirements. Minn. Stat. § 473.848 does not require any person to deliver MMSW to a resource recovery facility. It just prevents disposal of processible waste at a disposal facility if resource recovery facilities serving the metropolitan area have reasonably available capacity.</p>
16	<p>Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association (NSWMA)</p> <p>Jack Perry, Briggs &amp; Morgan (on behalf of Waste Management, Inc.)</p> <p>Timothy P. Steinbeck Elk River Resource Recovery Project – Great River Energy</p>	<p>MPCA needs to outline more details in terms of how facilities must comply – “no details” were provided</p>	<p>The regulated parties have well established and long term relationships that have (at least until 2008) operated the MMSW system in compliance with the restriction on disposal. Those arrangements can achieve compliance in the future. Actions taken by landfill owners and resource recovery facilities owners in cooperation with waste haulers, metropolitan counties, and host communities have resulted in over a million tons of metropolitan MMSW being processed each year. There is no need for MPCA to layout these details. Instead, the MPCA plans to put the outcome – the restriction on land disposal of unprocessed metro MMSW unless the waste is determined by the county to be unprocessable in accordance with the criteria in Appendix D of the Policy Plan -- into landfill and resource recovery facility permits.</p>
17	<p>Timothy P. Steinbeck Elk River Resource Recovery Project – Great River Energy</p> <p>Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association(NSWMA)</p>	<p>MPCA needs to communicate more details to the stakeholders and organize meeting to answer questions.</p>	<p>MPCA is willing to facilitate additional informational meetings in addition to the meetings that have already been held. However, MPCA will not dictate the activities that landfills and resource recovery facilities will take to implement the requirement.</p>

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18	Rich Hirstein, Allied Waste Senior Area Municipal Services Manager	MMSW customers will pay more for MMSW services due to the restriction on disposal.	The MPCA has limited information on MMSW service pricing. However, in 2009, MPCA commissioned a study of residential MMSW service arrangements (Analysis of Waste Collection Service Arrangement, June 2009) and found that there was no relationship between MMSW service charges levied by waste haulers for MMSW residential service and where the hauler delivered the residential MMSW collected. The study showed that in almost all cities studied, organized collection resulted in lower prices. Second, the study indicated that organized collection was highly correlated with MMSW delivery to resource recovery facilities in the metropolitan area. MPCA has initiated research on how non-residential MMSW service pricing may be affected by the enforcement of restriction on disposal. At the time of MPCA's completion of this report, MPCA's review of billings has shown that there is no trend indicating that higher or lower MMSW service charges are correlated with landfill disposal or resource recovery.
19	Craig Ebeling, City Manager, City of Burnsville	The Restriction on disposal will delay the City of Burnsville's redevelopment plan for the landfill because it will take more years to fill the landfill. The restriction on disposal will reduce the payment of fees from Waste Management, Inc. (WMI) to the City of Burnsville.	If the restriction on disposal and the increased recycling and organic recovery goals outlined in the Metropolitan Solid Waste Plan reduces the need for land disposal of MMSW and if WMI reduces MMSW disposal at the WMI's Burnsville landfill, then the City's comments are correct. The City should be aware that attaining the Policy Plan goals of waste abatement through increased waste reduction, recycling and composting will likely cause a larger decrease in waste disposal per year at the landfill than restriction on disposal. However, the City may experience some benefit from extending the useful life of the landfill. First, total fees paid to the City will not be reduced by the restriction on disposal. Although the annual amount may be marginally lower, but the same amount of fees will be paid over a longer period of time because the life of the landfill will be extended. Second, the development and implementation of more effective landfill technologies may increase the amount of waste that can be deposited into the limited space available at the landfill. This would increase the total fees collected by the City. Third, mitigative measures and remediation systems may develop over

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			an extended site life and thereby, bringing improvements.
20	Craig Ebeling, City Manager, City of Burnsville	MPCA should propose an extension of the Metropolitan Landfill Abatement (MLA) Fee to landfills located outside the metro area to more fairly apply the MLA fee to metro MMSW. Metropolitan MMSW pricing would be certain and would reduce the incentive to haul MMSW to distant landfills. Extending the fee could also help compensate host communities in the metro area.	MPCA has in the past proposed closing the loophole where metropolitan generated waste that is landfilled outside of the metropolitan area is not assessed the MLAA fee. The change would assist landfill abatement activities in various ways and push solid waste higher up the hierarchy. It has not been enacted. Any changes to the MLAA fee structure would not have a direct impact on obtaining compliance with restriction on disposal.
21	Jack Perry, Briggs & Morgan (on behalf of Waste Management, Inc.)  Jeff Meyer, Vice President, Minnesota Landfill Operators Group	MMSW will be exported in large amount to landfills in (Wisconsin, North Dakota, and Iowa) neighboring states.	MPCA's strategy to obtain compliance with the restriction on disposal, increase energy materials recovery from MMSW, and increase landfill abatement in Minnesota does not forestall export of metro MMSW. The decision to ship waste out of state is one made by haulers because of a variety of reasons and is a potential unintended consequence of solid waste policies.
22	Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association (NSWMA)	MPCA should focus on the top of the hierarchy, advocate for more reduction, recycling, organics, and mandatory recycling.	MPCA is focused on the top of the hierarchy by expanding waste diversion in the metro area. MPCA's 2011 Metro Plan adopts very ambitious numerical goals for reduction (6%), recycling (60%), and organics recovery (15%). MPCA worked with the seven metropolitan counties to develop and adopt County Master Plans to layout specific programs to significantly increase waste reduction, reuse, recycling and organics. If obtained, these waste diversion objectives will create much larger reductions in MMSW land disposal than the restriction on disposal.

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23	Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association (NSWMA)	Operating resource recovery facilities at maximum capacity is inefficient and costly. Can the resource recovery facilities handle the tons?	The Report shows the capacities of resource recovery facilities. Operational capacity, as identified by the resource recovery facilities, is shown in the table. It is notable that two of the facilities have operational capacities set well below their permitted capacity. Three of the facilities have long term operational histories that show that their operating capacity has been consistently and effectively achieved for many years. Red Wing expanded its processing capacity in 2010 with a presort system that has increased its operating throughput.
24	Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association (NSWMA)	A 10% reduction in MMSW deliveries to a landfill is significant.	MPCA acknowledges that any diversion of MMSW from a landfill reduces the landfill's revenues, including diversion as a result of waste reduction, recycling, and composting, which are also all preferred methods under State laws. MPCA also acknowledges that some amount of land disposal may be necessary for many years.
25	Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association (NSWMA)	Will MPCA direct Hennepin County to use resource recovery instead of landfills?	Hennepin County has committed in its new 2012 Solid Waste Management Master Plan to send MMSW only to resource recovery facilities from its facilities, comply with the restriction on disposal, and work with MPCA using the criteria established in the Policy Plan.
26	Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association (NSWMA)	Monthly MMSW deliveries to satisfy the restriction on disposal criteria will create a boom and bust delivery cycle	MPCA anticipates that MMSW delivery to resource recovery facilities will occur, as it occurs now, with regular daily delivery of MMSW. Although the proposed mandatory reporting is on a monthly basis, we anticipate that MMSW tracking at facilities will be done on a daily basis, as it is done now. Resource recovery facilities will report to the MPCA monthly, noting periods when insufficient delivery causes facilities to operate below regular operating capacity. MMSW shortages cannot be resolved by large end of the month inputs because MMSW is generated and collected daily and resource recovery facilities have daily operational needs and limited storage. MPCA anticipates no problems with deliveries based on a monthly reporting period. If NSWMA recommends more frequent reporting, then MPCA will discuss that option with landfills and resource recovery facilities.

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27	Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association (NSWMA)	What is the added MPCA FTE (full time equivalent) for enforcing the Statute?	MPCA has assigned existing Staff to implementing the restriction on disposal. MPCA anticipates that no more than 0.25 FTE in combined permitting staff and staff assigned to metropolitan landfill abatement duties will be needed to perform the work. MPCA will not need to add additional FTEs to enforce the restriction on disposal.
28	Doug Carnival, Council, Minnesota Chapter National Solid Wastes Management Association (NSWMA)	Why is MPCA targeting the waste industry?	MPCA is not targeting the waste industry. MPCA is holding four resource recovery facilities and four landfills accountable for their land disposal of metropolitan MMSW as directed by State statute. The Policy Plan established a goal to broaden the accountability of all public and private entities who use or benefit from the waste management system, and this is just one part of the plan to accomplish that goal.
29	Jack Perry, Briggs & Morgan (on behalf of Waste Management, Inc.)	Counties and the Industry were not forewarned of the MPCA's plan to enforce the restriction on disposal.	Beginning in 2008, MPCA consulted and informed Metropolitan Counties, waste haulers, and landfills throughout the development of the Policy Plan. In 2010, MPCA sent the draft Policy Plan to stakeholders including Minnesota's County Solid Waste Administrators requesting comments prior to adopting the Policy Plan. Subsequently, in 2010, NSWMA and WMI, among others, commented on the MPCA's Policy Plan regarding the restriction on disposal.
30	Jack Perry, Briggs & Morgan (on behalf of Waste Management, Inc.)	The resource recovery shortfall is overstated.	MPCA disagrees. We believe that our estimate of the amount of processible metropolitan MMSW bypassing resource recovery and being delivered to landfills is accurate yet conservative. The amount of processible metropolitan MMSW bypassing resource recovery and going to landfills is a conservative estimate and was approximately 140,000 in 2011.
31	Jack Perry, Briggs & Morgan (on behalf of Waste Management, Inc.)	Resource recovery facilities will not close if the requirement to comply with the restriction on disposal is dropped. The market value of the GRE and RRT resource recovery facilities' capacity is \$27 million not the MPCA's stated value of \$1 billion dollars.	Three of the four resource recovery projects have expressed concerns that without MPCA enforcement of the restriction on disposal, they may be forced to close. MPCA's statement of replacement costs is not a calculation of market value. It is based on a 2007 study of the capital costs of various types of resource recovery systems. The engineering firm of HDR provided MPCA with the information that supports MPCA's estimate of

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		\$1 billion dollars.	with the information that supports MPCA's estimate of \$943,464,375 (in capital costs alone) to replace our current waste-to-energy (WTE) capacity with new facilities. This capital cost estimate does not include development cost that may account for an additional 10% over and above capital cost. Minnesota needs to preserve existing resource recovery infrastructure rather than build new systems after allowing the current facilities to fail.
32	Jack Perry, Briggs & Morgan (on behalf of Waste Management, Inc.)	Landfills taking metropolitan MMSW already comply with the restriction on disposal. MPCA does not disapprove Metropolitan County certification reports.	MPCA disagrees that landfills are currently in compliance with the restriction on disposal. Landfills are accepting unprocessed MMSW generated in the metropolitan area that has not been certified as unprocessable. MPCA outlined a more detailed framework for county certification standards in MPCA's Policy Plan adopted in 2011. Effective application of restriction on disposal criteria and standards to landfills, resource recovery facilities and Metro County Certification Reports could begin as soon as February 15, 2013. If MPCA applied its criteria for metro MMSW today, landfills would fail to meet the standards. MPCA disapproved all seven county Certification Reports in 2008 when the trend toward bypassing resource recovery facilities began. Metropolitan Counties then renewed their request for MPCA to hold landfills accountable.
33	Jack Perry, Briggs & Morgan (on behalf of Waste Management, Inc.)	Legacy cost of landfills and concerns about environmental impacts are unwarranted	For four decades, MPCA permitted landfills, inspected landfills, and established financial assurance funding levels for landfills that today are being remediated under Minnesota's closed landfill program (CLP). Clean up costs for the CLP have consistently exceed financial assurance funding and insurance proceeds. The CLP requires subsidies and state bonding to cover the cost of remediation. Recent discoveries of previously unknown pollution, such as PFC chemical releases, are another concern. MPCA hopes that the legacy costs and environmental impact of landfills operating over the next 30 to 50 years is less than anticipated. Engineering and operations have improved over time. However, experience has shown the landfills have huge legacy costs. Although current landfills are required to setup financial assurance to pay for problems that arise during the closure and

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			<p>postclosure care period, there have not yet been any of the current type of landfills that have closed and progressed through the post closure care period, so it is uncertain what types of costs and environmental impacts may be experienced during and after the end of the postclosure care period.</p>
34	Jack Perry, Briggs & Morgan (on behalf of Waste Management, Inc.)	Waste Management, Inc. (WMI) will export metropolitan MMSW to other states to avoid compliance with the restriction on disposal. This will further reduce MMSW delivery to resource recovery facilities, defeating the purpose of the restriction on disposal.	MPCA's proposed restriction on disposal compliance plan does not prevent WMI's exportation of metropolitan MMSW out of state. However, other MMSW haulers may choose to use resource recovery facilities instead of long haul to out-of-state landfills.
35	Jack Perry, Briggs & Morgan (on behalf of Waste Management, Inc.)	MPCA has misunderstood or ignored the United States Environmental Protection Agency's waste management hierarchy.	<p>MPCA has contacted the U.S. EPA and confirmed that land disposal is the U.S. EPA's least preferred management option and that waste processing resulting in materials and energy recovery is preferred over landfilling of any kind. In addition, the U.S. EPA website lists its waste management hierarchy as:</p> <ul style="list-style-type: none"> <li>• <a href="#">Source Reduction and Reuse</a></li> <li>• <a href="#">Recycling</a></li> <li>• <a href="#">Composting</a></li> <li>• <a href="#">Combustion with Energy Recovery</a></li> <li>• <a href="#">Landfilling</a> and <a href="#">Incineration</a> without Energy Recovery</li> </ul> <p>(Combustion with energy recovery does not refer to landfill gas ) Source: <a href="http://www.epa.gov/epawaste/nonhaz/municipal/wte/nonhaz.htm">http://www.epa.gov/epawaste/nonhaz/municipal/wte/nonhaz.htm</a>).</p> <p>The U.S. EPA and Minnesota policies are consistent.</p>
36	Jack Perry, Briggs & Morgan (on behalf of Waste Management, Inc.)	MPCA stated its intention to implement the restriction on disposal prior to February 15, 2013 in violation of state law.	MPCA will comply with all of the Legislature's directives, including its compliance date for implementing the restriction on disposal.

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37	Joseph Lynch, City Administrator, City of Inver Grove Heights	Host cities such as Inver Grove Heights were not consulted during the MPCA's preparation of the 2011 Policy Plan. The City desires to have a larger part in discussions of the restriction on disposal with Dakota County and the City of Burnsville.	MPCA worked with Dakota County and landfill owners, but not the host cities. MPCA recognizes the need to reach out to host communities to help cities and counties cope with the impact of landfill abatement programs. The reduction in host fees due to the restriction on disposal is small compared to the anticipated reduction in land disposal of metropolitan MMSW due to the expansion of recycling, organics recovery, reuse and waste reduction.
38	The Elk River City Council John J. Dietz, Mayor	The City Council supports MPCA's prompt enforcement of the restriction on disposal and opposes any further delays to implementation. The City Council supports the processing of MMSW to recover materials and energy. The City Council is in agreement with Minn. Stat. § 115A.02 that outlines the policies and purposes of Minnesota's Waste Management Act.	MPCA is prepared to implement the restriction on disposal.
39	Trudy Richter, Executive Director of the Minnesota Resource Recovery Association (MRRA)	MRRA members welcome the MPCA's enforcement of the restriction on disposal on February 15, 2013.	MPCA is prepared to implement the restriction on disposal.
40	Trudy Richter, Executive Director of the Minnesota Resource Recovery Association (MRRA)	Landfill owners appear to want MPCA to direct them on how to comply with the restriction on disposal. This is unnecessary. Resource recovery facilities and landfills can work out the details of compliance	MPCA believes that in the past, waste delivery arrangements have supported full utilization of resource recovery facilities and that no added details of compliance need be prescribed to landfills or resource recovery facilities beyond that outlined in the draft permit language, and the draft reporting forms.
41	Trudy Richter, Executive Director of the Minnesota Resource Recovery Association (MRRA)	Restriction on disposal is needed to prevent resource recovery facilities from closing. If the State does not act, then several large landfill firms will be the only beneficiaries. Under the MPCA's proposed plan, taxpayers are beneficiaries.	MPCA is convinced that the restriction on disposal is needed to assure that land disposal of metropolitan MMSW is reduced.

#	Name/Organization	Comment	Response
42	Mark Bauman, President Minnesota Solid Waste Administrators Association	To maintain Minnesota's resource recovery system, MPCA needs to enforce the restriction on disposal.	MPCA believes that restriction on disposal will increase incentives to maximize resource recovery.
43	Ted Michaels, President Energy Recovery Council  Bonny Betancourt, Covanta Energy	Resource recovery systems (waste-to-energy) generate base load renewable energy. These systems are reliable and available base load unlike other renewable energy sources.	MPCA recognizes the benefits of resource recovery in generating power for Minnesota.
44	Ted Michaels, President Energy Recovery Council  Bonny Betancourt, Covanta Energy	Resource recovery systems (waste-to-energy) reduce greenhouse gas releases. Waste to energy (WTE) facilities generate power without fossil fuel, has no methane releases like landfills, and recycles metals, all saving carbon equivalent releases.	MPCA recognizes the benefits of resource recovery in recycling and reducing greenhouse gas releases.
45	Ted Michaels, President Energy Recovery Council  Bonny Betancourt, Covanta Energy	Resource recovery systems are compatible with recycling and communities served by waste-to-energy (WTE) systems have higher recycling rates nationally.	MPCA recognizes that resource recovery and recycling work well together.
46	Bonny Betancourt, Covanta Energy	MPCA enforcement of the restriction on disposal will expand the useful life of the primary metropolitan MMSW landfills that have already been operating for over 20 years and have limited capacity.	MPCA recognizes the difficulty in securing new landfill sites and the benefits of limiting land disposal to waste that cannot be recycled, reused, recovered as organic materials, or processed via resource recovery systems.

#	Name/Organization	Comment	Response
47	Bonny Betancourt, Covanta Energy	Covanta is working with the MPCA and Hennepin County to secure approval to accept an additional 35,000 tons per year at the County's HERC facility in Minneapolis. This additional MMSW would provide additional thermal and electrical energy.	MPCA is in the process of reviewing Hennepin County's Environmental Assessment Worksheet that requests expanding the annual throughput for the HERC facility.
48	Chris Gondeck, CFO/COO Resource Recovery Technologies	The Newport and Elk River Facilities (under RRT operation) consistently processed over 850,000 tons per year. Since 2007, due to landfill pricing, over 250,000 tons per year has been lost to landfills. RRT believes that if the restriction on disposal is repealed or ignored, the Newport facility will close due to the diversion of waste to landfills. If voluntary compliance fails, RRT urges MPCA and the Legislature to implement the restriction on disposal.	MPCA has monitored the shift of metropolitan MMSW from resource recovery facilities to landfills, and the MPCA is beginning to recognize the magnitude of the impact on resource recovery systems serving the metro area.
49	Chris Gondeck, CFO/COO Resource Recovery Technologies  Bonny Betancourt Covanta Energy  Trudy Richter, Executive Director of the Minnesota Resource Recovery Association (MRRA)  The City of Red Wing  Timothy P. Steinbeck Elk River Resource Recovery Project – Great River Energy	Resource recovery facilities capture and recycle certain recyclable materials including ferrous metals, nonferrous metals, plastics, old corrugated cardboard, and problem materials entrained in trash and tires, appliances and electronics. The recovery of recyclables and problem materials from MMSW is another aspect of resource recovery that is superior to landfills and supports the Minnesota's waste hierarchy.	MPCA is very aware that each resource recovery facility has a strategy for capturing certain recyclables. Unlike landfills, resource recovery facilities recycle materials and are also required by MPCA to perform periodic waste composition analysis. MPCA supports these aspects of resource recovery. However, in addition to recycling from MMSW, Minnesota needs robust curbside source separation programs to maximize recycling.

#	Name/Organization	Comment	Response
50	Dennis Eagan, Mayor Ralph Rauterkus, Council President Lisa Pritchard Bayley, Council Vice President City of Red Wing	Communication between waste haulers and the City of Red Wing to assure compliance with the restriction on disposal will not be a problem. The City is familiar with the communication processes and technologies in use by the smallest and largest waste haulers. The City is confident that communication will not be an impediment to successful compliance with the restriction on disposal.	MPCA believes that established existing communication systems have and will continue to facilitate compliance with the restriction on disposal.
51	Dennis Eagan, Mayor Ralph Rauterkus, Council President Lisa Pritchard Bayley, Council Vice President City of Red Wing	The City of Red Wing believes that landfill host fees paid to cities and counties are a finite source of funds. Therefore, extending those payments over a longer period of time rather than having them go from high levels to zero seems to be a preferable local funding instrument.	MPCA believes that cities and counties using host fees or other tonnage indexed solid waste fees should examine the reliability of these funding instruments in light of anticipated reductions in annual metropolitan MMSW land disposal needs.
52	Dennis Eagan, Mayor Ralph Rauterkus, Council President Lisa Pritchard Bayley, Council Vice President City of Red Wing	The City of Red Wing has been a long term supporter of resource recovery over landfills. The City believes that it is good public policy to reduce the need for and practice of land disposal. However, unrestricted land disposal is putting the City at an economic disadvantage.	MPCA is aware of the challenges faced by the City of Red Wing in operating its resource recovery system.
53	Victoria Reinhardt, Chair of the Solid Waste Management Coordinating Board (Anoka, Carver, Dakota, Hennepin, Ramsey, and Washington Counties)	How will the restriction on disposal impact Metropolitan County Certification?	The Metropolitan Counties are also required to comply with the criteria for MMSW management and certification according to the Policy Plan. For example, a metropolitan county could not certify MMSW as unprocessable unless reasonably available resource recovery capacity was fully used. Annual reporting, in accordance with Minn. Stat. § 474.848, Subd. 2 will continue.

#	Name/Organization	Comment	Response
54	Victoria Reinhardt, Chair of the Solid Waste Management Coordinating Board (Anoka, Carver, Dakota, Hennepin, Ramsey, and Washington Counties)	What would be the impact of resource recovery facility closure?	<p>The following calculation shows the increase in land disposal on an annual basis and over the remaining term of the Policy Plan (through 2030) assuming the closure of resource recovery facilities:</p> <p>HERC – 365,000 tons/year (6,570,000 tons)</p> <p>RRT- 430,000 tons/year (7, 740,000 tons)</p> <p>GRE- 300,000 tons/year (5,400,000 tons)</p> <p>City of Red Wing- 30,000tons/year (540,000 tons)</p> <p><b>Total- 1,125,000 tons/year (20,250,000 tons)</b></p>
55	Victoria Reinhardt, Chair of the Solid Waste Management Coordinating Board (Anoka, Carver, Dakota, Hennepin, Ramsey, and Washington Counties)	What has been the total public investment in processing since the Legislature first established the waste hierarchy and determined that processing MMSW is preferable to land disposal?	MPCA will require additional time to make an accurate calculation of public investment in resource recovery. However, the MPCA has calculated the capital cost of replacing our current resource recovery infrastructure to be over \$1.0 billion.
56	Timothy P. Steinbeck Elk River Resource Recovery Project – Great River Energy	The GRE resource recovery facility in Elk River contributes \$25 million, 80 jobs, and 30 megawatts of power to the local economy annually. GRE is at risk of closure if MPCA is not allowed to enforce the restriction on disposal.	MPCA is aware of the contribution of GRE and the consequences of failing to create workable incentives that may forestall metropolitan MMSW bypassing the GRE's Elk River facility in favor of land disposal at the Elk River landfill several miles further north.
57	Timothy P. Steinbeck Elk River Resource Recovery Project – Great River Energy	The report should highlight the recycling benefits of WTE.	Recyclable materials recovery from MMSW performed by resource recovery facilities can range from 1% to 5% of the MMSW received. More importantly, the ferrous and non-ferrous metals recovered from MMSW have high market value and provide significant energy and green house gas savings if recycled rather than landfilled. .
58	Timothy P. Steinbeck Elk River Resource Recovery Project – Great River Energy	Include a total MMSW trend on the graph on page 7.	MPCA has included information to clarify.

#	Name/Organization	Comment	Response
59	Victoria Reinhardt Chair of the Solid Waste Management Coordinating Board (Anoka, Carver, Dakota, Hennepin, Ramsey, and Washington Counties)	On page 6 of the Report, what does the MPCA mean by its reference to “political subdivisions and private firms”?	Coordination between political subdivisions is a top priority of state solid waste policy. MPCA also believes that the waste industry should coordinate their efforts with political subdivisions to implement the Policy Plan. MPCA has made a revision to clarify.
60	Victoria Reinhardt Chair of the Solid Waste Management Coordinating Board (Anoka, Carver, Dakota, Hennepin, Ramsey, and Washington Counties)	Can the MPCA clarify what constitutes a large amount of methane gas (compared to other forms of renewable energy generation) in its statement on pages 11-12	MPCA has made a revision that clarifies landfill gas capture and provided a comparison of energy generation from landfills and resource recovery facilities.
61	Victoria Reinhardt Chair of the Solid Waste Management Coordinating Board (Anoka, Carver, Dakota, Hennepin, Ramsey, and Washington Counties)	Would the MPCA consider adding the word “significantly” to the sentence on page 17 that states “...the actual tipping fees charged to haulers are generally significantly lower at landfills than resource recovery facilities.”	MPCA has limited information regarding the pricing of landfill tipping fees made in agreement between haulers and landfills. Posted rates at landfills are higher than resource recovery facilities. Yet, MPCA has sufficient information to assume that resource recovery pricing is higher.

## **Appendix F**

# **Public Comments on the DRAFT Metropolitan Waste Disposal Restrictions Report**



August 30, 2012

Minnesota Pollution Control Agency (MPCA)  
520 Lafayette Road  
St Paul, Minnesota 55155

RE: Comments Regarding Metropolitan Waste Disposal Restrictions Report

To whom it may concern,

Thank you for providing us the opportunity to comment on the August 1<sup>st</sup> draft of your Metropolitan Waste Disposal Restrictions Report. We appreciate all the time and effort that went into preparation of this report.

We are writing to express a number of concerns with MPCA's report and its conclusions.

**Moving from Market-Based system to Government Regulation:**

The current system is market-based. If a landfill or a resource recovery facility (RRF) seeks the delivery of additional mixed municipal solid waste (MSW), they need only reduce their rates. The market-based system has the effect of forcing facility operators to be as efficient as possible.

Here, MPCA is proposing to turn the current market-system into a system of government regulation, with all the inherent inefficiencies of a government-run waste system.

**A "No Details" Regulatory Scheme**

MPCA fails to explain how its regulatory system will operate. Key questions still undefined include: (1) how far must a hauler travel to deliver to a RRF which is under capacity, (2) who makes this decision, (3) how do haulers find out these decisions, and (4) who will manage this system on a daily basis.

MPCA has failed to address numerous requests for clarification on these crucial points. We are in the dark on the most basic pieces of the regulatory scheme. We have not yet been informed which entities will be subject to enforcement actions. Will it be landfills, haulers, or transfer stations, or all three?

We believe these operational details were precisely what the legislature was asking the MPCA to provide in its report.

**Picking Winners and Losers**

MPCA's proposed regulatory system picks winners and losers. The winners are RRFs, and the losers are haulers and landfills with waste to energy (WTE) operations. While MPCA is

propping up one industry, they are causing negative results in another. This proposed regulatory scheme has a direct effect on jobs at landfills. MPCA also creates the economic climate which could result in the closing of one or more landfills (greatly reducing Minnesota's landfill capacity).

Years ago, MPCA began its support for waste to energy operations at landfills. Private and public landfill operators then spent millions to create this WTE capacity. MPCA permitted these landfills. Now the MPCA is proposing action that would cause direct harm to this public and private investment.

### **Subsidizing Inefficiency**

Most RRFs are most efficient when operating below maximum capacity. Therefore, when operating at maximum capacity, RRFs are less efficient. At the same time, this regulatory scheme allows RRFs free reign to raise their tips fees—and still be guaranteed full capacity. It does not matter how inefficient or costly they are, RRFs are guaranteed full capacity. While RRFs are guaranteed profit, it is ultimately consumers and businesses that will pay more.

### **Unfair Competitive Advantage**

This “no details” regulatory scheme allows one hauler to gain competitive advantage over another. A hauler would be incentivized to game the system to avoid hauling to more expensive RRFs—while forcing competitors to deliver there instead.

Additionally, haulers with operations distant from RRFs would gain competitive advantage. They would avoid higher tip fees at RRFs, while their competitors would be forced to pay more.

### **Anti-trust Concerns**

MPCA states that only landfills will be regulated with this scheme, not haulers. However, it is impossible to take haulers out of the system. At some point, haulers will need to be directed where to deliver MSW. MPCA puts this responsibility on the landfills. However, there are serious anti-trust concerns raised when a company owning both landfills and hauling operations is made to direct the trucks of competitors. This is especially worrisome when competitor haulers could be diverted to distant RRFs with higher tip fees.

Additionally, MPCA's regulatory scheme calls for significant daily communication and coordination amongst haulers, landfills, and RRFs. This behavior is specifically prohibited by anti-trust laws.

### **Operational Concerns**

MPCA's “no details” regulatory scheme ignores significant operational challenges. The current market-based system is finely-tuned and constantly evolving—to provide maximum efficiency for participants and lowest costs to consumers and businesses.

A government-regulated scheme will result in longer truck waiting times at facilities, constant re-routing, and diversion of trucks from one facility to another. This re-routing of

trucks will result in higher fuel consumption, unnecessary road wear, and the release of additional greenhouse gases. A central dispatch will need to be created to direct trucks on a minute-by-minute basis.

### **A Solution for a Different Era**

When Minn. Stat. Sec. 473.848 was enacted 27 years ago, the world was much different. Much of the science and technology was not yet invented. Recycling was rare, organics recovery non-existent, and engineered landfills were in their infancy. Landfill engineering has come a long way, and industry has made great strides in increasing recycling.

If Minn. Stat. Sec. 473.848 were considered today, would it even be supported by the stakeholders and passed by the legislature? We believe a different approach is in order. We encourage MPCA to work with us to affect the top of the hierarchy, including product stewardship, recycling, and organics recovery.

In recent years, industry has invested millions of dollars in recycling facilities. We have moved to collection of 1-7 plastics on its own, without any government mandate. We stand ready to work with MPCA in a cooperative manner. Instead, MPCA proposes a regulatory scheme which causes a significant economic and operational impact to private sector waste haulers and landfills.

### **Legal Concerns**

MPCA's proposed plan also raises a number of legal concerns. MPCA does not appear to have the legal authority to enforce Minn. Stat. Sec. 473.848. The opening of current landfill permits also raises due process concerns. MPCA's regulatory scheme also impairs current and binding contracts that exist between haulers and RRFs. Finally, MPCA is attempting to divert the flow of MSW from one class of private facility (landfills) to another class of private facilities (RRFs)—in violation of the Commerce Clause.

### **Contributors/Acknowledgement Page**

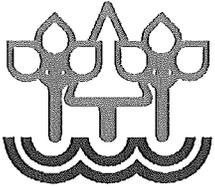
Finally, we respectfully request that MPCA remove the name of Allied Waste employee Jim Rauschnot from the list of "Contributors/acknowledgements" on the second page of the report. Mr. Rauschnot's only "contribution" was to send MPCA a photo. Listing him under this section has the effect of misleading readers of the report. It implies that Allied Waste contributed to the substance of the report. We did not contribute to this report, and do not support this report's conclusions.

Please do not hesitate to contact me at 952-946-5330 or at [rhirstein@republicservices.com](mailto:rhirstein@republicservices.com) if you have any questions.

Very truly yours,

*Rich Hirstein*

Senior Area Municipal Services Manager  
Allied Waste/Republic Services



City of  
**BURNSVILLE**

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August 28, 2012

Sigurd Scheurle, Project Manager  
Minnesota Pollution Control Agency  
520 Lafayette Road N.  
St. Paul, MN 55155-6002

RE: Comments on August 2012 Draft Report – “Metropolitan Waste Disposal Restrictions Report”

Dear Mr. Scheurle:

I am writing to comment on the recent decision to use the authority provided to the Agency under Minnesota Statutes, section 473.848. As you know, this provision has been in place for nearly three decades and has not been implemented. The City of Burnsville has several questions and comments about the implementation plan.

From an environmental perspective, the goals you have stated are laudable. In fact, the City of Burnsville has been a key partner in Dakota County in efforts to recycle and reduce the amount of waste generated in our communities. As noted by the PCA, the Dakota County recycling rate has increased to 52 percent as of 2011, the highest recycling rate in the seven-county metropolitan area. The reduction in waste generated in Dakota County can be attributed, in large part, to the sustainability efforts of the City and the other communities of Dakota County. For many years, we have done more than what is required to ensure good environmental practices in local communities.

However, the City of Burnsville also has to consider the impacts that diversion of waste from existing landfills will have on our community. Diversion of solid waste negatively impacts not only the finances of the City, but also the community development goals established by the City Council and supported by City residents. In the 1990s, when the State had determined that additional landfill capacity was needed, Burnsville reluctantly stepped up and agreed to expand the existing landfill, with the assurances that it would be closed in 2019.

The assumptions made for the future land uses AND the attendant revenues associated with hosting a landfill were important considerations for the City at that time. The underpinnings of that willingness to provide a regionally-needed facility are now being changed mid-stream. The current landfill is located on a beautiful parcel of land off of the Minnesota River next to a future lake that will be created by the nearby quarry operations. The City has long-term plans to develop this area, called the Minnesota River Quadrant (MRQ) when the existing landfill and quarry cease operations; currently scheduled for 2024. This redevelopment area is just east of the Minnesota Valley National Wildlife Refuge. Diversion of waste would significantly delay the development of this area and thwarts the City's ability to achieve the highest and best use of this land.

Based on the estimated reduction outlined on page 12 of the draft report, the City would see an immediate annual reduction of \$120,000 in revenue from the host fee agreements with the Burnsville Sanitary Landfill with reductions that are even more significant as time goes by. This revenue funds essential services and offsets the added costs of serving as a host community. We have already seen a reduction in these revenues both from the economic downturn and the City's successful sustainability efforts, which we are able to manage through long-term planning, but the additional financial impacts of diverting waste from the facility likely will result in a reduction in services. On page 22 of the draft report, the Agency's response to the impact on local host communities makes light of the financial challenges facing these communities. The City strives to minimize tax increases on its residents and businesses—even in the face of a growing number of unfunded mandates from the State. This loss of revenue is yet another blow in an economically challenging time.

The Agency's *Metropolitan Solid Waste Management Policy Plan 2010-2030* refers to creating financial incentives to "drive better waste management." The implementation plan described in the PCA's draft report seems to change the nature of the economic incentives that have been in place for quite some time, for most of the past years, accomplishing regional goals. At the same time the counties are reducing financial incentives for haulers to bring waste to the Resource Recovery Centers (RRCs), the PCA is changing its approach toward meeting its goals. By requiring the haulers to re-direct trucks to other facilities, the Agency is moving away from the economic model that has led achieving earlier goals. In other words, the Agency is changing the approach from one where incentives were used to influence market forces to achieve government goals for solid waste to an approach that is largely regulatory.

If we can no longer afford to achieve the goals by influencing the market through county-financed incentives, perhaps a different model for incentives must be developed. One option could be to create an annual supplemental charge on mixed municipal solid waste (MMSW) generated in the seven-county regional area delivered to all landfills serving the metropolitan area regardless of where the landfill is located. Another possibility would be to increase the existing Metropolitan Landfill Abatement Account (MLAA) surcharge (currently \$2.00 per cubic yard), and again, apply it to all MMSW from the 7-County Metropolitan area regardless of where the landfill is located. Revenues from either approach could be used first to hold host communities harmless and second to provide economic incentive to haulers to encourage use of the RRCs. In our estimation this will at least provide more market certainty to the operators, especially the haulers that must work within the system that will result from the state actions.

The approach described in the draft report creates logistical challenges. The 2009 study referenced on page 18 would reach different conclusions when a hauler has to price in uncertainty associated with a daily change in distribution of waste. The logical method for setting a fee with a daily change in transportation dictated by external forces would be to include such uncertainty in the pricing model. An annual review of the incentive fees discussed above by the PCA would allow an assessment of whether the goals were being met, and provide more stability to haulers in developing pricing models and running existing operations.

Finally, the report assumes no additional RRCs would be built to implement this plan. Would the PCA support companies building additional facilities intended to facilitate implementation of this plan using state economic development incentives? Again, providing economic incentives to support the use of RRCs would aid the Agency in achieving its goals. As an aside, if there is a mismatch on RDF capacity and burner capacity, what will happen to the RDF that is generated in excess of what can be burned? Will that just accumulate and ultimately need to be landfilled? The operator located in Burnsville contends that there are unresolved legal questions related to the proposed approach.

In summary, the negative economic and community development implications of implementation on our community requires that as this plan moves forward that *all* implications of diversion of solid waste are considered and addressed. We appreciate your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Craig L. Ebeling". The signature is fluid and cursive, with a prominent initial "C" and "E".

Craig L. Ebeling  
City Manager  
City of Burnsville

cc: Mike Sandusky, Director, Environmental Analysis and Outcomes Division  
Jeff Smith, Director, Industrial Division  
Tina Patton, MPCA  
Commissioner Liz Workman, Dakota County  
Brandt Richardson, Dakota County



*Bonny Betancourt  
Associate Director, Government Relations  
(518) 598-7031  
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## **COMMENTS ON MPCA DRAFT WASTE DISPOSAL RESTRICTIONS REPORT**

Submitted August 31, 2012

Covanta Energy is pleased to submit the following comments on the Minnesota Pollution Control Agency's (MPCA) draft "Metropolitan Waste Disposal Restrictions Report", which was released on August 1.

### **Covanta Energy Background**

Covanta is an international leader in developing, owning and operating facilities that convert municipal solid waste (MSW) into renewable energy. Waste-to-Energy (WTE) facilities provide important waste disposal services to municipalities seeking to avoid or minimize use of landfills, while using MSW as a fuel source for generating renewable energy. Covanta owns and/or operates over 40 WTE facilities in the U.S.

WTE facilities produce renewable energy near the areas of demand, create skilled jobs that pay above-average wages and benefits, and reduce land use through facility footprints that are much smaller than other alternative energy producers such as wind and solar farms. At the same time, EfW is recognized internationally by climate scientists as a reducer of greenhouse gas emissions.

Covanta Energy has operated the Hennepin Energy Recovery Center (HERC) under contract since 1989. The HERC facility supplies enough electricity to power approximately 24,000 homes and businesses and recovers an estimated 11 tons of metals yearly.

Covanta and Hennepin County share in the sales revenues from the facility's renewable electricity generation and from recycling metals recovered at the facility, which in turn provides revenues to help fund the County's ongoing recycling efforts.

### **Hennepin Solid Waste Management Master Plan Supports Expanded Recycling and Materials Recovery Goals**

Hennepin County adopted an updated Solid Waste Management Master Plan (SWMMP) in April 2012. That plan acknowledges and supports the State's goal of a 45% recycling rate by 2015, and also states an ambitious county-specific goal of a 6% organics recycling rate, also by 2015.

The County's new Master Plan outlines various strategies to increase both residential and commercial recycling rates through expansions of existing programs, as well as new approaches and some new targets. For example, the new plan seeks to increase recycling rates at apartment buildings and among multi-families, demographics that typically have been harder to engage.

As part of its efforts, the County will seek to expand its consumer outreach and education, including providing information on recycling in languages other than English, and distributing information in multimedia formats more suited to today's digital age, including social media, videos and interactive websites, in addition to more traditional communication methods such as direct mail and print materials. The County will also pursue peer-to-peer communication by partnering with community groups, congregations, youth-serving organizations and others to deliver environmental education programs.

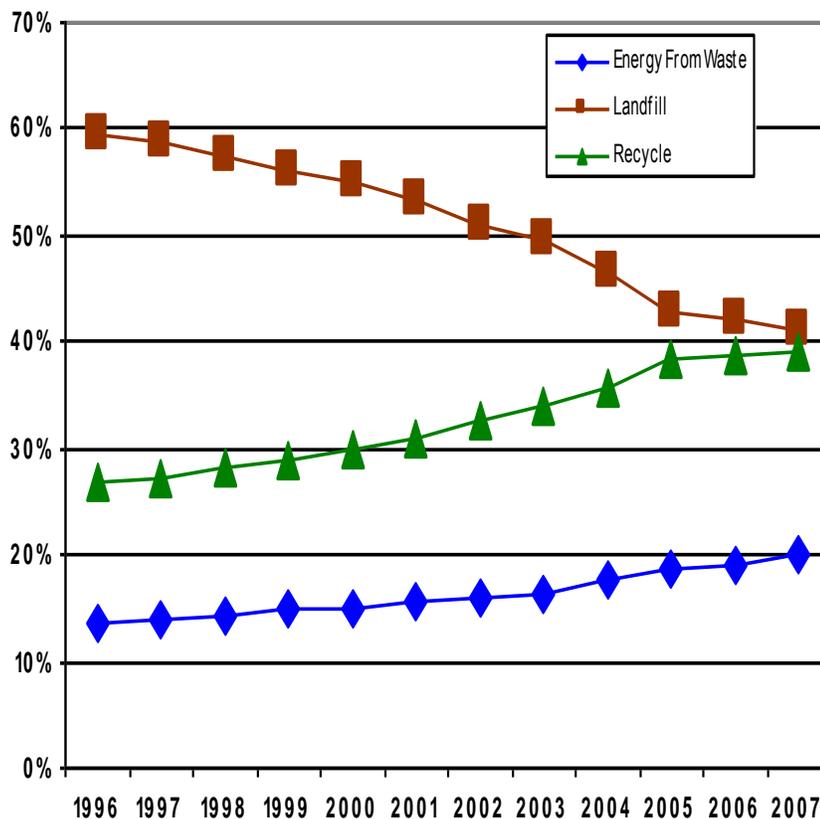
### *Materials Recovery*

Currently, the HERC facility estimates that it recycles over 11 tons of ferrous and non-ferrous metals pulled out of the MMSW it processes on an annual basis.

Additionally, the County has negotiated a contract with a recycler to set up sorting operations at the County's Brooklyn Park Transfer Station. The recycler will seek to recover plastics and metals from the incoming waste. About one third of the estimated 22,000 tons recovered will be recycled, with the rest to be converted into synthetic crude oil. The County will seek to evaluate the feasibility of replicating this initiative at the HERC facility once sufficient data have been established (*Hennepin County Solid Waste Management Master Plan, April 2012*).

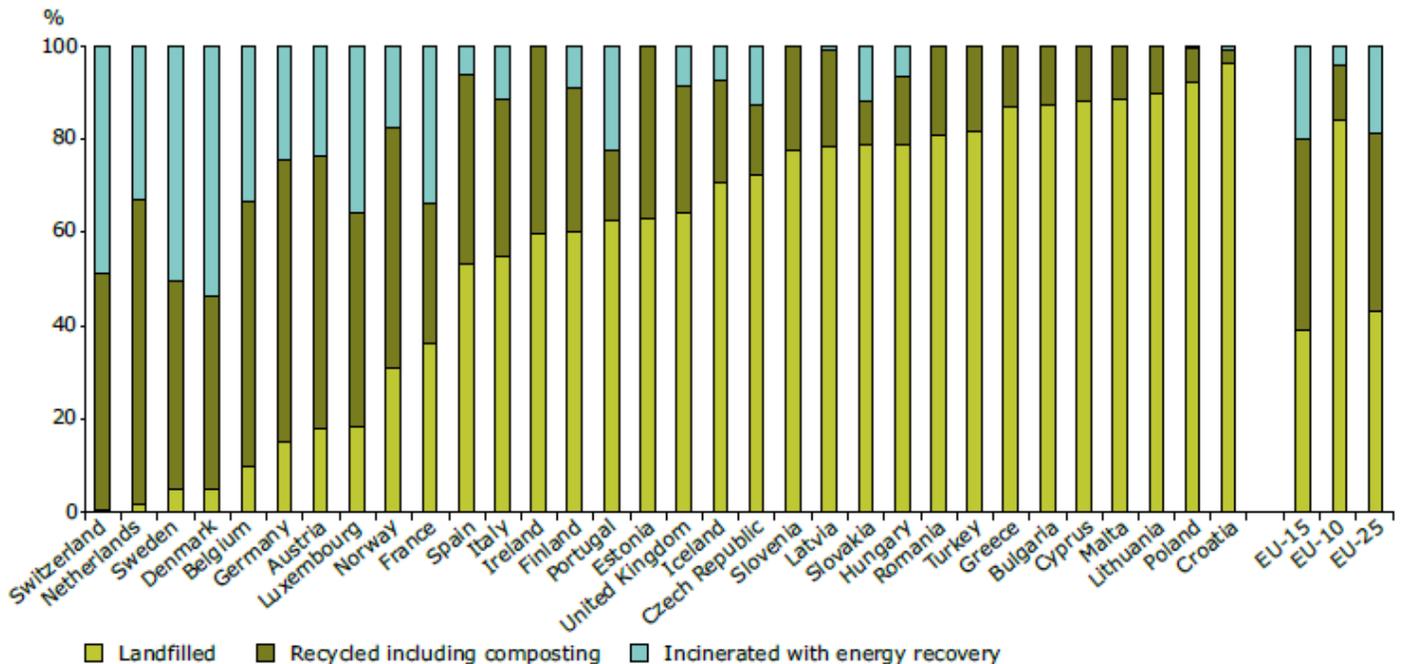
### **WTE and Recycling Work Well Together**

In contrast to concerns expressed by some environmental groups that WTE competes with recycling, data and studies from the European Union and academic researchers have demonstrated the exact opposite. In addition to its ability to produce baseload energy, WTE is fully compatible with aggressive recycling efforts. It is well documented that recycling rates in the European Union have increased steadily over time after the EU's formal adoption of WTE as its primary waste management strategy (*see graph below, European Environment Agency, 2007*).



Inclusion of WTE in an integrated waste management strategy in the EU has *not* lead to lower recycling rates, as many fear. In fact, as can be seen from the figure below, the countries with *the highest recycling rates also exhibit the greatest use of WTE*. Countries with strong regulatory efforts such as Germany and Denmark have truly reduced the amount of MSW being directed to landfills.

### Allocation of MSW to Recycling, Energy Recovery and Landfill



Source: EEA-ETC/RWM calculation based on data from Eurostat, 2007d.

### HERC Expanded Throughput Would Support State Solid Waste Management Hierarchy

Currently, as the MPCA draft report notes, the HERC facility is operating at its full permitted capacity of 365,000 tons of MMSW a year. However, the HERC facility is in the process of pursuing both municipal and MPCA approval for a permit modification to be able to process 400,000 tons MMSW capacity.

This additional 35,000 tons MMSW capacity per year would directly support the State's solid waste management hierarchy and overall MPCA goal of reducing the amount of MMSW landfilled, provide the City of Minneapolis with additional electricity and steam for the downtown loop, increase the recovery of scrap metals from the waste stream, and produce additional revenue for the County to help fund its new recycling, composting, materials recovery, and reuse efforts.

Covanta and Hennepin County continue to stand behind the HERC facility's operations as safe, environmentally compliant, and in support of the State's solid waste management policy.

### Minnesota Solid Waste Management Hierarchy Was a Forerunner to EU Landfill Directive

Minnesota's existing solid waste management hierarchy was established in law in 1980 through the adoption of the Waste Management Act. It is notable that this Act, which demonstrated the State's forward thinking about best waste management practices, pre-dated the European Union's 1999 Landfill Directive by almost two decades. Like Minnesota's solid waste

management hierarchy which prioritizes reduction, recycling and resource recovery over landfilling, the EU Landfill Directive also seeks to reduce the amount of waste landfilled through similar practices.

The primary goal of Minnesota's solid waste management hierarchy is the overall reduction of waste. However, the MPCA report also mentions in several places that Waste-to-Energy can help contribute to the reduction of greenhouse gases in the state. Covanta agrees that, in addition to the tangible energy production of WTE facilities, another critically important benefit is WTE's ability to help reduce the net volume of climate-warming greenhouse gases (GHG).

The Nobel Prize winning Intergovernmental Panel on Climate Change ("IPCC") identifies WTE as a key GHG mitigation technology for the waste sector. The World Economic Forum in its 2009 Davos Report identified WTE as one of eight technologies likely to make a significant contribution for a future low-carbon global energy system. The 2010 Davos Report reiterated these findings, but also included a recommendation to follow the European Union's model and increase Energy-from-Waste by phasing out the use of landfills because burying waste in landfills is "increasingly considered environmentally unacceptable".

Additionally, the European Union Landfill Directive sets an aggressive target of 65% diversion of all organics (e.g. food wastes, forest products, yard wastes) from landfills to recycling, composting, and energy recovery by 2014. EU member states are meeting this mandate by managing waste in line with the waste hierarchy, which favors, in order: reuse, reduction, recycling, and energy recovery over landfilling. High landfill taxes and an outright ban on organics in German landfills have served to deter reliance on landfills even further.

Recognizing that waste is an energy resource, the U.S. EPA Office of Resource Conservation and Recovery reflects a new emphasis on sustainability and recovering value from former waste materials. In fact, the U.S. EPA waste hierarchy establishes the same order as Minnesota and the EU, giving preference to recycling and recovery over waste disposal in landfills.

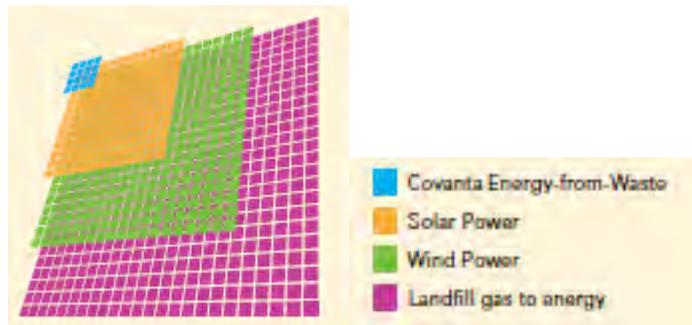
#### **Energy-from-Waste Is Efficient, Has Small Footprint**

The MPCA draft report states that "MPCA concluded that each of the four metropolitan area resource recovery facilities is ten times more efficient in converting waste to energy than the most effective landfill gas system."

This comports with our own company data, which estimates that the average energy output of a Covanta-operated energy recovery facility is approximately 500–750 kWh, about 9-14X the energy output of a Land Fill Gas-to-Energy (LFGTE) system, which typically averages about 65 kWh (*U.S. EPA*). The U.S. EPA also states that Energy-from-Waste (EfW) "produces electricity with less environmental impact than almost any other source".

Typically, Waste-to-Energy facilities require only a tiny fraction of the land needed to produce energy in comparison to wind and solar farms. EfW facilities average 0.7 acres per MW

produced, in comparison to 8 acres per MW for solar and 18 acres per MW for wind. The greatest amount of land space taken up to produce energy is 27 acres per MW for Landfill-Gas-to-Energy (LFGTE), based on average capacity over 30 years. Waste-to-Energy plants help *conserve* land while producing critically needed baseload energy.



**Land Required Per Megawatt**

### **Conclusion**

Covanta Energy strongly supports the state's existing solid waste management hierarchy, which prioritizes the recovery of materials and energy over landfilling. It is counterproductive to landfill waste that could serve as the source for valuable recyclable materials, and finally, as another source of alternative, renewable energy.

Accordingly, Covanta applauds the MPCA for pledging to uphold the State's existing solid waste management hierarchy and State law §473.848 mandating recovery over landfilling. By doing so, the State of Minnesota will continue to preserve its standing alongside a growing number of progressive-thinking countries in the European Union, Asia and other parts of the world that actively incorporate energy recovery as an integral part of their solid waste management and energy plans. Indeed, China has set an ambitious goal of producing 30% of its energy needs from its solid waste by 2030.

That being said, landfills do have an important role in the management of solid waste, as a means of disposal for wastes that are not recyclable or otherwise recoverable. It is notable that the MPCA draft report states that the Spruce Ridge, Pine Bend, Burnsville and Elk River landfills have all been in operation for over twenty years. While the lifespan of an individual landfill depends on its size and management, it is generally estimated that the average lifespan of a landfill is approximately 30-50 years.

We agree with the MPCA that full implementation of State law §473.848 will extend the useful life of these landfills. This will help ensure that a proper disposal option will continue to exist for those types of waste that cannot otherwise be productively utilized for materials or energy recovery.

Finally, we reiterate our view that fully implementing the provisions of §473.848 would help create new in-state jobs as recycling and materials recovery rates grow, increase the utilization of a reliable source of energy production that uses a sustainable, non-fossil fuel (MMSW), conserve Minnesota's existing open spaces, and help preserve existing landfill capacity for future decades.

# # #



13065 Orono Parkway  
Elk River, MN 55330

August 22, 2012

Sigurd Scheurle  
Minnesota Pollution Control Agency  
520 Lafayette Rd. N.  
St. Paul, MN 55155-4194

Dear Sigurd Scheurle:

Please see the attached resolution to support prompt enforcement of the Minnesota Statutes, Section 473.848 by the Minnesota Pollution Control Agency, restricting disposal of unprocessed mixed municipal solid waste generated in the metropolitan area from being landfilled.

Sincerely,

Rebecca Haug  
Environmental Administrator

Phone: 763.635.1000  
Fax: 763.635.1090

[www.ci.elk-river.mn.us](http://www.ci.elk-river.mn.us)



RESOLUTION 12-45

A RESOLUTION OF THE CITY OF ELK RIVER

A RESOLUTION TO SUPPORT PROMPT ENFORCEMENT BY THE  
MINNESOTA POLLUTION CONTROL AGENCY OF MINNESOTA  
STATUTES, SECTION 473.848

- WHEREAS, the goals of the City of Elk River are in agreement with the goals of the State of Minnesota, delineated in Minnesota Statutes, Section 115A.02, which states: *"It is the goal of this chapter to protect the state's land, air, water and other natural resources and the public health by improving waste management in the state to serve the following purposes: (1) reduction in the amount and toxicity of waste generated; (2) separation and recovery of materials and energy from waste; (3) reduction in indiscriminate dependence on disposal of waste; (4) coordination of the solid waste management among political subdivisions; and (5) orderly and deliberate development and financial security of waste facilities, including disposal facilities."*; and
- WHEREAS, Minnesota Statutes, Section 473.848, placing restrictions on the disposal of unprocessed mixed municipal solid waste generated in the metropolitan area, was adopted in 1985 for the purposes of implementing the policies established in Section 115A.02; and
- WHEREAS, the City of Elk River has a long standing policy of supporting those initiatives that reduce the need for indiscriminate land disposal of solid waste through various waste reduction, recycling, and resource recovery efforts; and
- WHEREAS, Minnesota Statutes, Section 473.848 has been in law for 27 years and, pursuant to this law, significant investments have been made in processing facilities to reduce dependence on indiscriminate land disposal of mixed municipal solid waste; and
- WHEREAS, the City of Elk River has licensed and supports Great River Energy's Elk River Resource Recovery Project, which is currently processing mixed municipal solid waste into Renewable Energy so that it need not be landfilled; and
- WHEREAS, in 2005, the MPCA became responsible for enforcing Minnesota Statutes, Section 473.848 and; beginning in late 2010, the MPCA began studying how to enforce the provisions of this statute; and
- WHEREAS, enforcement of Minnesota Statutes, Section 473.848 will provide direct benefits to the public by reducing the indiscriminant landfilling of mixed municipal solid waste; and

WHEREAS, enforcement of Minnesota Statutes, Section 473.848 will ensure that processing facilities receive their operational capacity of mixed municipal solid waste, thereby greatly reducing the need for public subsidies; and

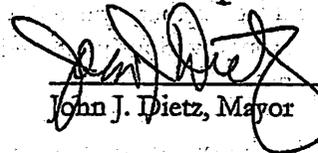
WHEREAS, enforcement of Minnesota Statute 473.848 will not adversely impact existing or potential expansions to methane/landfill gas to energy facilities; and

WHEREAS, Minnesota Statutes, Section 473.848 is good public policy that encourages the recovery of resources, including renewable energy and recyclables, from mixed municipal solid waste; and

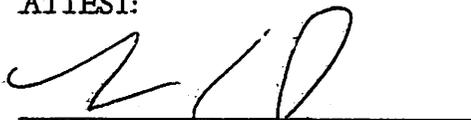
WHEREAS, the City of Elk River is not concerned about potential reductions in host community/expansion fees and/or surcharge fees due to the enforcement of Minnesota Statutes, Section 473.848.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Elk River to continue to support the processing of mixed municipal solid waste as a preferred management option to land disposal and further supports the MPCA's prompt enforcement of Minnesota Statute Section 473.848 in such a way that the existing capacity of facilities that manage mixed municipal solid waste through the separation and recovery of materials and energy is maximized and opposes any further delays to such enforcement that additional studies or other actions may cause.

Passed and adopted this 20<sup>th</sup> day of August, 2012.

  
\_\_\_\_\_  
John J. Dietz, Mayor

ATTEST:

  
\_\_\_\_\_  
Tina Allard, City Clerk



August 31, 2012

Mr. Sig Scheurle  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
Saint Paul, MN 55155-4194

*RE: Metropolitan Waste Disposal Restrictions Report, August 2012*

Dear Mr. Scheurle:

On behalf of the Energy Recovery Council (ERC), I would like to take this opportunity to comment on MPCA's Metropolitan Waste Disposal Restrictions Report dated August, 2012. Waste-to-energy is a vital component of any integrated solid waste management plan, and we strongly support a faithful implementation of MPCA's solid waste hierarchy. The approach recommended by the MPCA would ensure that waste-to-energy facilities continue to offer sustainable waste management solutions into the future.

The Energy Recovery Council is the national trade association representing the companies and local governments that own and operate waste-to-energy facilities. These facilities produce clean, renewable energy through the combustion of municipal solid waste in specially designed power plants equipped with the most modern pollution control equipment to clean emissions. Trash volume is reduced by 90% and the remaining residue is safely reused or disposed in landfills. There are 86 waste-to-energy plants operating in 24 states managing about 95,000 tons of MSW each day. Waste-to-energy facilities have a baseload capacity of about 2,700 megawatts of electricity to meet the power needs of nearly two million homes while serving the trash disposal needs of more than 36 million people. Minnesota has made a significant commitment to waste-to-energy and the state's nine energy-generating facilities process more than 4,400 tons of trash per day and have a baseload electric capacity of more than 130 megawatts.

Minnesota's solid waste hierarchy is consistent with the solid waste strategies of the most sustainable and environmentally progressive countries in Europe, where land conservation and sustainability are paramount. It is also consistent with U.S. EPA's hierarchy. After waste reduction, reuse, and recycling, waste-to-energy is preferable to landfilling, and the state's policies should result in faithful implementation of the hierarchy. By taking the appropriate steps to ensure that waste-to-energy is fully utilized, MPCA will ensure that Minnesota can continue to rely on power that is clean, renewable, and reliable.

**Waste-to-Energy Generates Much Needed Baseload Power**

It is important to consider that waste-to-energy plants supply power 365-days-a-year, 24-hours a day and can operate under severe conditions. Waste-to-energy facilities average greater than 90% availability of installed capacity. The facilities generally operate in or

near an urban area, easing transmission to the customer. Waste-to-energy power is sold as “baseload” electricity to utilities that can rely upon its supply of electricity. There is a constant need for trash disposal, and an equally constant, steady, and reliable energy generation. Baseload capacity will become even more important as new intermittent sources of electricity are brought online, such as wind and solar. Wind energy, for example, only produces electricity a fraction of the day, and generally during periods when the electricity is not in peak demand.

**Waste-to-Energy reduces greenhouse gas emissions**

In addition, waste-to-energy achieves the reduction of greenhouse gas emission through three separate mechanisms: 1) by generating electrical power or steam, waste-to-energy avoids carbon dioxide (CO<sub>2</sub>) emissions from fossil fuel- based electrical generation; 2) the waste-to-energy combustion process effectively avoids all potential methane emissions from landfills, thereby avoiding any potential release of methane in the future; and 3) the recovery of ferrous and nonferrous metals from municipal solid waste by waste-to-energy is more energy efficient than production from raw materials. These three mechanisms provide a true accounting of the greenhouse gas emission reduction potential of waste-to-energy and illustrate the importance of waste-to-energy in achieving the state’s greenhouse gas goals.

**Waste-to-energy is Compatible with Recycling**

Statistics compiled for nearly two decades have proven that waste-to-energy and recycling are compatible despite many attempts by naysayers to conclude otherwise. Since research on the subject began in 1992, communities that rely upon waste-to-energy maintain, on average, a higher recycling rate than the national EPA average.

Communities that employ integrated waste management systems usually have higher recycling rates and the use of waste-to-energy in that integrated system plays a key role. There are several factors why the recycling rates of communities with waste-to-energy facilities would be higher than those without. First, communities with waste-to-energy plants tend to be more knowledgeable and forward thinking about recycling and MSW management in general. Second, communities with waste-to-energy plants have more opportunities to recycle since they handle the MSW stream more. Third, the municipal recycling program can be combined with on-site materials recovery at the waste-to-energy plant (e.g. metals recovered at a waste-to-energy plant post-combustion usually cannot be recycled curbside and would otherwise have been buried had that trash been landfilled).

In a paper entitled, “A Compatibility Study: Recycling and Waste-to-Energy Work in Concert, 2009 Update,” Eileen Berenyi with Governmental Advisory Associate, Inc. researched the recycling characteristics surrounding 82 waste-to-energy facilities in 22 states. Recycling data was obtained from 567 local governments, as well as statewide data from the 22 states covered in the report. In 2009, the report shows that communities with waste-to-energy have an average recycling rate of 33.2%. The national average for

recycling as estimated by EPA is estimated at 32.5%, while BioCycle/Columbia University estimate it to be 28.6 %. However, Berenyi has calculated an “adjusted” recycling rate for EPA that more closely tracks the recycling rates calculated by others. (Berenyi, 2009)

The unadjusted U.S. EPA computed national recycling rate (32.5%) is computed using a waste stream model and includes certain commercial/industrial components and yard waste. These materials are often excluded in individual state and local recycling tonnages. In order to juxtapose comparable statistics, it is appropriate to use Berenyi’s adjusted EPA rate of 27.8%. Regardless of what factor you use, communities with waste-to-energy outperform communities without waste-to-energy when it comes to recycling. If you compare the rate to BioCycle or the Berenyi adjusted EPA rate, it is a difference of approximately five percentage points. This is borne out by the recycling rates of European countries as it relates to their reliance upon waste-to-energy or landfilling. The most progressive countries recycle a lot, recover energy as much as possible, and landfill little. Less advanced countries landfill as much as possible, recycle and combust almost nothing.

ERC appreciates the efforts of MPCA to implement policies that will give meaning and definition to the solid waste hierarchy. Without enacting such policies, the hierarchy will remain an unfilled goal. If you have any questions, please contact me at (202) 467-6240 or [tmichaels@energyrecoverycouncil.org](mailto:tmichaels@energyrecoverycouncil.org).

Sincerely,

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

Ted Michaels  
President



**Glencoe Light and Power**  
**305 11<sup>th</sup> Street East**  
**Glencoe, MN 55336**

**To:** Sigurd Scheurle / Tina Patton  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-4100

**From:** David Meyer, General Manager

**Date:** August 30, 2012

**Re:** Metropolitan Waste Disposal Restrictions Report

---

Dear Mr. Scheurle and Ms. Patton:

Glencoe Light and Power appreciates the opportunity to provide the following comments to the Minnesota Pollution Control Agency regarding its August 2012 Metropolitan Waste Disposal Restrictions Report. As noted in the Report's executive summary, "the report attempts to forecast potential impacts related to achieving compliance" with Minnesota Statutes §473.848. As a testifier during legislative committee proceedings that produced the study requirement, I believe that exploring these potential impacts was exactly the legislature's intent. The executive summary indicates that the impacts were explored however; I believe there are impacts that are not contemplated in the Report or should receive consideration in greater detail.

As a provider of renewable electricity from landfill-produced methane gas, Glencoe Light and Power holds a significant stake in the outcome of deliberations that could result in reduced waste flow to its generating site at the Spruce Ridge Landfill. From my perspective as General Manager of the utility, I am aware that the study lacks or misinterprets certain data that informs how much waste would be diverted from Spruce Ridge. Furthermore, the Report fails to consider several undesirable externalities that would be created by shifting political favor toward electricity produced from resource derived fuel and away from landfill gas.

#### **Less renewable electricity to Glencoe citizens**

The citizens of Glencoe receive in excess of 30% of their electricity from methane produced at Spruce Ridge and thus help Minnesota meet its overall statutory goal of

producing 25% of the state's electricity from renewable resources by 2025. On page 2, the report claims: "If compliance with *Minn. Stat. § 473.848* was fully met, in 2011, there would be an average 11 percent reduction in waste landfilled. The reductions would range from an estimated four percent decrease in total waste delivered to the Spruce Ridge facility to 29 percent for the Elk River landfill." Yet on page 11, the report states: "Over the past three years 15 percent to 27 percent of the MMSW disposed by the [Spruce Ridge] facility was metropolitan area unprocessed waste." The report fails to explain this disparity. In fact, Glencoe electric customers stand to lose the methane production caused by more than a 27% reduction in MMSW hauled to Spruce Ridge as, according to the Spruce Ridge Resource Management Facility 2011 Annual Operating Report prepared by Liesch Associates and filed with MPCA on behalf of Waste Management, over 40% of the MMSW hauled to Spruce Ridge in 2011 came from the seven county metro areas. A reduction of that magnitude would certainly affect the landfill gas generation at Spruce Ridge adversely and must be addressed in the Report.

### **Significant negative impacts from promoting RDF over LFG**

The Report, on page 14, states that waste-to-energy is "far superior to landfills" and "ten times more efficient in converting waste to energy than the most effective landfill gas system." The facility at Spruce Ridge generates 3200 kW of electricity of which more than 3100 kW is transmitted to Glencoe customers. This amounts to over 96% of the energy produced. How much of an RDF facility's capacity is consumed by the facility in order to produce the energy and how much of the energy actually makes it to the electric customer? How much energy goes into storing the waste for use? How much energy does it take to move the waste into the facility? How much energy goes into controlling the pollution created by the process? The true efficiency of the facility can't be calculated without comparing the gross generation to the net generation.

On page 3 the Report states that one of the Agency's duties under the Waste Reduction Act is the "reduction in the amount and toxicity of waste generated" as stated in Minnesota Statutes §115A.02. According to page 6, one of the effects sought by the Agency in achieving the Metropolitan Solid Waste Management Policy Plan would be to "reduce environmental and economic risks of land disposal." However, ash from waste-to-energy incineration is hazardous waste and creates a greater risk of toxic environmental contamination from hauling and leakage. These impacts, as well as the related energy and pollution impacts from ash hauling and disposal, need to be explained.

The "Policy Plan" referred to above was adopted on April 6, 2011. Page 8 indicates it was "developed after MPCA spent more than two years performing extensive consultations with industry groups, environmental groups, local governments and others." Glencoe has a significant investment in the Spruce Ridge facility, and the potential impact of the Agency's plan to Glencoe and its customers is substantial. This should qualify the City of Glencoe and Glencoe Light and Power as major stakeholders in the Policy Plan development. Yet neither was contacted at all during this process of "extensive consultations." I don't believe that this report can be truly accurate without input from all of the major stakeholders.

Again, Glencoe Light and Power greatly appreciates the opportunity to provide these comments. I strongly believe that the issues above need to be addressed in order for the Agency and the Minnesota Legislature to make informed policy decisions regarding enforcement of Section 473.848 or reconsideration of its efficacy. If you have any questions, please feel free to contact me and I will do my best to answer them.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Meyer".

David Meyer  
General Manager  
Glencoe Light and Power  
(320) 864-5184 office  
(320) 510-0293 cell  
[dave@glencoelightandpower.com](mailto:dave@glencoelightandpower.com)



GREAT RIVER  
ENERGY®

12300 Elm Creek Boulevard • Maple Grove, Minnesota 55369-4718 • 763-445-5000 • Fax 763-445-5050 • www.GreatRiverEnergy.com

August 31, 2012

Mr. Kirk Koudelka  
Assistant Commissioner  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-4194

Re: Metropolitan Waste Disposal Restrictions Report

Dear Mr. Koudelka:

Great River Energy (GRE) would like to thank the Minnesota Pollution Control Agency (MPCA) for the preparation of the Metropolitan Waste Disposal Restrictions Report. GRE's Elk River Resource Recovery Project (ERRRP) has been directly affected by the lack of an enforcement strategy for Minnesota Statute 473.848 and we welcome this effort to enforce existing state law. The ERRRP represents a total contribution of over \$25,000,000 annually to the local economy, 30 megawatts of renewable energy and 80 full time jobs. We are at risk of losing these and other benefits of our project if the MPCA is not allowed to fully enforce 473.848. The report does a good job of providing background information on the solid waste system in Minnesota. It accurately describes current public policy and the challenges to achieving these statutory waste management goals.

However, we believe the report could better highlight the recycling benefits of waste processing and waste to energy projects. Waste processing is not just about energy conversion and volume reduction. The ERRRP also separates metals and recycles over 4% of every ton of mixed municipal solid waste (MMSW) that is received. GRE has also invested in process improvements which almost eliminate the need to dispose of any of the process residue or bulky materials. These efficiencies, in part, are a reason that GRE is now stating a project capacity of 300,000 tons of MMSW/year; significantly less than the 400,000 tons MMSW/year the project averaged from 1990-2008. In addition, GRE is also in the process of investing in additional technologies that will increase volume and market value of recyclable materials.

On page 21, the report states that compliance with the disposal restriction will not be difficult for industry to achieve. GRE believes there should be more details and specificity added to this provision. What are the steps each stakeholder would undergo on a monthly, weekly or daily basis to be in compliance? GRE can envision utilizing a number of different processes to advise other stakeholders on

monthly, weekly and daily processing capacity and when additional waste is unprocessable. Such a capacity forecast can be updated and shared with all stakeholders electronically almost instantly. The forecast could be in the form of an email attachment, posting to a central web-host site or utilizing another electronic communication method for all to refer to.

In the event that there is an unforeseen issue that would immediately affect the ability for a facility to receive waste, all contracted MMSW delivery haulers, transportation providers and land disposal facilities would be immediately informed. In all but the most catastrophic incident, same day, in-route deliveries would continue to be accepted at the ERRRP.

It is important for all stakeholders to understand all the steps of the implementation plan. There should be an outline of how each stakeholder will communicate with each other and the agency in order to ensure compliance without wasting time or adding additional cost. While GRE agrees with the MPCA that this type of communication is commonplace within the industry, we strongly encourage the MPCA to coordinate a meeting of all stakeholders to work out a universal communication system that is deemed feasible by the participating parties. Bringing all parties to the table should help identify and resolve many of the challenges that this change may raise.

Additionally, GRE would also like to offer the following clarifications for your consideration:

**Reference:** p. 7 graph of "Policy Plan Top Objectives by Management Method"

**Comment:** It would be helpful to include the total MMSW trend on this graph.

**Reference:** p. 14 Great River Energy (GRE) paragraph; "The facility pays no host fees."

**Comment:** The facility does pay a host fee to the City of Elk River.

GRE appreciates the opportunity to comment on this report and looks forward to working cooperatively with all stakeholders to assure that Minnesota's solid waste management goals are met after February 15, 2013.

Sincerely,  
GREAT RIVER ENERGY



Timothy P. Steinbeck, Manager  
Elk River Resource Recovery Project



# City of Inver Grove Heights

[www.ci.inver-grove-heights.mn.us](http://www.ci.inver-grove-heights.mn.us)

August 21, 2012

Sigurd Scheurle, Project Manager  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-6002

RE: Comments on August 2012 Draft Report—"Metropolitan Waste Disposal Restrictions Report"

Dear Mr. Scheurle:

The City of Inver Grove Heights appreciates the opportunity to comment on the "Metropolitan Waste Disposal Restriction Report".

Inver Grove Heights strongly supports and applauds the Minnesota Pollution Control Agency's goals. In fact, one of the purposes of the City's Zoning Ordinance is to "provide an opportunity for solid waste uses that are consistent with the State's waste management hierarchy of encouraging reduction, reuse, recycling, composting, and discouraging incineration and landfilling." (City Code 10-13E-2)

However, the MPCA report does not fully recognize the impact of the proposed Metropolitan Waste Disposal Restrictions on cities' fees and financing. Page 22 of the report states:

'Q: Will cities and counties that receive landfill taxes and fees suffer if landfills comply with the law?

A: No. In 2001 only 139,154 tons of Metropolitan MMSW would have been diverted from landfills to resource recovery facilities. If spread among the landfills, then this equates to about 10% of the waste that is landfilled. Local units of government have flexibility with the level of host fees and taxes."

Contrary to the draft report, the proposed Metropolitan Waste Disposal Restriction's diversion of waste from existing landfills would have a significant financial impact on Inver Grove Heights. The City's Host Community Agreement obligates the Pine Bend Landfills owner to pay the City fees based on volumes of waste. If the Metropolitan Waste Disposal Restrictions were effective in 2012, the City of Inver Grove Heights would lose \$160,000. From 2012 to 2030 the City would suffer the loss of \$2.8 million. Since the proposed restrictions would decrease these fees, it is not accurate to state that cities will not be impacted by the proposed disposal restrictions and that cities have the flexibility to raise more revenue through taxes, a scenario that is not practical or wise in today's economy.

These host fees are critical to offsetting the many negative impacts of landfills on a community. As stated by the City's Zoning Ordinance:

"Mixed municipal solid waste landfills have the potential to cause negative environmental impacts relating to stormwater quality, groundwater quality, air emissions, aesthetics, general community and neighborhood image, and public nuisances. As a result, the City

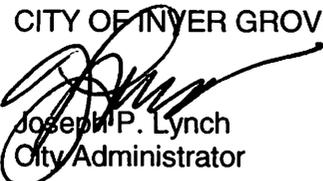
has found that many land uses are not compatible with and will not locate adjacent to or near a mixed municipal solid waste landfill. This tends to restrict development opportunities on surrounding properties, thus hindering the expansion of the City's commercial/industrial tax base and employment opportunities." (City Code 10-13E-1)

For many years, the City of Inver Grove Heights has done its part to address regional waste disposal needs and has reluctantly accepted a mixed municipal solid waste landfill, despite these many negative impacts. In exchange, the City now requests that the MPCA consider the full impacts of the proposed Metropolitan Waste Disposal Restrictions on host municipalities.

Host cities have not been invited to be a part of the discussions of this significant change on the Metropolitan Waste Disposal Process, a process that has been in place for nearly 30 years. For example, the time period for providing these comments has been very brief, from August 8 to August 31. Since host cities are impacted, we desire to have a larger part in the discussions and will work together with others, such as the City of Burnsville and Dakota County, in seeking solutions to the problem of waste disposal.

Sincerely,

CITY OF INVER GROVE HEIGHTS



Joseph P. Lynch  
City Administrator

JL/kf

cc: Inver Grove Heights Mayor and Council  
Mike Sandusky, Director Environmental Analysis and Outcomes Division  
Jeff Smith, Director Industrial Division  
Tina Patton, Minnesota Pollution Control Agency  
Brant Richardson, Dakota County  
Craig Ebeling, City of Burnsville  
Representative Joseph Atkins  
Senator James Metzen

-----Original Message-----

From: Jeff Meyer [mailto:[jeffmeyer@clearwire.net](mailto:jeffmeyer@clearwire.net)]

Sent: Friday, August 31, 2012 1:29 PM

To: Scheurle, Sig (MPCA)

Subject: Metro processing plan

The Minnesota Landfill Operators group oppose the enactment of the mandatory Processing of solid waste . There are many environmentally sound public systems which are in place to manage Minnesota's solid waste that will be adversely affected by this Requirement. The processing requirement with its across the board increase of tipping fees will expand the economic incentive to drive Minnesota Waste to out of state landfills not to Minnesota processing centers.

Thank You, Jeff Meyer

Vice President , Minnesota Landfill Operators Group.

Sent from my iPad

**From:** Ed Homan [<mailto:Ed.Homan@co.mcleod.mn.us>]

**Sent:** Monday, August 06, 2012 3:40 PM

**To:** Scheurle, Sig (MPCA)

**Cc:** Kermit Terlinden; [dave@glencoelightandpower.com](mailto:dave@glencoelightandpower.com); Gary Schreifels ([GSchreifels@ci.glencoe.mn.us](mailto:GSchreifels@ci.glencoe.mn.us)); Paul Wright P; Sheldon Nies P; Pat Melvin

**Subject:** RE: Metro Report

Sig,

Please accept this e-mail as a written response to the report, relative to the impact to the City of Glencoe Methane Gas Project and the McLeod County Solid Waste Program funding.

On page 11, the report states that "over the last three years 15% to 25% of the MMSW deposited at Spruce Ridge was from the Metro area". Yet, on page 2 it is estimated that only a 4% decrease of the total waste delivered to Spruce Ridge, will result with enforcement of the statute. Please provide me with an explanation of how the decrease was determined from the range on page 11, which is much higher.

Ed Homan

McLeod County Solid Waste Director



# McLeod County Solid Waste Management

Solid Waste Director – Ed Homan  
(320) 484-4316 [ed.homan@co.mcleod.mn.us](mailto:ed.homan@co.mcleod.mn.us)

Solid Waste Coordinator – Sarah Young  
(320) 484-4319 [sarah.young@co.mcleod.mn.us](mailto:sarah.young@co.mcleod.mn.us)

August 29, 2012

Sigurd Scheurle & Tina Patton  
MPCA  
520 Lafayette Rd. N.  
St. Paul, MN 55155

Dear Sigurd & Tina,

The information contained on page 2 and page 11 of the Executive Summary, appears to be inaccurate and misleading data. I have attached a summary of my findings, using the average tons by the MPCA and respectfully disagree, that there would only be a 4% decrease in total waste delivered to the Spruce Ridge facility. Also attached is the 2007-2011 MSW Activity Report for Spruce Ridge Landfill, which shows a more realistic tonnage average from 2007-2010, to be 153,046 tons. It is estimated that nearly 39% to 44% of the MSW disposed at the facility would be metropolitan area unprocessed waste and not 15% to 27% as reported. Therefore, I believe the unprocessed MSW to be significantly higher and would seriously affect McLeod County's ability to fund all of our school, business, township, municipal recycling programs and continue operating our County MRF, as they are currently funded.

The MPCA also needs to reevaluate the hierarchy of the landfill disposal, especially with landfills that are now lined and are capturing the methane gas, to produce a renewable energy resource. Specifically, the Spruce Ridge Landfill produces and estimated 1/3 of renewable energy for the City of Glencoe at this time. The landfill gas projects, which have been approved by the MPCA, should receive the same benefits and support as RDF facilities, which is not reflected in the chart on page 3 of the Executive Summary.

It appears the policy and goals of the McLeod County Solid Waste Plan have been completely ignored. Due to economics, it is not feasible for McLeod County to consider, as an alternative, using the RDF facilities that require an \$86.00 tip fee for disposal, compared to a \$53 tip fee at Spruce Ridge. It appears the Metropolitan Solid Waste Management Plan or Act, supersedes all other plans.

The law also appears to be a form of "flow control", which was proclaimed unconstitutional by the U.S. Supreme Court around 1994. The attached Resolution No 12-CB-26 adopted by the McLeod County Board of Commissioners supports repealing the law.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Homan", with a horizontal line extending to the right.

Ed Homan  
McLeod County Solid Waste Director

Cc: Senator Newman  
Representative Gruenhagen  
Commissioner Wangerin, Chair McLeod County Board  
Commissioner Terlinden m Vice Chair McLeod County Board  
Commissioner Wright  
Commissioner Nies  
Commissioner Bayerl  
Pat Melvin, County Administrator

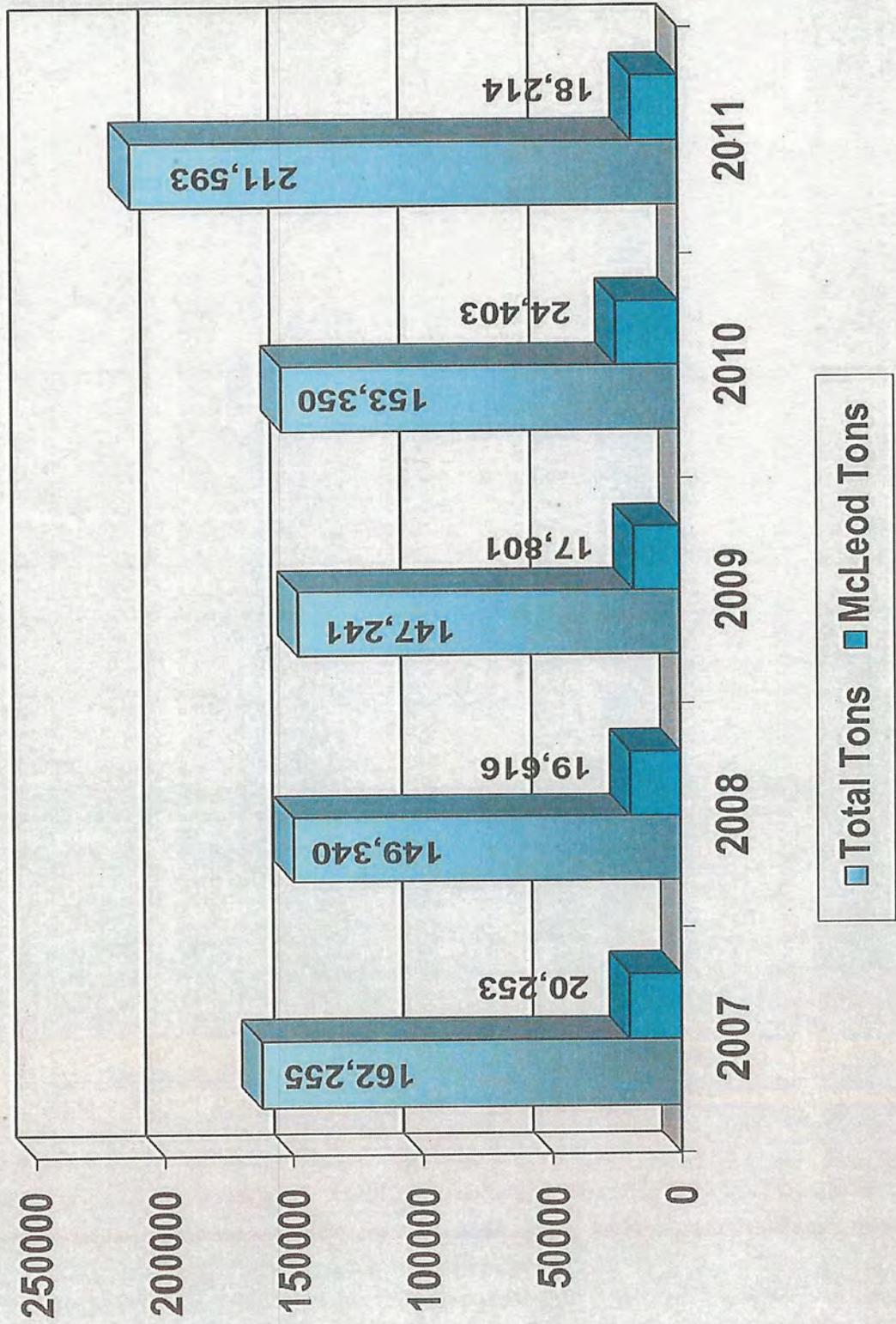
## Metro Waste Disposal Restrictions Report

### Total Tons deposited at Spruce Ridge 2009-2011

2009	2110	2011
147,241	153,360	211,593
Total/Average		
512,194/170,731		

- Based on the average tonnage for a 3 year period
  - Estimated unprocessed MSW deposited a Spruce Ridge @15% 25.610 tons
  - Estimated unprocessed MSW deposited at Spruce Ridge @27% 46,097 tons
  - Total Metro MSW deposited at Spruce Ridge in 2011 67,085 tons
  
- Estimated 4% decrease in total waste delivered to Spruce Ridge 6,829 tons
- Estimated loss of revenue based on \$8.16 per tonnage averaging
  - 15%    \$208,976 per the report
  - 27%    \$376,157 per the report
  - 4%     \$ 6,829 per the report
  - 39%    \$547,416 per landfill records for Metro MSW 12/31/2011

# MSW ACTIVITY AT SPRUCE RIDGE RESOURCE MANAGEMENT FACILITY



Origin / Material Summary Report

Criteria: 01/01/2011 12:00 AM to 12/31/2011 11:59 PM

Business Unit Name: MN/IA Landfills - Spruce Ridge RMF(USA)

User: kel

Date: Jan 27 2012, 9:55:38 AM

Operation Type: Inbound

Customer Name: All

Ticket Type: All

Customer Type: All

PMT Category: MSW

Origin	Material	Loads	Yards	Tons	
ANOKM	msw	437	0.0	8,278.18	✓
BROWM	msw	5	0.0	31.73	
CARLM	msw	1	0.0	19.46	
CARVM	msw	1368	0.0	24,416.02	✓
CHIPM	msw	332	0.0	7,067.38	
HENNM	msw	1834	0.0	34,383.90	✓
KANDM	msw	658	0.0	14,433.25	
LESUM	msw	1069	0.0	19,791.56	
MCLEM	msw	4482	0.0	18,214.24	
MEEKM	msw	601	0.0	10,351.65	
NICOM	msw	1	0.0	2.51	
RENVN	msw	177	0.0	1,208.42	
SCOTM	msw	2	0.0	7.29	✓
SIBLM	msw	219	0.0	1,352.66	
STEAM	msw	690	0.0	11,705.20	
WRIGM	msw	3582	0.0	58,576.83	

Minn Stat. 473.848

Metro Tons: 67,085.39

Revenue Rcv'd: \$547,416.78



# McLeod County Solid Waste

## *Present Programs*

### **Subsidized Programs**

- Curbside Recycling Program
- Rural drop-box Recycling
- Township shed Recycling
- School Recycling Receptacles
- School Recycling Service
- School Recycling Rebates
- County Department office space
- MTP/VEC office space
- Hunger Free McLeod's Backpack Program Storage Space
- Well Water testing around SRRMF
- Business Recycling Audits
- fREeUSE Center
- Household Hazardous Waste Disposal
- Business Recycling Collection
- Out-of-County Recycling Services
- Motor Oil Recycling
- CFL Recycling
- Recordable Media Recycling
- Cork Recycling
- Crayon Recycling
- Water Filter Recycling
- EPS Recycling
- Fishing line Recycling
- Holiday Lights Recycling
- Empty Pesticide Container Recycling
- Ag Bag Recycling
- HHW Mobile Collections
- Ag Chemical Disposal (<301 lbs)
- #3-#7 Plastic Recycling
- Pharmaceutical/OTC Medication Disposal
- Event Recycling @ the County Fair
- Employee HHW Collections
- Battery Recycling
- Ink/Laser/Toner Cartridge Recycling
- Plastic Bag Recycling
- Car/Booster Seat Recycling (GreenSeats Program)
- Cooking Oil Recycling
- Municipal Yard Waste Processing
- Municipal Yard Waste Hauling
- Education for all programs
- Host for annual 3rd Grade Environmental Day
- Participant in annual 4th Grade Nature Day

### **Partially Subsidized Programs**

- Aluminum Fundraising for area non-profits
- Paper Drive Fundraising for area non-profits
- Penny Per Pound Plastic Program (P<sup>5</sup>) for County-wide non-profits
- Aluminum Redemption Program
- Annual County-wide Collections
- Municipal Site Monitoring
- Donation Directory Program
- Commercial recycling revenue
- Oil Filer Recycling
- VSQG Business Waste Program
- Small Gas Cylinder Recycling
- Electronics Recycling
- Appliance Recycling
- FLB Recycling
- Mattress Recycling
- Tire Recycling
- Creekside Soils Site Monitoring
- Municipal Yard Waste Monitoring





# County of McLeod

830 11th Street East  
Glencoe, Minnesota 55336  
FAX (320) 864-3410

**COMMISSIONER RAY BAYERL**  
1st District  
Phone (320) 485-2181  
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**COMMISSIONER KERMIT D. TERLINDEN**  
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**COUNTY ADMINISTRATOR  
PATRICK T. MELVIN**  
Phone (320) 864-1363  
830 11th Street East, Suite 110  
Glencoe, MN 55336  
[Pat.Melvin@co.mcleod.mn.us](mailto:Pat.Melvin@co.mcleod.mn.us)

## RESOLUTION 12-CB-26

### Support of Repealing MN Statute 473.848

MCLEOD COUNTY OPPOSES IMPLEMENTATION AND ENFORCEMENT OF M.S 473.848 AND REQUEST THE STATUTE BE REPEALED OR EXEMPT MCLEOD COUNTY BE EXEMPT FROM ENFORCEMENT BECAUSE OF ADVERSE AFFECTS ON THE LANDFILL GAS PROJECT FOR THE CITY OF GLENCOE AND FUNDING FOR ALL SOLID WASTE PROGRAMS IN MCLEOD COUNTY AND ITS MUNICIPALITIES

WHEREAS, M.S. 473.848 was enacted in 1985 and was never implemented or enforced by the Minnesota Pollution Control Agency (MPCA) for 27 years; and

WHEREAS, the statute has become obsolete or is no longer consistent with waste-to-energy and recycling activities in McLeod County; and

WHEREAS, the City of Glencoe has made a financial commitment and partnered with Waste Management to capture the methane gas to provide the electricity to one-third of the homes in Glencoe, Minnesota; and

WHEREAS, McLeod County has adopted a Comprehensive Solid Waste Plan per MPCA rules and has established the financial funding mechanisms pursuant to M.S. 115A.919 and 115A.923 to provide funding to all county recycling programs;

WHEREAS, the City of Glencoe, McLeod County and all Municipalities are dependent on the MSW and revenue generated at Spruce Ridge Landfill to continue the Project and Programs;

BE IT THEREFORE RESOLVED that the McLeod County Board of Commissioners do not want to impose a solid waste fee on to their constituents to cover the lost revenue from implantation and enforcement M.S. 473.848; and

BE IT FURTHER RESLOVED that the McLeod County Board of Commissioners request of Governor Dayton and the legislature to repeal M.S. 473.848

Adopted this 21st day of August, 2012.

#### CERTIFICATION

Beverly Wangerin, Chairperson

Patrick Melvin, County Administrator



August 31, 2012

Mr. Sig Scheurle  
MPCA  
520 Lafayette Road North  
St. Paul, MN 55155-4194

Re: Metropolitan Waste Disposal Restrictions Report



Dear Mr. Scheurle:

477 Selby Avenue  
Saint Paul, Minnesota  
55102-1726  
Ph: 651-222-7227  
Fax: 651-223-5220

The Minnesota Resource Recovery Association (MRRA), on behalf of its membership, would like to thank you for the Agency's preparation of the Metropolitan Waste Disposal Restrictions Report. Various MRRA members are directly impacted by this Report and concur with the Minnesota Pollution Control Agency (MPCA) that compliance can be achieved regarding the disposal restrictions of Minnesota Statutes 473.848. The MRRA has supported the State's hierarchy with recycling and energy recovery from waste since the late 1980's and agrees that operating resource recovery facilities at capacity is an essential component of implementing the State law. There is no shortage of waste to operate both resource recovery facilities and landfills but only if the waste is appropriately managed pursuant to 473.848.

Many prefer to limit government's involvement but in this instance, the MPCA's involvement is critical to assure compliance with State law regarding Minnesotans' preferences that waste be recycled or processed and not landfilled. When States do not place the same emphasis on restricting the disposal of waste into landfills, recycling programs are greatly diminished.

Government involvement is also needed because all solid waste activities require permits. Furthermore, Minnesota has had the experience of cleaning up landfills at significant taxpayer expense and future generations face this clean up liability further justifying the State's involvement in limiting landfilling. If the State does not act, there is a price advantage to landfilling over recycling or processing and more waste will be landfilled ultimately closing the processing facilities. Under the MPCA's plan, Minnesota taxpayers are the beneficiaries. Restrictions on disposal must occur or landfills owned by large national corporations will be the only beneficiaries.

Landfill owners appear to want more State direction on how to implement the MPCA's plan to assure that resource recovery capacity is utilized. The MPCA has wisely not instructed a landfill or resource recovery facility on how to meet its permit obligations. For years, the MPCA and Counties have heard the hue and cry of haulers and landfills to stay out of their business and that is precisely what this plan does: it modifies permits for landfills and resource recovery facilities **only** and then leaves it up to these entities to manage their affairs as they see fit to meet

their operating permit requirements.. The same obligation is being placed on both the affected landfills and processing facilities: in the event there is other processing capacity available in the region, neither party can landfill without first confirming that capacity has been fully utilized. **The resource recovery facilities are prepared to manage their operations and meet these new permit requirements.**

The MRRA and its members welcome the commencement of enforcement of Minnesota Statute 473.848 on February 15, 2013. Such enforcement maximizes production of power with renewable energy while increasing recycling and assures the State's solid waste management goals and laws are met.

Sincerely,

A handwritten signature in black ink, appearing to read 'Trudy Richter', with a long horizontal line extending to the right.

Trudy J. Richter  
Executive Director

Cc: MRRA Facilities  
Kirk Koudelka  
Tina Patton

# ITEM 1

## MCGRANN SHEA CARNIVAL STRAUGHN & LAMB, CHARTERED

### ATTORNEYS AT LAW

WILLIAM R. MCGRANN  
DOUGLAS M. CARNIVAL  
ROBERT O. STRAUGHN  
PETER L. COOPER  
KATHLEEN M. LAMB  
JOHN R. SCHULZ  
COREY J. AYLING  
DEBRA E. YERIGAN  
SCOTT B. CROSSMAN  
TIMOTHY J. NOLAN

CARLA J. PEDERSEN  
JOSEPH T. BAGNOLI  
ROGER J. STELLJES  
JEFFREY C. URBAN  
KATHLEEN MICHAELA BRENNAN  
JENNIFER A. JAMESON  
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JASON H. THOMAS  
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-----

CHRISTINE L. MENNEN  
MICHAEL T. HATING  
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MICHAEL P. ELDRIDGE  
CHRISTY E. LAWRIE

Of Counsel  
ANDREW J. SHEA

July 18, 2012

Assistant Commissioner Koudelka  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155

Re: Metropolitan Waste Disposal Restrictions Report  
Our File No.: 60192-0001

Dear Assistant Commissioner Koudelka:

The National Solid Wastes Management Association (NSWMA) provides the following additional comments on the Metropolitan Waste Disposal Restrictions Report, as requested in the MPCA's June 19, 2012 correspondence. Our comments focus on:

- 1) The legislative language authorizing the study;
- 2) The timing of MPCA's proposed enforcement of Minn. Stat. 473.848;
- 3) Questions regarding the projected shortfall at processing facilities;
- 4) Whether the proposed enforcement strategy will actually achieve the outcomes of more waste being processed;
- 5) Specifics of the Agency's proposed enforcement strategy; and
- 6) Alternatives to enforcing mandatory processing that would advance the state of Minnesota's environmental goals.

### Legislative Language

With regard to the legislation authorizing the study of this issue, the NSWMA would like to emphasize the language of the enabling statute, which reads that MPCA must report on “how compliance with Chapter 473.848 **may** be achieved.” We would like to point out that the document requested by the legislature is specifically a “study” and not a “plan” that requires implementation. Further and more importantly, the legislative language states “may”, thereby giving the Agency the opportunity to conclude that they neither have the authority or the means to construct an equitable or feasible plan for enforcing the metropolitan area mandatory processing statute.

The Commissioner, on a number of occasions, has indicated that this review and analysis presents an excellent opportunity to determine whether the current statute is in need of revision or even repeal. NSWMA stands ready to assist the Commissioner should revision or repeal be the appropriate course of action in light of the fact that circumstances have substantially changed in the intervening 27 years since the statute’s passage.

### MPCA’s Timing of Proposed Enforcement

NSWMA is interested in the important question of “why now?”. Why, at this particular point in time, has the Agency decided to change its interpretation of a statute that is 27 years old? What are the unique set of circumstances existing with today’s solid waste system that compels the Agency to change its position regarding a statute that the MPCA has not acted on for so many years? For nearly the past 10 years, the processing facilities serving the metropolitan area have operated at a total capacity of just over 1.0 million tons of waste a year, and until now, there was no action taken by the Agency to get more volume to these processing facilities by statute. Over the years, the waste industry has signed contracts with these facilities and there has been no issue with facilities being concerned about needing more waste.

### Projected Shortfall

Over the last year, the Agency has reported differing values for the processing shortfall, ranging from a shortfall of 300,000 tons to a shortfall of 140,000, to possibly a lower shortfall. Recently, at least one county master plan revised their goals to reflect increased processing. Does MPCA’s projected shortfall include this recent change and is there still a problem?

NSWMA believes there needs to be more clarification of what the actual shortfall at each facility is and what the Agency’s expectation is for total volume of waste to be delivered as a result of enforcing mandatory processing. Does the Agency really expect these processing facilities to accept waste volumes at their “design” capacity or their “permitted” capacity? Or does the MPCA expect these facilities to accept volumes at

the more practical, actual capacity at which each facility operates most efficiently and cost effectively every day---their "operating" capacity? If the latter, more practical approach is considered, NSWMA would contend that with the latest calculations and changes to waste deliveries, there is no significant shortfall in tonnage that will be processed.

### Processing Infrastructure

Our industry questions whether the existing processing infrastructure can actually handle the additional volume that would result from the MPCA mandating enforcement of the processing statute. And, if the desired volumes are tipped, what then is the outcome of this endeavor? Will more waste actually be processed, or will more waste be bypassed from these facilities and sent to landfills anyway, since they can only operate at their most efficient and effective capacity? If that is the case, NSWMA believes that the additional cost of getting waste to processing facilities at a much higher rate, will result in increased costs to ratepayers, the citizenry, with very little gain since the additional waste may not actually be processed anyway. And in the end, will the rates in the entire marketplace actually support the Agency's strategy for getting more waste to Minnesota processing facilities or will the waste go elsewhere?

### Regulated Community Needs Details

NSWMA also raises the very important question of "how" enforcement will be accomplished. NSWMA members need to know exactly how the MPCA plans to carry out enforcement of this statute. What are the details of how the new system will work? Will enforcement be directed at haulers and transfer stations and if so, what specifically are the penalties? A detailed list of questions are included in Attachment "A".

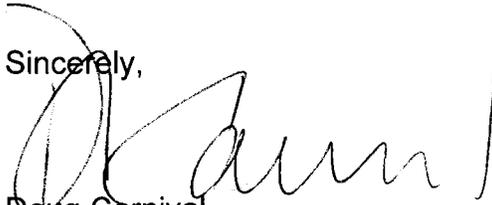
### Alternatives

NSWMA believes that the MPCA should focus its efforts on increasing the recycling rate through mandatory recycling because recycling is at the top of the hierarchy, rather than focusing on increased waste processing. We also believe that any methods to increase recycled volumes should be implemented first, before processing, so that these materials are actually pulled out by the generator and given a chance to be recycled. According to Minn. Stat. 115a.551, subd 2(a), the recycling goal for the metropolitan area was 50% by December 31, 1996. We are unaware of any measures the Agency has taken to enforce this standard. We realize that the Minnesota Climate Change Action Group (MCCAG) recommended higher recycling goals and that these higher goals have been part of the MPCA's Metropolitan Policy Plan of 2010-2030; however, NSWMA believes that MPCA efforts to mandate recycling would enhance this objective.

Koudelka Letter  
August 28, 2012  
Page 4

Thank you for the opportunity to comment on this important issue. We look forward to hearing from you in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read "Doug Carnival". The signature is fluid and cursive, with a large initial "D" and "C".

Doug Carnival  
Counsel, Minnesota Chapter National Solid Wastes  
Management Association

CC: Peggy Macenas

Enc.

600230.DOCX

## ITEM 2

### Attachment "A"

#### Mandatory Processing Issues:

##### I. System Impacts

- 1) MSW has to be managed in real time. End of month reporting and analysis of shortfalls by MPCA will result in shifting tonnages to facilities, that: 1) may not be available, since the waste has already been managed days or weeks prior; 2) that, even if the volumes are available, will result in logjams at facilities, with MPCA directing truckloads of garbage to facilities with an end of the month shortfall.
- 2) How will MPCA fairly and evenly enforce this law? When a facility has a shortfall, how will MPCA view the data, determine which of the hundreds of waste haulers in the metro area must deliver to the facility?
- 3) How does this effort affect the MPCA's desire to advance recycling rates and new organics management programs? By locking increased MSW volumes into contracts at the processing facilities, how does that impact state policy, the MPCA and metro counties' desire to advance higher recycling rates and organics management in the Region? Is there a competition for material?
- 4) Reduced competition in the hauling community will result due to increased fuel use. Costs will increase for some companies and possibly not, for others, creating a new market dynamic that may not be anticipated which could impact the vitality of some hauling companies.
- 5) Increased regulation and government involvement will result in increased costs of doing business, less competition and increased costs to the consumer. These increases will require rate increases to businesses and residents.

##### II. Environmental, Public Health, and Community Impacts:

- 1) The MPCA proposes end of month reporting of tonnages by facilities, collectors, and transfer stations, that would then be analyzed by MPCA staff to determine shortfalls at processing facilities. MPCA then would direct waste to facilities needing to meet capacity. The backlog of trucks waiting to tip, and garbage piling up at these facilities waiting to be managed could result in public health impacts if the waste sits around too long.
- 2) Greenhouse Gas (GHG) emissions increase in the metro area with shifting waste volumes to more distant processing facilities. Also, increased particulate generation as a result of increased fuel use will result. How does MPCA balance these environmental concerns?
- 3) Increased truck traffic at some facilities will result in a backlash from the community.

### **III. MPCA Resources**

- 1) Who will make the determination of which company must deliver to a particular "shortfall" facility? How will this decision be made fairly? Who will have to haul the longest distance to Red Wing? This will require staff analysis and recommendation to managers, and eventually the MPCA Commissioner signing off, requiring an inordinate amount of time for a decision to be made about which of the hundreds of haulers in the metro area must deliver.
- 2) There are hundreds of haulers in the Twin Cities Metro Area that will be filing monthly reports. Has MPCA considered the FTE required to send out and receive, review and analyze, make recommendations as to which haulers need to deliver more tons to which facility? How many people will be involved in this extensive effort?
- 3) These decisions and the time required to reach them do not match waste industry methods and standards. Individual companies have dispatchers that are directing and redirecting trucks constantly, not on one day at the end of the month, but rather, minute by minute. The MPCA may need to add another layer of operations, essentially requiring a Centralized Dispatch system, in order to fairly and effectively carry out this effort.
- 4) All of these responsibilities will require additional resources; in essence, the creation of a whole new MPCA program. Have the number of Full Time Equivalent (FTE) staff been estimated or taken into account to carry out this new responsibility? Does MPCA have authorization for this new program?

### **IV. Miscellaneous**

- 5) Why does the MPCA continue to target the waste industry with increased regulation when the industry has made significant investments in recycling that have allowed our state to achieve recycling rates that we never would have reached if it were only government based, SCORE funding driven. Recent recycling facility upgrades to extract more plastics from the MSW stream cost millions of dollars. These efforts have invigorated recycling, generating interest in the media and bringing more awareness to, and hopefully increases in recycling. We cannot make these advancements and investments in new recycling technology with the nearly constant threat of increased regulation for fear that we will not make our return on investment made in the capital equipment we have purchased due to rising costs associated with regulation.

## ITEM 3

### A Review of the Legislative History of M.S. 473.848

1. The original law, passed in 1985, said "...waste disposal facilities located in the metropolitan area may not accept..."
2. In 1989, the language was changed to "...a person may not dispose of unprocessed..." Language was added giving counties the responsibility to certify waste as unprocessable and the Metropolitan Council was required to approve the certifications and determine that the county will continue to reduce unprocessed waste. The Council reported to the Legislative Commission on Waste Management. These changes provided the method by which progress in achieving the policy would be assessed by counties, the Metro Council and the legislature. There was no enforcement mechanism in the law to compel "a person" not to dispose of unprocessed waste.
3. In 1993, a new phrase was added before "...a person may not dispose...". Here is the language: "For the purposes of implementing the waste management policies in section 115A.02 [waste hierarchy] and metropolitan goals related to landfill abatement established under this chapter...". This language combined with the reporting changes in 1989 further emphasizes that this section is a "policy" provision, not a regulatory compliance or enforcement provision.
4. In 1995, the Metropolitan Council responsibilities were moved to the state Office of Waste Management (later the Office of Environmental Assistance). This office had no regulatory compliance or enforcement authority.
5. In 2005, in a "revisor's instruction", the legislature transferred responsibility for this section from the Office of Environmental Assistance to the Pollution Control Agency.

#### **Comment:**

In 2012, the PCA is seeking to "enforce" section 473.848 against "waste disposal facilities" (landfills) contrary to the amendments in 1989 removing the focus on waste disposal facilities. The legislative history does not contemplate regulatory compliance or civil enforcement. The Metropolitan Council, Office of Waste Management and Office of Environmental Assistance did not have this authority. The transfer to PCA in 2005 was accomplished in a technical revisor's instruction with no legislative direction or authority for enforcement of section 473.848. PCA enforcement authority is found in section 115.071 (Enforcement; Civil Penalties) and section 116.072 (Administrative Penalty Orders). Each of those sections list the statutes that may be enforced by those sections. Neither includes section 473.848. If the legislature wanted the PCA to enforce section 473.848, it would have amended sections 115.071 and 116.072 to

provide that authority. With no specific legislative enforcement authority, the PCA is attempting to use its authority to issue permits for solid waste disposal facilities to enforce section 473.848, contrary to the 1989 amendment removing such facilities from the law.

### **Chronological Legislative History of M.S. 473.848**

1985 Session Laws, Chapter 274, sec. 35

Sec. 35. [473.848] [RESTRICTION ON DISPOSAL.]

After January 1, 1990, waste disposal facilities located in the metropolitan area may not accept mixed municipal solid waste for disposal unless the waste has been transferred to the disposal facility from a resource recovery facility identified by the council. For purposes of this section, mixed municipal solid waste does not include street sweepings, construction debris, mining waste, foundry sand, and other materials, if they are not capable of being processed by resource recovery as determined by the council.

1989 Session Laws, Chapter 325, sec. 66

Sec. 66. Minnesota Statutes 1988, section 473.848, is amended to read:

473.848 [RESTRICTION ON DISPOSAL.]

Subdivision 1. [RESTRICTION.] (a) After January 1, 1990, a person may not dispose of unprocessed mixed municipal solid waste at waste disposal facilities located in the metropolitan area may not accept mixed municipal solid waste for disposal unless:

(1) the waste has been certified as unprocessable by a county under subdivision 2; or

(2)(i) the waste has been transferred to the disposal facility from a resource recovery facility identified by the council;

(ii) no other resource recovery facility in the metropolitan area is capable of processing the waste; and

(iii) the waste has been certified as unprocessable by the operator of the resource recovery facility under subdivision 3.

(b) For purposes of this section, mixed municipal solid waste does not include street sweepings, construction debris, mining waste, foundry sand, and other materials, if they are not capable of being processed by resource recovery as determined by the council.

Subd. 2. [COUNTY CERTIFICATION; COUNCIL APPROVAL.] (a) Each county that has not implemented designation of all or a portion of its mixed municipal solid waste to a resource recovery facility shall submit a semiannual certification report to the council detailing:

(1) the quantity of waste generated in the county that was not processed prior to transfer to a disposal facility during the six months preceding the report;

(2) the reasons the waste was not processed;

(3) a strategy for development of techniques to ensure processing of waste including a specific timeline for implementation of those techniques; and

(4) any progress made by the county in reducing the amount of unprocessed waste.

(b) The council shall approve a county's report if it determines that the county is reducing and will continue to reduce the amount of unprocessed waste, based on the report and the county's progress in development and implementation of techniques to reduce the amount of unprocessed waste transferred to disposal facilities. If the council does not approve a county's report, it shall negotiate with the county to develop and implement specific techniques to reduce unprocessed waste. If the council does not approve three or more consecutive reports from any one county, the council shall develop specific reduction techniques that are designed for the particular needs of the county. The county shall implement those techniques by specific dates to be determined by the council.

Subd. 3. [FACILITY CERTIFICATION; COUNTY REPORTS.] (a) The operator of each resource recovery facility that receives waste from counties in the metropolitan area shall certify as unprocessable each load of mixed municipal solid waste it does not process. Certification must be made to each county that sends its waste to the facility at intervals specified by the county. Certification must include at least the number and size of loads certified as unprocessable and the reasons the waste is unprocessable. Loads certified as unprocessable must include the loads that would otherwise have been processed but were not processed because the facility was not in operation, but nothing in this section relieves the operator of its contractual obligations to process mixed municipal solid waste.

(b) A county that sends its waste to a resource recovery facility shall submit a semiannual report to the council detailing the quantity of waste generated within the county that

was not processed during the six months preceding the report, the reasons the waste was not processed, and a strategy for reducing the amount of unprocessed mixed municipal solid waste.

Subd. 4. [COUNCIL REPORT.] The council shall include, as part of its report to the legislative commission on waste management required under section 473.149, an accounting of the quantity of unprocessed waste transferred to disposal facilities, the reasons the waste was not processed, a strategy for reducing the amount of unprocessed waste, and progress made by counties to reduce the amount of unprocessed waste. The council may adopt standards for determining when waste is unprocessable and procedures for expediting certification and reporting of unprocessed waste.

### 1991 Session Laws, Chapter 337, secs. 81, 82

Sec. 81. Minnesota Statutes 1990, section 473.848, subdivision 2, is amended to read:

Subd. 2. [COUNTY CERTIFICATION; COUNCIL APPROVAL.] (a) ~~Each county that has not implemented designation of all or a portion of its mixed municipal solid waste to a resource recovery facility~~ shall submit a semiannual certification report to the council detailing:

(1) the quantity of waste generated in the county that was not processed prior to transfer to a disposal facility during the six months preceding the report;

(2) the reasons the waste was not processed;

(3) a strategy for development of techniques to ensure processing of waste including a specific timeline for implementation of those techniques; and

(4) any progress made by the county in reducing the amount of unprocessed waste.

(b) The council shall approve a county's report if it determines that the county is reducing and will continue to reduce the amount of unprocessed waste, based on the report and the county's progress in development and implementation of techniques to reduce the amount of unprocessed waste transferred to disposal facilities. If the council does not approve a county's report, it shall negotiate with the county to develop and implement specific techniques to reduce unprocessed waste. If the council does not approve three or more consecutive reports from any one county, the council shall develop specific reduction techniques that are designed for the particular needs of the county. The county shall implement those techniques by

specific dates to be determined by the council.

Sec. 82. Minnesota Statutes 1990, section 473.848, is amended by adding a subdivision to read:

Subd. 5. [DEFINITION.] For the purpose of this section, waste is "unprocessed" if it has not, after collection and before disposal, undergone at least one process, as defined in section 115A.03, subdivision 25, excluding storage, exchange, and transfer of the waste.

### 1993 Session Laws, Chapter 249, secs. 43, 44

Sec. 43. Minnesota Statutes 1992, section 473.848, subdivision 2, is amended to read:

Subd. 2. [COUNTY CERTIFICATION; COUNCIL APPROVAL.] (a) By April 1 of each year, each county shall submit a ~~semiannual~~ an annual certification report to the council detailing:

(1) the quantity of waste generated in the county that was not processed prior to transfer to a disposal facility during the ~~six months~~ year preceding the report;

(2) the reasons the waste was not processed;

(3) a strategy for development of techniques to ensure processing of waste including a specific timeline for implementation of those techniques; and

(4) any progress made by the county in reducing the amount of unprocessed waste.

The report shall be included in the county report required by section 473.803, subdivision 3.

(b) The council shall approve a county's certification report if it determines that the county is reducing and will continue to reduce the amount of unprocessed waste, based on the report and the county's progress in development and implementation of techniques to reduce the amount of unprocessed waste transferred to disposal facilities. If the council does not approve a county's report, it shall negotiate with the county to develop and implement specific techniques to reduce unprocessed waste. If the council does not approve ~~three~~ two or more consecutive reports from any one county, the council shall develop specific reduction techniques that are designed for the particular needs of the county. The county shall implement those techniques by specific dates to be determined by the council.

Sec. 44. Minnesota Statutes 1992, section 473.848, subdivision 3, is amended to read:

Subd. 3. [FACILITY CERTIFICATION; ~~COUNTY REPORTS.~~] (a) The

operator of each resource recovery facility that receives waste from counties in the metropolitan area shall certify as unprocessable each load of mixed municipal solid waste it does not process. Certification must be made to each county that sends its waste to the facility at intervals specified by the county. Certification must include at least the number and size of loads certified as unprocessable and the reasons the waste is unprocessable. Loads certified as unprocessable must include the loads that would otherwise have been processed but were not processed because the facility was not in operation, but nothing in this section relieves the operator of its contractual obligations to process mixed municipal solid waste.

~~(b) A county that sends its waste to a resource recovery facility shall submit a semiannual report to the council detailing the quantity of waste generated within the county that was not processed during the six months preceding the report, the reasons the waste was not processed, and a strategy for reducing the amount of unprocessed mixed municipal solid waste.~~

1994 Session Laws, Chapter 585, secs. 49, 50

Sec. 49. Minnesota Statutes 1992, section 473.848, subdivision 1, is amended to read:

Subdivision 1. [RESTRICTION.] (a) ~~After January 1, 1990~~ For the purposes of implementing the waste management policies in section 115A.02 and metropolitan area goals related to landfill abatement established under this chapter, a person may not dispose of unprocessed mixed municipal solid waste generated in the metropolitan area at a waste disposal facilities located in the metropolitan area facility unless the waste disposal facility meets the standards in section 473.849 and:

(1) the waste has been certified as unprocessable by a county under subdivision 2; or

(2)(i) the waste has been transferred to the disposal facility from a resource recovery facility;

(ii) no other resource recovery facility ~~is~~ is serving the metropolitan area is capable of processing the waste; and

(iii) the waste has been certified as unprocessable by the operator of the resource recovery facility under subdivision 3.

(b) For purposes of this section, mixed municipal solid waste does not include street sweepings, construction debris, mining waste, foundry sand, and other materials, if they are not

capable of being processed by resource recovery as determined by the council.

Sec. 50. Minnesota Statutes 1992, section 473.848, subdivision 5, is amended to read:

Subd. 5. [DEFINITION.] For the purpose of this section, waste is "unprocessed" if it has not, after collection and before disposal, undergone ~~at least one process, as defined in section 115A.03, subdivision 25, excluding storage, exchange, and transfer of the waste~~ separation of materials for resource recovery through recycling, incineration for energy production, production and use of refuse-derived fuel, composting, or any combination of these processes so that the weight of the waste remaining that must be disposed of in a mixed municipal solid waste disposal facility is not more than 35 percent of the weight before processing, on an annual average.

#### 1995 Session Laws, Chapter 247, Art. 2 51, 52

Sec. 51. Minnesota Statutes 1994, section 473.848, subdivision 2, is amended to read:

Subd. 2. [COUNTY CERTIFICATION; ~~COUNCIL~~ OFFICE APPROVAL.]

(a) By April 1 of each year, each county shall submit an annual certification report to the ~~council~~ office detailing:

(1) the quantity of waste generated in the county that was not processed prior to transfer to a disposal facility during the year preceding the report;

(2) the reasons the waste was not processed;

(3) a strategy for development of techniques to ensure processing of waste including a specific timeline for implementation of those techniques; and

(4) any progress made by the county in reducing the amount of unprocessed waste.

The report shall be included in the county report required by section 473.803, subdivision 3.

(b) The ~~council~~ office shall approve a county's certification report if it determines that the county is reducing and will continue to reduce the amount of unprocessed waste, based on the report and the county's progress in development and implementation of techniques to reduce the amount of unprocessed waste transferred to disposal facilities. If the ~~council~~ office does not approve a county's report, it shall negotiate with the county to develop and implement specific techniques to reduce unprocessed waste. If the ~~council~~ office does not approve two or more consecutive reports from any

one county, the ~~council~~ office shall develop specific reduction techniques that are designed for the particular needs of the county. The county shall implement those techniques by specific dates to be determined by the ~~council~~ office.

Sec. 52. Minnesota Statutes 1994, section 473.848, subdivision 4, is amended to read:

Subd. 4. [COUNCIL OFFICE REPORT.] The ~~council~~ office shall include, as part of its report to the legislative commission on waste management required under section 473.149, an accounting of the quantity of unprocessed waste transferred to disposal facilities, the reasons the waste was not processed, a strategy for reducing the amount of unprocessed waste, and progress made by counties to reduce the amount of unprocessed waste. The ~~council~~ office may adopt standards for determining when waste is unprocessable and procedures for expediting certification and reporting of unprocessed waste.

#### 1996 Session Laws, Chapter 470, sec. 27

Sec. 27. [REVISOR'S INSTRUCTION.]

The revisor shall change provisions in Minnesota Statutes that direct reports to the legislative commission on waste management so that the reports are received by the environment and natural resources committees of the senate and house of representatives, the finance division of the senate committee on environment and natural resources, and the house of representatives committee on environment and natural resources finance.

#### 2005 1Sp Session Laws, Chapter 1, Art. 2, sec. 161

Sec. 161. [REVISOR'S INSTRUCTION.]

Except as otherwise provided in this article, the revisor shall make the following changes, with appropriate grammatical corrections, in Minnesota Statutes and Minnesota Rules:

(1) delete references to the Office of Environmental Assistance or its director and insert references to the Pollution Control Agency or its commissioner;

(2) delete language that is made superfluous by the merger of the agency and the office;

(3) in Minnesota Statutes, chapters 115A to 116, delete references to obsolete names of committees in the senate and house of representatives and insert generic references to committees with jurisdiction over the specified areas of

governance; and

(4) in Minnesota Statutes, chapters 115A to 116, delete  
obsolete references

Current Law

## **2011 Minnesota Statutes**

### **473.848 RESTRICTION ON DISPOSAL.**

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#### **Subdivision 1. Restriction.**

(a) For the purposes of implementing the waste management policies in section 115A.02 and metropolitan area goals related to landfill abatement established under this chapter, a person may not dispose of unprocessed mixed municipal solid waste generated in the metropolitan area at a waste disposal facility unless the waste disposal facility meets the standards in section 473.849 and:

(1) the waste has been certified as unprocessable by a county under subdivision 2; or

(2)(i) the waste has been transferred to the disposal facility from a resource recovery facility;

(ii) no other resource recovery facility serving the metropolitan area is capable of processing the waste; and

(iii) the waste has been certified as unprocessable by the operator of the resource recovery facility under subdivision 3.

(b) For purposes of this section, mixed municipal solid waste does not include street sweepings, construction debris, mining waste, foundry sand, and other materials, if they are not capable of being processed by resource recovery as determined by the council.

#### **Subd. 2. County certification; office approval.**

(a) By April 1 of each year, each county shall submit an annual certification report to the office detailing:

- (1) the quantity of waste generated in the county that was not processed prior to transfer to a disposal facility during the year preceding the report;
- (2) the reasons the waste was not processed;
- (3) a strategy for development of techniques to ensure processing of waste including a specific timeline for implementation of those techniques; and
- (4) any progress made by the county in reducing the amount of unprocessed waste.

The report shall be included in the county report required by section 473.803, subdivision 3.

(b) The Pollution Control Agency shall approve a county's certification report if it determines that the county is reducing and will continue to reduce the amount of unprocessed waste, based on the report and the county's progress in development and implementation of techniques to reduce the amount of unprocessed waste transferred to disposal facilities. If the Pollution Control Agency does not approve a county's report, it shall negotiate with the county to develop and implement specific techniques to reduce unprocessed waste. If the Pollution Control Agency does not approve two or more consecutive reports from any one county, the Pollution Control Agency shall develop specific reduction techniques that are designed for the particular needs of the county. The county shall implement those techniques by specific dates to be determined by the Pollution Control Agency.

#### **Subd. 3. Facility certification.**

The operator of each resource recovery facility that receives waste from counties in the metropolitan area shall certify as unprocessable each load of mixed municipal solid waste it does not process. Certification must be made to each county that sends its waste to the facility at intervals specified by the county. Certification must include at least the number and size of loads certified as unprocessable and the reasons the waste is unprocessable. Loads certified as unprocessable must include the loads that would otherwise have been processed but were not processed because the facility was not in operation, but nothing in this section relieves the operator of its contractual obligations to process mixed municipal solid waste.

#### **Subd. 4. Pollution Control Agency report.**

The Pollution Control Agency shall include, as part of its report to the Environment and Natural Resources Committees of the senate and house of representatives, the Finance Division of the senate Committee on Environment and Natural Resources, and the house of representatives Committee on Environment and Natural Resources Finance required under section 473.149, an accounting of the quantity of unprocessed waste transferred to disposal facilities, the reasons the waste was not processed, a strategy for reducing the amount of unprocessed waste, and progress made by counties to reduce the amount of

unprocessed waste. The Pollution Control Agency may adopt standards for determining when waste is unprocessable and procedures for expediting certification and reporting of unprocessed waste.

**Subd. 5. Definition.**

For the purpose of this section, waste is "unprocessed" if it has not, after collection and before disposal, undergone separation of materials for resource recovery through recycling, incineration for energy production, production and use of refuse-derived fuel, composting, or any combination of these processes so that the weight of the waste remaining that must be disposed of in a mixed municipal solid waste disposal facility is not more than 35 percent of the weight before processing, on an annual average.

**History:**

1985 c 274 s 35; 1989 c 325 s 66; 1991 c 337 s 81,82; 1993 c 249 s 43,44; 1994 c 585 s 49,50; 1995 c 247 art 2 s 51,52; 1996 c 470 s 27; 1Sp2005 c 1 art 2 s 161

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August 30, 2012

Sigurd Scheurle  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155

Re: Comments on the Metropolitan Waste Disposal Restrictions Report

Dear Mr. Scheurle:

The National Solid Wastes Management Association (NSWMA) has prepared the following comments on the Metropolitan Waste Disposal Restrictions Report (Report), as required by Minnesota Law (2012), Chapter 272, Section 93, directing the Commissioner of the Minnesota Pollution Control Agency (MPCA, Agency) to study how compliance with Minnesota Statutes, Section 473.848, may be achieved. Our comments regarding this issue continue to focus on the details of how the MPCA plans to implement the enforcement strategy they are proposing. In essence, how, specifically, does the Agency intend to carry out this enforcement strategy? Detailed questions regarding the proposed new system have been asked by NSWMA in the past and are yet to be answered by the MPCA. We hereby incorporate by reference the attached letter of July 18, 2012 (Item 1) and Attachment A (Item 2) which raised these questions and make those documents part of these formal comments. NSWMA requests that MPCA respond to all questions contained within this document and its attachments in its final report to the legislature on October 1, 2012.

The Agency has provided an overly simplistic response to the question of how waste that is deemed "unprocessable", is then directed to "reasonably available capacity" and has greatly minimized the economic impact that this proposal will have on the industry and its ratepayers. Furthermore, NSWMA concludes that the Agency must report to the legislature that

compliance with Minn. Stat. Section 473.848 cannot be achieved due to the antitrust implications and competitive advantages to certain companies provided by the MPCA's proposed enforcement strategy.

There are haulers in the metropolitan area that will be impacted more so than others. How does the Agency plan to enforce this strategy fairly and equitably across all of the waste haulers in the metropolitan solid waste system? This proposal provides a competitive advantage to those haulers with a majority of accounts/business in areas that are so geographically distant from processing facilities that no "reasonably available capacity" exists for them; that is, they will likely never have to pay high tipping fees at processing facilities. These haulers will be best able to weather the effects of mandatory processing, realizing lower tip fees at land disposal facilities and better able to keep rates to their customers lower than their competitors.

Many questions arise with what the MPCA is describing as an enforceable standard: "reasonably available capacity". First, is the term "reasonably available capacity" really a standard that can be enforced? Typically, in rulemaking processes, a good test of whether a standard is enforceable or not is whether the standard can be commonly understood and whether it can actually be enforced. NSWMA believes that the term is not clearly understood, that there are many questions as to what "reasonably available" means. What is a reasonable distance to travel to tip waste at a processing facility? Who makes this decision? How does the hauler find out whether "reasonably available capacity" exists, and who is responsible for making that determination?

NSWMA believes that the term "reasonably available capacity" is not an enforceable standard from the standpoint of the term not being clear to a majority of the regulated community. Nor did the standard go through a bona fide, rigorous public comment period such as required by rulemaking. Due to the significant economic impact of this proposal on the regulated community, a legal process such as rulemaking is required to ensure that all affected parties have an opportunity to get comments on the proposed strategy on record, and to ensure that a good system of checks and balances is applied to standard setting.

And finally, the strategy, as described in this Draft Report, results in what we believe are anti-trust violations, and creates competitive advantages in the marketplace for some haulers. The proposed system requires an intensive level of increased communication among the solid

waste haulers in the system. These businesses are competitors in the marketplace and communication is limited to avoid antitrust violations. NSWMA believes that the increased communication will result in antitrust and anticompetitive conduct allegations. The proposed enforcement scheme also requires land disposal operators to regulate their competitors by communicating with and redirecting their competitors to more expensive and distant processing facilities. Whether based on arrival time at the landfill gate and/or when capacity at processing facilities might be available during any given day, some redirected haulers will be impacted disproportionately. These disproportionately impacted haulers will then allege that selective enforcement has taken place for competitive reasons; and that the other haulers, either individually or collectively, have conspired to affect their business. These consequences of the system MPCA is proposing means that businesses may be put in a position of making decisions that affect the costs and prices of their competitors. Both of these aspects of MPCA's proposed strategy raise concerns for the solid waste industry under the anti-trust laws.

In addition, as described by MPCA staff at the August 8, 2012 public meeting on the Draft Report, the proposed enforcement strategy will not result in additional MPCA staff resources because the proposal will require the industry to self regulate. The waste industry cannot be required to assist the Agency with this form of "self-regulation" through increased communication and by redirecting "processable" waste to waste processing facilities "with reasonably available capacity".

Based on the comments provided in this letter, NSWMA concludes that the Agency must respond in the final report to the legislature that compliance with Minn. Stat. Section 473.848 cannot be achieved due to the antitrust implications and competitive advantages to certain companies provided by the MPCA's proposed enforcement strategy.

Lastly, as it states on page 2 of the Draft Report, the Agency admits that more progress towards landfill abatement could be achieved by focusing on waste reduction, recycling, and organics recovery, than by enforcing mandatory processing. Mandatory recycling and organics recovery should be the priorities for the Agency with regard to solid waste management.

The following are additional comments on the report:

1) **Why now?**

This issue has been brought up throughout this past Legislative Session, and throughout these policy discussions. The mandatory processing statute is 27 years old and has never been enforced. Historically, waste haulers have signed contracts with processing facilities and have worked toward meeting county solid waste planning goals. Metro county planning authorities were transferred to the Agency in 2005. So why has the Agency, in this particular planning process, decided to begin enforcing mandatory processing today, when the Agency believes they have had the authority for the past seven years, and its predecessors for 20 years prior? Further, does the Agency truly have the specific statutory authority to enforce mandatory processing since MPCA was not given general enforcement authority for Minnesota Chapter 473 when these county planning authorities were transferred to the MPCA.\*

2) **Oversimplification of Operational Challenges**

The Draft Report minimizes the overall solid waste system impacts and the operational and communication requirements and additional regulatory oversight that such a system will require. While communication does occur between different processing and disposal facilities, this is done rarely and only on an intermittent basis, for example, when a processing facility is out of service for maintenance. The mandatory processing enforcement proposal, however, would require daily communication on a regular basis, and includes communication and reporting due to increased regulation of the industry. We also believe that implementation of this system will require much more communication and reporting that will increase MPCA resource demands and increased costs for state government beyond what has been stated. Most importantly, this type of communication will result in alleged violations of antitrust laws that govern the solid waste industry.

At the August 8, 2012 meeting, MPCA staff responded to questions regarding how the system might be implemented. Their response included increased communication between the privately held disposal facilities and privately held processing facilities.

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\* We also attach as Item 3 a review of the legislative history of M.S. Section 433.848 to show that MPCA lacks enforcement authority under this statute.

This increased communication between the disposal facilities and their competitors would require privately held disposal companies to redirect their competitors to processing facilities that command much higher tipping fees. This type of system requires much more communication than the current system employs and is well beyond what would be considered a reasonable level of enforcement and regulation of the solid waste system.

In fact, the Agency stated that the system will require "self-regulation" in order to achieve the mandatory processing requirement. While "self-regulation" of an individual business by its own internal auditing or compliance and enforcement team is commonplace, "self-regulation" of an entire industry by one or two members of that industry, particularly where competitors are regulating each other in a manner that affects the rates and profits achieved by those companies is not commonplace and likely violates antitrust laws.

Further, questions have been raised as to whether haulers and transfer stations will be cited for waste deliveries to a land disposal facility when they should have delivered to a processing facility. These questions have been raised several times throughout the nearly two year process and have not yet been answered. In essence, the Agency has not yet answered basic questions about how enforcement will be carried out, what parties are liable and who will be enforced against. The agency simply concludes that "no significant operational barriers exist to obtaining compliance". However, the Agency, since the 2010 release of the Policy Plan, has not responded to these questions and has not shown that they have a clear understanding of what those barriers might be, nor has Agency staff provided any analysis of those barriers.

3) **What is the Shortfall and is it Truly Problem**

Different numbers have been reported publicly over the past two years with regard to just how much of a shortfall exists at the processing facilities. While the MPCA cites a 140,000 ton per year shortfall at processing facilities, this number has changed over the last year, from 300,000 tons per year down to 140,000 tons per year. We believe the operating capacity numbers the Agency is using are higher than what these facilities actually operate at on a day-to-day basis. We believe the shortfall is closer to 60,000 tons per year. So is this truly a shortfall, and if so, is it a significant shortfall, and even

then, is the Agency's response, the proposed enforcement strategy an appropriate one? NSWMA believes the proposed enforcement strategy is an unworkable and extreme measure by the Agency, in response to the "perceived shortfall" at processing facilities. Further, operating processing facilities at their higher, permitted capacity actually reduces efficiency and increases the cost of operation.

4) **Fair and Equitable Enforcement**

The Draft Report provides no details on how the enforcement scheme will be implemented, other than to state that facility permits will be changed so that land disposal facilities cannot receive waste defined as "processable", that the new enforcement scheme will require increased communication, and that all facilities will implement an additional new reporting scheme.

The Draft Report, however, does state that enforcement will likely result in varying, uneven reductions and uneven financial impacts amongst the private disposal facilities. In so doing, the Agency acknowledges that enforcement will result in impacts to private businesses that are disproportionate and that one private sector industry member will suffer financial impacts greater than others. Further, by shifting waste from these private sector land disposal facilities to the benefit of private sector owned processing facilities, the Agency is controlling the flow of waste for the financial benefit of certain privately owned processing facilities at the expense of the privately owned land disposal companies. This action raises serious constitutional issues of impermissible flow control in violation of the Commerce Clause.

The MPCA mandatory processing enforcement proposal therefore puts some companies at a significant competitive disadvantage in the land disposal market and potentially to other waste collectors/haulers in this market.

Lastly, the Agency minimizes the economic impact of shifting waste volume out of landfills by citing 10% volume loss as "minimal". A 10 percent loss, let alone the significant total lost volume at certain land disposal sites, however, represents significant annual company revenue losses. That is, a 10% volume decrease at a landfill is a significant impact to the bottom line of a privately owned landfill.

5) **Focus on Recycling and Waste Reduction**

The Draft Report cites much more significant landfill diversion through recycling, waste reduction and organics management (p. 7), than by enforcing mandatory processing. The Agency's resources should be directed at increasing the waste reduction and recycling rates, and organics recovery rate rather than the minimal gains to be made to capture 60- 70,000 tons per year, or even 140,000 tons per year, of waste material that it believes need to be processed. In fact, the Agency has specific responsibility for enforcing mandatory recycling if the metropolitan area did not achieve a 50 per cent recycling rate by 1996 (Minn. Stat. 115A.551, subd.5(b), and the Agency is specifically authorized to enforce against metro counties that have not achieved their master planning goals by taking several enforcement steps, one of which is to enforce mandatory recycling within the particular metro area county. Either of these measures would have greatly advanced landfill diversion, and would have much greater potential over the long term to achieve the state solid waste policy goals for waste reduction and recycling.

6) **Require Compliance with County Master Plans**

In 2009, the MPCA had the opportunity and the authority to enforce metro planning goals against Hennepin County for failing to meet processing goals and for failing to abide by their County Master Plan when Hennepin County diverted significant tonnage per year from the Great River Energy (GRE) processing plant to land disposal, creating a shortfall at the GRE processing facility. This diversion resulted in the primary processing shortfall that exists within the metropolitan processing system. The MPCA Draft Report on page 15, includes a chart showing that the GRE facility shortfall is by far the greatest shortfall of all resource recovery facility shortfalls at 99,000 tons per year.

The Agency has the enforcement authority and a greatly simplified response to this situation would be to require Hennepin County to once again, fully meet the requirements of the Metropolitan Solid Waste Policy Plan, not just their 2012 revised Hennepin County Master Plan. The process and requirement for meeting the County Master Planning Goals is laid out in the metropolitan solid waste management planning statutes and it is the statutorily required process for achievement of the processing goals and compliance with the Metropolitan Solid Waste Policy Plan. Returning the 50,000 to

75,000 tons per year of Hennepin County's waste to the GRE processing plant would greatly reduce the projected shortfall on page 15 of MPCA's Draft Report to the point of being nearly negligible. Any additional Hennepin County generated waste that could be sent to GRE would eliminate the problem entirely.

**Conclusions:**

NSWMA concludes that due to the high level of communication amongst competitors in the solid waste market, the enforcement method proposed will violate anti-trust laws. There are haulers in the metropolitan area that will be impacted more so than others. Based on the comments provided in this letter, NSWMA concludes that the Agency must report to the legislature that compliance with Minn. Stat. Section 473.848 cannot be achieved due to the antitrust implications and competitive advantages to certain companies provided by the MPCA's proposed enforcement strategy. Further, MPCA's plan may be unconstitutional flow control in violation of the Commerce Clause. NSWMA recommends that the MPCA should report to the Minnesota Legislature that enforcement of mandatory processing cannot be achieved.

Thank you for the opportunity to comment on the 2012 Draft Restrictions on Disposal Report. We look forward to reviewing your response to these comments within the next draft of the Report.

Sincerely,



Douglas M. Carnival  
Counsel, Minnesota Chapter National Solid Wastes  
Management Association

cc: Peggy Macenas, Regional Manager, NSWMA – Midwest Region  
Senator Scott Newman  
Representative Glenn Gruenhagen  
Commissioner John Linc Stine



## Solid Waste Facilities

### Incinerator

708 8th Street NW  
PO Box 179  
Fosston, Minnesota 56542  
(218) 435-6501 Telephone  
(218) 435-6619 Fax

### Landfill

Located: Gentilly, Minnesota  
PO Box 179  
Fosston, Minnesota 56542  
(218) 281-5419  
Manager: [jonsteiner@co.polk.mn.us](mailto:jonsteiner@co.polk.mn.us)  
Accountant: [jbaumann@gvtel.com](mailto:jbaumann@gvtel.com)  
Secretary: [dkappedal@gvtel.com](mailto:dkappedal@gvtel.com)

August 29, 2012

Minnesota Pollution Control Agency  
Attn: Mr. Sig Scheurle  
520 Lafayette Rd N.  
St. Paul, MN 55155-4194

RE: Metro Waste Processing Report – Restriction on Disposal of Unprocessed Waste

Dear Mr. Scheurle:

Polk County is the owner/operator of a Material Recovery Facility (MRF), a Waste-to-Energy Incinerator (WTE) and a Municipal Solid Waste Landfill (LF) located in NW MN. Polk County works in partnership with the Counties of Beltrami, Clearwater, Mahanomen and Norman to utilize these solid waste facilities. Although Polk and its partner Counties are outside of the Metropolitan area, which is subject to MS 473.848 (Statute), it is our position that however the MPCA ultimately implements the Statute that it will have a definite impact upon other rural facilities such as ours. Whether that impact is positive or negative, and the extent of that impact, likely will be determined by the manner in which the implementation is accomplished.

With that said, Polk County supports the MPCA's attempt to further implement and maximize the Waste Management Hierarchy (Hierarchy) and existing WTE infrastructure without dictating how the goal is met. There is both room and requirement in any integrated waste management system for multiple types of processing and disposal facilities – MRF's, WTE's and LF's. To sustain that balance, there must be adequate waste supply for each type of facility. Unfortunately, economics often dictate the flow of waste, and the use of any given LF is generally cheaper than WTE. These conditions are not limited to that area regulated by MS 473.848, but rather apply to all of MN.

While we realize the impact of the economic pressures on WTE's and LF's, which have historically proven to be a barrier to implementing the Hierarchy, the use of the MPCA's permit authority is certainly an effective tool to maximize the use of existing WTE capacity. However, the use of the MPCA's permit authority to accomplish that goal should be used in conjunction with other effective tools and incentives which could be made available to further that goal on a state-wide basis.

In addition to using the MPCA's permitting authority to achieve the goal to maximize existing waste processing infrastructure to promote LF abatement where both possible and reasonable, Polk supports the creation (or re-establishment) of various economic incentives for using MRF, WTE or any other waste processing prior to disposal at a LF to bring about these results .

Creation of sustainable economic incentives could be accomplished in part or in whole through a number of incentives such as waste processing credits to reduce SWMT payments, processing payments for each ton processed via WTE or other types of waste processing, eliminate the requirement to pay SWMT on all waste processed (through WTE or MRF), create reduced SWMT rates for waste disposed of at a WTE, etc..

The creation of long-term financial incentives for MRF or WTE patronage could either level the economic playing field between LF and WTE, make WTE more economically attractive than LF, or create incentive to process waste through a MRF prior to disposal. Should WTE ever be more economically attractive than LF, not only would existing WTE capacity

likely be maximized, but it may also increase demand and incentive for additional capacity at those existing WTE or MRF facilities. Again, this type of incentivized system could be, and should be, on a state-wide level. In effect, the goal would switch from the current focus of using existing metro WTE capacity to the fullest to creating capacity to process waste to the fullest extent possible statewide.

Rural communities, in addition to many metropolitan communities, have voluntarily made a commitment to use MRF and/or WTE as an integral part of their primary waste management system – often times in spite of being the pricier of the options legally allowed. Finding a way to both reward those communities for their vision and commitment while encouraging others to do the same would go a long ways toward supporting and encouraging the goals of the Hierarchy going forward.

On behalf of Polk County and our long-standing county partners, I thank you for your consideration of our position on the topic.

Sincerely,

A handwritten signature in black ink that reads "Jon D. Steiner". The signature is written in a cursive, flowing style.

Jon D. Steiner  
Env. Svs. Admin.

CC: Mr. Kirk Koudelka – MPCA Ast. Commish.  
Advisory Board Solid Waste Admin's  
Chuck Whiting – Polk County Admin.



August 27, 2012

John Linc Stine, Commissioner  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-4100

Re: Comments of the City of Red Wing  
In the Matter of the Metropolitan Waste Disposal Restrictions Report

Dear Commissioner Stine:

The City of Red Wing, Minnesota would like to thank you for the Agency's attention to the issue of the Metropolitan Waste Disposal Restrictions Report and the actions necessary to achieve the goals of the Waste Management Act. The City has long been a supporter of the waste management hierarchy and the goals it seeks to achieve. The City of Red Wing has owned and operated one of the first resource recovery facilities in the State and was one of the first cities in the Nation to implement a viable curbside collection for recyclable materials. As a community that is directly impacted by this Report, the City concurs with the Minnesota Pollution Control Agency (MPCA) that the disposal restrictions of Minnesota Statutes §473.848 can be achieved without difficulty. Resource recovery facilities must operate at full capacity to achieve the environmental and economic benefits that they have to offer.

It is the City's understanding that the primary concerns raised by the landfill owners and their collection operations have been associated with the communication between the landfills and the resource recovery facilities to determine the levels of capacity on a daily basis. The City of Red Wing has a long-standing record of effective communication among the City's waste operations, local waste disposal facilities and waste haulers as this is critical to our daily operations. In fact, comprehensive communication processes and technologies are available for use by even the smallest collection and disposal operations, and communication among resource recovery facilities, waste collection vehicles and landfills should not present any real impediment to success. The City of Red Wing would be highly receptive to working directly with any entity affected to ensure seamless compliance with new land disposal requirements.

There are several communities that currently host landfills and receive some level of funding from the landfill presence. However, it would appear that landfills have a finite capacity for waste tonnages and as such, the practice of landfill abatement would be beneficial to providing a smaller yet long-term source of funding versus a larger short-term source that will end more abruptly with less likelihood of mitigating the lost funding. The City of Red Wing, as a



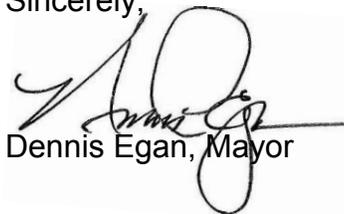
responsible entity, has subsidized the cost of resource recovery for many years and will be forced to make potentially irreversible decisions with respect to its resource recovery operations if the City is unable to fill existing capacities.

The City of Red Wing owns and operates a fully integrated solid waste management system and this system was developed based on an optimal level of waste received at its operations. The City desires to continue to operate this system at a level of capacity commensurate with the ability to manage waste appropriately. The City does not have a desire to manage tons as a transfer station by relocating these tons from one landfill to another. The City's goal is to utilize its maximum capacity at the highest levels of the waste management hierarchy in order to recover valuable resources and commodities from the waste stream. Furthermore, the City believes it is good public policy to mitigate the need for and practice of land disposal to the degree in which it is able.

The City's operations have been in competition with lower-priced land disposal options that do not take the steps to conserve and preserve resources and commodities. This has placed the City at an economic disadvantage in its efforts to follow good public policy and State law. Landfills are necessary, but they should be used as a last resort and the available landfill capacity should be seen as a limited resource. Siting new landfills is a long and difficult process which can best be avoided by conserving the available landfill capacity remaining.

The City of Red Wing is optimistic that the State will effectively enforce Minnesota Statutes §473.848 on February 15, 2013. Such enforcement maximizes production of power with renewable energy while increasing recycling and assures the State's solid waste management goals are met.

Sincerely,



Dennis Egan, Mayor



Ralph Rauterkus  
Council President



Lisa Pritchard Bayley  
Council Vice-President

Cc: Sigurd Scheurle, MPCA  
Tina Patton, MPCA

August 31, 2012

Mr. Sig Scheurle  
Assistant Commissioner  
MPCA  
520 Lafayette Road North  
St. Paul, MN 55155-4194

Re: Metropolitan Waste Disposal Restrictions Report

Mr. Scheurle,

RRT appreciates the opportunity to comment on the Metropolitan Waste Disposal Restrictions Report. Put simply, we believe that any successful implementation of the processing requirements contained in the Report requires the continued support of all of the members of the existing integrated solid waste management system: policymakers, host counties, haulers, waste processors, burn facilities, and landfill operators.

Since 1987, with little day to day involvement of the MPCA, local governments, landfill owners, waste haulers and waste processing facilities have worked closely together to comply with state mandates, including *Minn. Stat. 473.848* and implementation of the “hierarchy” of waste disposal. A critical aspect of complying with this statute at RRT’s Newport facility is the on-going commitment of Ramsey and Washington counties to offer pricing and convenience to waste haulers through their waste processing contract with RRT. The counties provide competitive pricing with landfill disposal rates, thereby preserving a marketplace to meet their environmental and statutory obligations. The majority of waste haulers voluntarily support compliance with the counties and state plans. However, this market pricing is unable to compete with “internal” pricing available to a hauler which also owns a landfill -- the continued operation of RRT / Newport and other waste processing facilities requires compliance with our statutes and uniform support and compliance from landfill owners as well.

Over the last few years, it appears the existing “voluntary” system of compliance is failing. Landfill owners have economically benefitted from retaining tonnage for direct land disposal that is required to be processed under state law. More specifically, during the late 1990s and through the mid-2000s, the Elk River and Newport waste processing facilities operated at near-capacity levels: an aggregate of 850,000 tons processed annually. Since 2007, however, the total number of tons of MSW from the metropolitan area received at Elk River and Newport has steadily fallen – a loss of over 250,000 tons per year by 2011. During this same period of time, the number of tons of waste received by the Burnsville, Elk River, Pine Bend and Spruce Ridge landfills decreased by only 35,000 tons.

It is true that changes in the economy and growth in recycling and organic programs nationwide have seen waste collection reduced by approximately 15% from 2007 levels. However, applying this consistent declining waste metric of 15% to the metro area, deliveries to the Elk River and Newport facilities should be dramatically more than 600,000 tons - and the 35,000 ton decrease in tons should be several times higher.

It is well established and obvious that it is in the best interests of landfill owners to maintain or expand land disposal tonnage whenever they are able to do so – there is no current “cost” to filling up existing air space as quickly as possible. As is reflected in the lost tonnage figures above, the substantial decrease in tons received at RRT/ Newport and other processing facilities comes directly from haulers who own landfills, who have opted for direct land disposal and revenue over compliance with *Minn. Stat. 473.848*. And while this loss has been dramatic, if the law were to be repealed (or continue to be ignored) the Elk River and Newport processing centers *will likely lose all of the tons which they currently receive from haulers who own landfills*. Without these tons, RRT / Newport will close and we assume the same is true for the Elk River processing facility. This result will send the 600,000 tons of MSW from the metropolitan area that are currently processed each year directly to the landfills, consume currently permitted land disposal capacity at a greatly accelerated rate and thereby require the expansion of existing landfills (or lead to the lengthy and controversial process of siting new land disposal facilities in the metro area). We think it would be difficult to view this as anything other than a tragedy for Minnesota in general - and the metro area in particular.

Should voluntary compliance continue to fail, we urge the MPCA and state policymakers to put in place an enforcement framework which respects the prohibition on the landfill of processable waste as mandated in *Minn. Stat. 473.848*.

Thank you for the opportunity to provide our comments.

Sincerely,



Chris Gondeck, CFO/COO  
Resource Recovery Technologies



August 29, 2012

Minnesota Pollution Control Agency  
Attn: Asst. Com. Kirk Koudelka  
520 Lafayette Rd N.  
St. Paul, MN 55155-4194

RE: Metro Waste Processing Report

Dear Mr. Koudelka:

On behalf of the membership of the Minnesota Solid Waste Administrators Association (SWAA) I would like to thank you for the Agency's preparation of the Metropolitan Waste Disposal Restrictions Report. SWAA concurs with the Minnesota Pollution Control Agency (Agency) that compliance can be achieved through the disposal restrictions of Minnesota Statutes 473.848.

SWAA has a statewide membership of county solid waste administrators. Although the association membership counties are primarily outside the metro area affected by MS 473.848, some are owners and/or operators of resource recovery facilities and/or municipal solid waste landfills. It is our opinion that MS 473.848 will have an impact on outstate facilities as well. Such enforcement maximizes the capacity of current waste disposal facilities while increasing waste reduction, recycling, and composting.

SWAA supports the Agency in its attempt to promote the State's Waste Management Hierarchy and existing waste disposal infrastructure. There is a need for both resource recovery facilities and landfills in integrated waste management systems. To maintain that balance, there must be sufficient waste supply for each type of facility. These conditions are not limited to the metro counties regulated by MS 473.848, but apply to all of Minnesota.

SWAA recognizes the historical success of implementing the Hierarchy using permit authority to maximize existing solid waste management capacity where it is possible and reasonable. SWAA also recognizes that enforcement of MS 473.848 will help to bolster the State's solid waste management goals.

SWAA would also support the re-establishment of economic incentives for using integrated solid waste management systems to achieve these results. Outstate communities, along with many metropolitan communities, have made a commitment to integrated solid waste management. Finding a way to reward those communities for their vision and commitment and encouraging others to do the same would support and encourage meeting the goals of the Hierarchy going forward.

On behalf of SWAA and our member Counties, I thank you for your consideration of our input on Metropolitan Waste Disposal Restrictions Report and the implementation and enforcement of MS 473.848

SWAA and its members welcome the commencement of enforcement of Minnesota Statute 473.848 on February 15, 2013

Sincerely,

Mark G. Bauman  
SWAA President

August 31, 2012

Mr. Sigurd Scheurle  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
Saint Paul, MN 55155-4194

Re: Metropolitan Waste Disposal Restrictions Report Public Comments from the Solid Waste Management Coordinating Board

Dear Mr. Scheurle:

On behalf of the Solid Waste Management Coordinating Board (SWMCB), a joint powers organization comprised of Anoka, Carver, Dakota, Hennepin, Ramsey and Washington counties, I thank the Minnesota Pollution Control Agency (MPCA) for releasing a credible and practical report addressing the enforcement of existing statutory requirements for waste disposal. The enforcement plan outlined in this report will significantly contribute to the Region’s ongoing efforts to enhance waste management in accordance with the state’s statutorily-defined and preferred Solid Waste Management Hierarchy of:

- |               |                |
|---------------|----------------|
| 1) Prevention | 3) Processing  |
| 2) Recycling  | 4) Landfilling |

While enforcing disposal restrictions at landfills is only one component of a larger effort to enhance waste management across the Region, the enforcement of Minnesota statute §473.848 will ultimately incentivize individuals and firms to reuse and recycle before disposing of waste through processing or, finally, landfilling. And stronger adherence to the hierarchy will prove not only to have environmental and public health benefits – it will also benefit the Region’s economy. According to MPCA statistics, 1.2 million tons of potential recyclables were landfilled in Minnesota in 2010 at a cost of \$200 million; had that waste been recycled instead it would have not only avoided all disposal costs, it would have actually generated an estimated \$285 million in economic activity within the state.<sup>1</sup>

SWMCB member counties also appreciate the MPCA’s implicit recognition throughout its waste disposal restrictions report that, while the Region’s waste management system relies upon the collaboration of public, private, and non-profit entities, the long-term costs associated with managing landfilled waste often becomes the responsibility of Minnesota’s taxpayers. History demonstrates that at least some of the private companies currently managing the Region’s landfills may disappear as time

<sup>1</sup> Minnesota Pollution Control Agency presentation to the Solid Waste Management Coordinating Board. May 2012.

# Solid Waste Management Coordinating Board

**Commissioner Victoria Reinhardt**  
Ramsey County  
*Chair*

**Commissioner Jan Callison**  
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**Commissioner Joseph Harris**  
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**Commissioner Autumn Lehrke**  
Washington County

**David Benke**  
Minnesota Pollution Control Agency



477 Selby Avenue  
St. Paul, Minnesota 55102

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passes, but the waste in those landfills will remain – along with expensive health and environmental issues that cannot be neglected. \$365 million has been spent as of 2011 to manage aging and failing landfills, with millions in additional future costs already expected. It is therefore vital to presently prevent unnecessary landfilling, and future taxpayer liability, whenever possible.<sup>2</sup>

Various concerns were raised at the Legislature when the issue of landfill disposal enforcement was discussed during 2012. SWMCB member counties believe that two issues in particular should be addressed at this time so as to ensure that all stakeholders have factual data available during any future discussions about enforcement of Minnesota statute §473.848:

- 1) Concerns were raised that by restricting unnecessary landfilling in the Region, the public would lose significant amounts of landfill gas being converted into energy, thus harming the state's efforts to reach its renewable energy goals. SWMCB member counties are pleased to point out that moving waste up the hierarchy away from landfilling into processing will actually help the state achieve its renewable energy goals. According to the MPCA, processing facilities produce on average ten times more energy from a ton of waste than when that same ton is landfilled and methane gas is extracted for energy.<sup>3</sup>
- 2) There have been divergent projections regarding the magnitude of change to landfill waste amounts following enforcement of Minnesota statute §473.848. SWMCB member counties support the estimates provided within the MPCA waste disposal restrictions report and believe that all future hypothetical scenarios regarding projected landfill amounts should be benchmarked for accuracy using the MPCA figures. SWMCB member counties emphasize that of the 1.4 million tons of waste generated in the Region in 2011, it would have only required 139,154 tons of mixed municipal solid waste (9.9% of the overall total), spread across all four Minnesota landfills serving the Region, to be diverted from landfills to processing facilities to satisfy existing state laws and fully support the state's solid waste management hierarchy of reuse and recycling, followed by processing and then landfilling.<sup>4</sup> Ultimately, the four Minnesota landfills serving the Region will be financially impacted to some degree by enforcement of existing state law. Yet it is important to note that the financial impact should be relatively minimal for the landfill companies – especially when one realizes that the Region's overall amount of waste that will need to be managed is projected to continue increasing in future years.<sup>5</sup>

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<sup>2</sup> Minnesota Pollution Control Agency Closed Landfill Report to the Legislature. December 2011.

<sup>3</sup> Minnesota Pollution Control Agency. [www.pca.state.mn.us/index.php/component/option,com\\_docman/task,doc\\_view/gid,13898](http://www.pca.state.mn.us/index.php/component/option,com_docman/task,doc_view/gid,13898). Accessed August 2012.

<sup>4</sup> Minnesota Pollution Control Agency. Metropolitan Waste Disposal Restrictions Report. Page 22. August 2012.

<sup>5</sup> Minnesota Pollution Control Agency. 2010-2030 Metropolitan Solid Waste Policy Report. Page 6. March 2011

SWMCB member counties recognize that the waste disposal restrictions report does not specifically address every detail regarding how waste collection, transport, and delivery will occur to ensure operational capacity is maximized once enforcement begins. This report instead focuses on the timely and important issue of clarifying the MPCA's mechanism and authority to enforce a long-standing statutory requirement that is instrumental in achieving our Region's vision of safe and sustainable waste management. However, in order to ensure that potential financial impacts associated with enforcement are mitigated to the greatest extent possible, the SWMCB specifically requests that the MPCA make a concerted effort to engage with and entertain ideas from the Region's landfill host communities (which are striving to balance local needs with those of the Region) during the months ahead.

Along with this letter of support for MPCA enforcement, SWMCB member counties submit a few clarifying questions regarding the waste disposal restrictions report in Attachment #1. It is hoped that the MPCA can incorporate information from the responses to these questions into the waste disposal restrictions report, thus ensuring that the final document is as clear and complete as possible.

Achieving the Region's solid waste management objectives, outlined in the State's 2010-2030 Metropolitan Area Policy Plan and supported through policies articulated in the regional and individual county master plans that have been passed by SWMCB member counties, requires the bold state leadership that the MPCA is exhibiting through the enforcement of Minnesota statute §473.848. SWMCB member counties stand prepared to support the state's efforts by developing new and enhanced local programs that ensure waste is being managed at ever-higher levels on the waste management hierarchy. Ultimately, it is only through these collaborative efforts that are forward-thinking, market-driven, and well-researched that the Region will achieve its long-term vision of improved waste management.

Sincerely,



Victoria Reinhardt  
Chair, Solid Waste Management Coordinating Board  
Ramsey County Board of Commissioners

Cc: Members of the Solid Waste Management Coordinating Board  
Kirk Koudelka, Minnesota Pollution Control Agency  
Tina Patton, Minnesota Pollution Control Agency

## Attachment #1

*The following clarifying questions pertaining to the waste disposal restrictions report are submitted by SWMCB member counties to the MPCA. It is hoped that the MPCA can incorporate information from the responses to these questions into the final waste disposal restrictions report, thus ensuring that the final document is as clear and complete as possible.*

1. *General:* There are real concerns that some of the processing facilities that serve the Region would close if Minnesota statute §473.848 is not enforced (because it is comparatively inexpensive in the near-term to landfill waste and simply defer the long-term costs whereas processing requires more up-front cost). Does the MPCA have projections for how much additional waste would have to be landfilled annually across the Region if Minnesota statute §473.848 was not enforced and processing facilities in Elk River and Red Wing ceased operations?
2. *General:* What is the total public investment in processing technology since the Legislature first established the Waste Management Hierarchy and determined processing to be a preferred form of waste management when compared to landfilling?
3. *Page 6:* What is specifically meant by the sixth bullet's reference to "political subdivisions and private firms?"
4. *Pages 11-12:* The statement, "The landfill produces large amounts of methane gas" appears multiple times. Can the MPCA clarify what constitutes a *large* amount of methane gas, maybe by comparing it to other forms of renewable energy generation? Alternatively, could the MPCA remove the term *large* and instead specify the amount of renewable energy generated?
5. *Page 17:* Would the MPCA consider adding the word *significantly* to the following sentence (or clarifying the range of magnitude in cost difference between each disposal option)? "...the actual tipping fees charged to haulers are generally *significantly* lower at landfills than resource recovery facilities."
6. *Page 21:* How, if at all, will enforcement impact the counties' current processes for certifying waste?



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80 South 8th Street  
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tel 612.977.8400  
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August 31, 2012

**Jack Y. Perry**  
(612) 977-8497  
jperry@briggs.com

**VIA EMAIL & FAX**

Commissioner John Stine  
Minnesota Pollution Control Agency  
520 Lafayette Road N.  
St. Paul, MN 55155-4194

**Re: MPCA's proposed rewrite of Minn. Stat. § 473.848 (1985)**

Dear Commissioner Stine:

Pursuant to the legislative directive, the Minnesota Pollution Control Agency (MPCA) published for public comment its August 1, 2012 "Draft Metropolitan Waste Disposal Restrictions Report" (8/1/12 MPCA Report). Following its publication of the 8/1/12 MPCA Report, MPCA conducted an August 8, 2012 information meeting (8/8/12 MPCA Meeting). Based on the 8/1/12 MPCA Report and the 8/8/12 MPCA Meeting, it is clear that MPCA did not meet its legislatively-prescribed mandate to "prepare a report on how compliance with Minnesota Statutes, section 473.848 may be achieved." (Emphasis added). The plain language of § 473.848 – notably, Subdivision 2 – has been uniformly interpreted and enforced by MPCA and the seven metropolitan counties for over a quarter century. MPCA nevertheless proposes to rewrite – not "compl[y] with" – Subdivision 2.

**OVERVIEW**

MPCA's proposed rewrite is three-fold. First, MPCA proposes to **add** to the Subdivision 2(a)-required "planning" — *i.e.*, "annual certification reports" — process an unauthorized "enforcement" — *i.e.*, a "real-time" (by "specific loads" or "in advance during the month") certification — process. Second, MPCA proposes to **extend** the responsibility for the Subdivision 2(a)-required certification process from just the seven metropolitan counties to these counties and the four in-state private landfills which receive mixed-municipal solid waste (MSW) generated in the seven-county metropolitan area (MMSW) — *i.e.*, Waste Management of Minnesota, Inc.'s (Waste Management) Burnsville Sanitary Landfill in Burnsville, Elk River Landfill in Elk River and Spruce Ridge Landfill in McLeod County, and Republic Service's (Republic) Pine Bend Landfill in Inver Grove Heights. And, third, MPCA proposes to **adopt** "criteria" for certifying on a "real-time" (by "specific loads" or "in advance during the month") basis that which is "unprocessible" MMSW — *i.e.*, when there is "reasonably available [processing] capacity" — that is void for vagueness.

Commissioner John Stine

August 31, 2012

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Despite proposing, in essence, to make the seven metropolitan counties and the two owners of the four affected MSW landfills — *i.e.*, Waste Management and Republic — the "MMSW Processing Regulators" for the entire MMSW market, MPCA chose not to exercise its Subdivision 4 discretion to "adopt . . . procedures expediting certification and reporting of unprocessed waste." MPCA did not do so because the "enforcement" — *i.e.*, "real-time" (by "specific loads" or "in advance during the month") certification — process that it is proposing to impose on the seven metropolitan counties and the two owners of the four affected MSW landfills (*i.e.*, Waste Management and Republic) is, besides being statutorily unauthorized, something that would, at best, require intense rulemaking and, at worst, is impossible and otherwise violative of all manner of free trade regulations.

### BACKGROUND

#### A. THE STATUTE – NOTABLY, SUBDIVISION 2

Minn. Stat. § 473.848 provides in its entirety as follows:

#### **473.848 RESTRICTION ON DISPOSAL.**

Subdivision 1. **Restriction.** (a) For the purposes of implementing the waste management policies in section 115A.02 and metropolitan area goals related to landfill abatement established under this chapter, a person may not dispose of unprocessed mixed municipal solid waste generated in the metropolitan area at a waste disposal facility unless the waste disposal facility meets the standards in section 473.849 and:

(1) the waste has been certified as unprocessable by a county under subdivision 2; or

(2)(i) the waste has been transferred to the disposal facility from a resource recovery facility;

(ii) no other resource recovery facility serving the metropolitan area is capable of processing the waste; and

(iii) the waste has been certified as unprocessable by the operator of the resource recovery facility under subdivision 3.

(b) For purposes of this section, mixed municipal solid waste does not include street sweepings, construction debris, mining waste, foundry sand, and other materials, if they are not capable of being processed by resource recovery as determined by the council.

Commissioner John Stine  
August 31, 2012  
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Subd. 2. **County certification; office approval.**(a) By April 1 of each year, each county shall submit an annual certification report to the office detailing:

(1) the quantity of waste generated in the county that was not processed prior to transfer to a disposal facility during the year preceding the report;

(2) the reasons the waste was not processed;

**(3) a strategy for development of techniques to ensure processing of waste including a specific timeline for implementation of those techniques; and**

(4) any progress made by the county in reducing the amount of unprocessed waste.

The report shall be included in the county report required by section 473.803, subdivision 3.

(b) The Pollution Control Agency shall approve a county's certification report if it determines that the county is reducing and will continue to reduce the amount of unprocessed waste, based on the report and the county's progress in development and implementation of techniques to reduce the amount of unprocessed waste transferred to disposal facilities. If the Pollution Control Agency does not approve a county's report, it shall negotiate with the county to develop and implement specific techniques to reduce unprocessed waste. If the Pollution Control Agency does not approve two or more consecutive reports from any one county, the Pollution Control Agency shall develop specific reduction techniques that are designed for the particular needs of the county. The county shall implement those techniques by specific dates to be determined by the Pollution Control Agency.

Subd. 3. **Facility certification.** The operator of each resource recovery facility that receives waste from counties in the metropolitan area shall certify as unprocessable each load of mixed municipal solid waste it does not process. Certification must be made to each county that sends its waste to the facility at intervals specified by the county. Certification must include at least the number and size of loads certified as unprocessable and the reasons the waste is unprocessable. Loads certified as unprocessable must include the loads that would otherwise have been processed but were not processed because the facility was

Commissioner John Stine  
August 31, 2012  
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not in operation, but nothing in this section relieves the operator of its contractual obligations to process mixed municipal solid waste.

Subd. 4. **Pollution Control Agency report.** The Pollution Control Agency shall include, as part of its report to the Environment and Natural Resources Committees of the senate and house of representatives, the Finance Division of the senate Committee on Environment and Natural Resources, and the house of representatives Committee on Environment and Natural Resources Finance required under section 473.149, an accounting of the quantity of unprocessed waste transferred to disposal facilities, the reasons the waste was not processed, a strategy for reducing the amount of unprocessed waste, and progress made by counties to reduce the amount of unprocessed waste. The Pollution Control Agency may adopt standards for determining when waste is unprocessable and procedures for expediting certification and reporting of unprocessed waste.

Subd. 5. **Definition.** For the purpose of this section, waste is "unprocessed" if it has not, after collection and before disposal, undergone separation of materials for resource recovery through recycling, incineration for energy production, production and use of refuse-derived fuel, composting, or any combination of these processes so that the weight of the waste remaining that must be disposed of in a mixed municipal solid waste disposal facility is not more than 35 percent of the weight before processing, on an annual average.

(Bold in headings in original; emphasis added).

As it relates to MPCA's current 2012 proposal, the critical portion of § 473.848 is Subdivision 2, which is shaded. Consistent with the metropolitan counties being statutorily-responsible for the preparation of and compliance with their own (albeit MPCA-approved) solid waste management plans, Subdivision 2(a) delegates to each of the seven metropolitan counties the duty, "[b]y April 1 of each year," to "submit an annual certification report to [MPCA] detailing," among other things, (1) the processing results "during the year preceding the report" and (2) "a strategy for development of techniques to ensure processing of waste." (Emphasis added).

MPCA internally recognizes that the Subdivision 2(a)-required "annual certification reports" establish what is essentially a "planning" process, not an "enforcement" process. And MPCA explains, as follows, this Subdivision 2(a)-required "planning" process:

Commissioner John Stine  
August 31, 2012  
Page 5

Metro County Certification Reports

Annual Certification Reports are prepared by each metro area County and are *intended to do three things*:

1. *Quantify* the portion of MMSW generated in each County that is unprocessable, and
2. *Identify* barriers and forces that have encumbered the processing of MMSW generated within the County, and
3. *Propose* strategies to reduce the land disposal of MMSW, increase MMSW processing and landfill abatement programs, and expand MMSW processing capacity if necessary.

(Underlining in original; italics added).

Per Subdivision 2(b), MPCA can either "approve" or "not approve a county's [annual certification] reports." If MPCA "approve[s] a county's [annual] certification report," then it is, per Subdivision 2(b), "determin[ing] that the county is reducing and will continue to reduce the amount of unprocessed waste." Conversely, if MPCA "does not approve a county's report," then it is authorized by Subdivision 2(b) to take two progressive steps. If it has "not approve[d]" of but one "consecutive reports from any one county, "then it is mandated to "negotiate with the county to develop and implement specific techniques to reduce unprocessed waste." (Emphasis added). But, if it has "not approved of two or more consecutive reports from one county," then it is mandated to "develop specific reduction techniques that are designed for the particular needs of the county[,] [and] [t]he county shall implement those techniques by specific dates to be determined by [MPCA]." (Emphasis added). MPCA itself recognizes that, "[i]f a report is disapproved, [it] will work with the county or counties to develop specific methods within specified time frames to achieve the landfill abatement objectives." MPCA's March 2011 "Metropolitan Solid Waste Management Policy Plan 2010-2030" (2011 MPCA Metro. SW Plan), Appendix D-10 (emphasis added).

**B. THE APPLICATION OF SUBDIVISION 2**

The seven metropolitan counties have at all times recognized and complied with their duty under Subdivision 2(a) to submit to MPCA, "[b]y April 1 of each year," the required "annual certification report," including the "development of techniques to ensure processing of waste."

From their construction of the MSW processing facilities in the late 1980/early 1990s until February 14, 1992, the metropolitan counties were collectively able to ensure an adequate

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flow of MMSW to the significantly more expensive processing facilities through "waste delegation" (or "flow control") ordinances enacted pursuant to Minn. Stat. §§ 115A.80-.893. These flow control ordinances barred the exportation of designated MMSW to less-expensive out-of-state landfills. Not surprisingly, such ordinances enacted under §§ 115A.80-.893 were, beginning on February 14, 1992, struck as violative of the Commerce Clause.

Even without flow control, the seven metropolitan counties continued to recognize and comply with their duty under Subdivision 2(a) to, among other things, "develop[ ] . . . techniques to ensure processing of waste." They were forced to instead employ market-based "techniques." As described by MPCA,

In the past, Metropolitan Counties have used various tools to ensure that MMSW was processed using resource recovery. Generally, until the past several years, these measures have been sufficient to utilize the operating capacity of resource recovery facilities.

8/1/12 MPCA Report at 15-16 (emphasis added). MPCA further describes how the market-based "techniques" have worked for the last 20 years:

County measures to direct MMSW to resource recovery have included:

- Incentive payments to MMSW resource recovery facilities
- Subsidy payments made to MMSW waste haulers
- Contracts for the delivery of MMSW
- Initiatives to organize MMSW collection
- Initiatives to direct MMSW generated by public entities

*Id.* at 16 (emphasis added).

It is undisputed that the seven metropolitan counties have routinely submitted to MPCA their required "annual solid waste reports" per § 473.803, subd. 3, inclusive of their required "annual certification reports" per § 473.848, subd. 2(a). Their reports described the above-identified market-based "techniques" that these metropolitan counties have used to "ensure processing of waste." And, except for its October 19, 2009 disapproval of all seven metropolitan counties' 2008 "annual certification reports," MPCA "approved" of each such Subdivision 2(a) "annual certification report," thereby "determin[ing]" for every other year to the present "that [each of] the [metropolitan] count[ies] is reducing and will continue to reduce the amount of unprocessed waste."

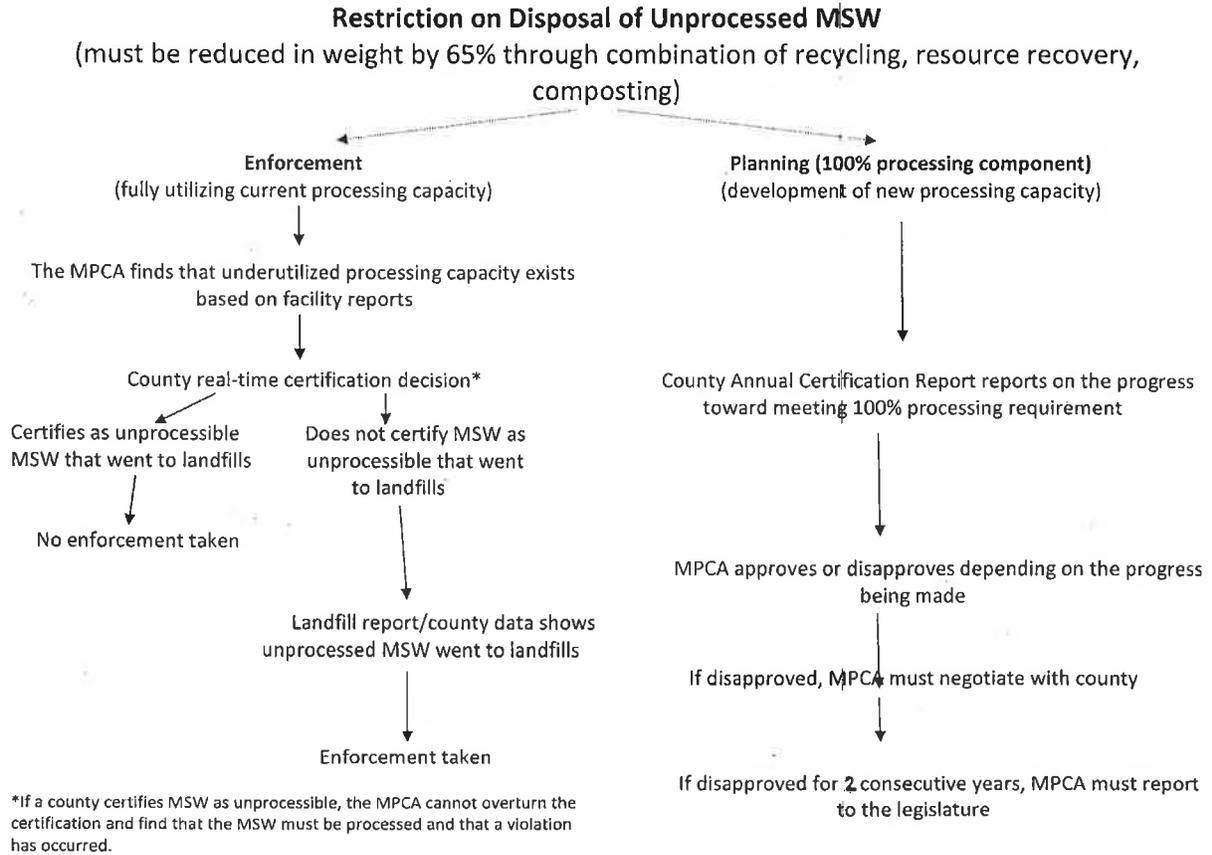
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### C.    MPCA'S INITIAL 2009 PROPOSAL

In 2008-2009, MPCA became increasingly concerned that what is now Great River Energy, Inc.'s (GRE) refuse-derived fuel (RDF) facility in Elk River (GRE's RDF Facility) would close due to a purported "shortfall" in MSW to the facility. Two distinct factors caused the purported "shortfall." First, MPCA approved Sherburne County's redirection of MSW generated within the western portion of its boundaries from the nearby GRE's RDF Facility to the much more distant Pope and Douglas counties' RDF facility in Alexandria. Second, with the August 2009 termination of its 20-year contract with GRE's RDF Facility, Hennepin County allowed approximately 100,000 tons/year of MMSW to be redirected for disposal away from GRE's RDF Facility. Expressly committed to protecting against the closure of GRE's RDF Facility, MPCA began looking at alternative ways to read and apply § 473.848.

In mid-2009, MPCA proposed for the first time to add to the Subdivision 2(a)-required "planning" — *i.e.*, county "annual certification reports" — process an unauthorized "enforcement" — *i.e.*, "county real-time certifications" — process. MPCA's flow chart of the Subdivision 2(a)-prescribed "planning" — *i.e.*, county "annual certification report" — process (right side) and MPCA's then-proposed "enforcement" — *i.e.*, "county real-time certification" — process (left side) is reproduced below:

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With regard to its proposed "enforcement" — *i.e.*, "county real-time certification" — process, MPCA internally admitted that "[t]he ability of the MPCA to implement such a provision depends on the county certification process." (Emphasis added). In other words, MPCA recognizes that Subdivision 2 controls.

In order to implement MPCA's then-proposed "enforcement" — *i.e.*, "[c]ounty real-time certification" — process, the seven metropolitan counties would have been the *de facto* "MMSW Processing Regulators" for the entire seven-county metropolitan MSW market. The seven metropolitan counties objected that they had neither the authority nor the procedures, expertise or personnel to be the *de facto* "MMSW Processing Regulators" for the entire seven-county metropolitan MSW market. And, because MPCA had not then or since disapproved of any of the seven metropolitan counties' Subdivision 2(a) "annual certification reports" for "two or more

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consecutive reports,"<sup>1</sup> MPCA could not, under Subdivision 2(b), unilaterally dictate its own strategy for the counties to ensure processing. For this reason, MPCA did not then pursue its proposal.

#### **D.     MPCA'S CURRENT 2012 PROPOSAL**

Though it did not disapprove of another of the seven metropolitan counties' "annual certification reports" besides their 2008 reports and thus has not disapproved "two or more consecutive reports from one county" as is required by Subdivision 2(b) for it to unilaterally "develop specific reduction techniques," MPCA has, nevertheless, unilaterally advanced its current 2012 proposal. MPCA's current 2012 proposal is set forth in both (1) its 2011 MPCA Metro SW Plan and (2) its 8/1/12 MPCA Report, which includes the four appendices (*i.e.*, App. A ("Frequently Asked Questions/Background"), App. B ("Metropolitan MMSW Monthly Report for Landfills"), App. C ("Draft Paragraph for Inclusion in Permits for Resource Recovery Facilities" and "Draft Paragraph for Inclusion in Permits for Disposal Facilities"), App. D (MPCA's June 14, 2010 "Decision [on] Waste-to-Energy (WTE) in Integrated Solid Waste Management Systems").

##### **1.     The 2011 MPCA Metro SW Plan's full description of MPCA's current 2012 proposal**

MPCA describes, as follows, its proposal in its 2011 MPCA Metro SW Plan at D-9 to D-11:

##### **County Annual report and Waste Certification Reports**

The TCMA counties are required to submit annual solid waste reports and certification reports to the MPCA for approval under Minn. Stat. §§ 473.803, subd. 3 and 473.848, subd. 2. The MPCA will review these reports for consistency with the Policy Plan and for consistency with the requirements of Minn. Stat. § 473.848, which states that no person shall dispose of unprocessable mixed MSW generated in the metropolitan area at a land disposal facility. Minn. Stat. § 473.848, subd. 4 states that the MPCA may adopt standards for determining when waste is unprocessable and procedures for expediting certification and reporting of unprocessed waste. The MPCA will use the

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<sup>1</sup> In response to Waste Management's June 29, 2012 Data Practices Act (DPA) letter, MPCA produced no data evidencing any two consecutive Subdivision 2(a)-required "annual certification reports" being disapproved for any of the seven metropolitan counties. MPCA's sole disapproval was its October 19, 2009 disapproval of all seven metropolitan counties' "annual certification reports" for 2008.

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information contained in the reports to enforce Minn. Stat. § 473.848 with respect to permitted waste facilities and public entities. MPCA permitted waste facilities are required by state law to comply with Minn. Stat. § 473.848. The restriction on disposal in Minn. Stat. § 473.848, Subd. 1 applies only to solid waste management and land filling within Minnesota. Public entities that manage solid waste or contract for the management of solid waste are required by Minn. Stat. § 473.46, subd. 5(b) to manage the waste consistent with the county plan.

The county reports must provide information on: waste generation and waste management activities; progress in achieving the policies and objectives in the Policy Plan, including the goals and objectives of the Metropolitan System Plan; the cities that have not satisfied the county performance standards for local abatement of solid waste through resource recovery, waste reduction and source separation; the quantity of MSW generated and not processed prior to land disposal; the reasons the MSW was not processed; a strategy to ensure that the MSW will be processed, including a timeline for implementation; and progress the county has made in reducing the amount of unprocessed MSW landfilled. **The report shall also certify whether mixed MSW generated in the county is unprocessable based on the criteria in 2.c. and 2.d.iii below.** The certification shall be made at least annually, but the county shall provide more frequent certifications if the MPCA determines that more frequent certifications are necessary to expedite the certification process. The MPCA will work with the metropolitan counties to develop a process for expediting the certification process.

If the MPCA finds that the counties are achieving results consistent with the Policy Plan, including the Landfill Abatement Plan, and as required by law, the reports will be approved. If a report is disapproved, the MPCA will work with the county or counties to develop specific methods within specified time frames to achieve the landfill abatement objectives.

1. Objectives
  - a. Implement the goals and objectives of the Metropolitan System Plan.
  - b. Ensure that no unprocessable mixed MSW goes to land disposal facilities in accordance with the requirement of Minn. Stat. § 473.848.

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- c. Increase the recovery of materials and energy from mixed MSW.
- d. Assure clear and consistent determinations and certification of unprocessable MSW.

2. Criteria

- a. County Annual Reports shall demonstrate that appropriate measures were implemented to support the objectives and goals of the Metropolitan System Plan.
- b. County Annual Reports shall report on the barriers to implement the objectives and goals of the Metropolitan System Plan, along with recommendations to overcome the barriers.
- c. TCMA mixed MSW is unprocessable when all **reasonably available capacity** within the TCMA processing system is fully utilized at a 100 percent of its operating capacity. In determining reasonably available capacity, consideration will be given to the specific geographic area that typically supports each of the processing facilities that serves the TCMA. The TCMA processing system is described in Appendix A, but this system could change periodically. The MPCA will annually provide a list of processing facilities that serve the TCMA.
- d. Certification Reports shall:
  - I. Demonstrate that appropriate measures were implemented to assure that public entities, mixed MSW haulers, and permitted mixed MSW facilities comply with Minn. Stat. § 473.848.
  - II. Report on the barriers to mixed MSW processing and recommendations for increasing the processing of mixed MSW.
  - III. Certify mixed MSW as unprocessable when there is no reasonably available mixed MSW capacity within the TCMA processing system. County

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certification of mixed MSW as unprocessable must be consistent with the criteria outlined in 2.c. above. **All certifications of unprocessable mixed MSW must be approved by MPCA.**

(Bold heading in original; emphasis added).

"[C]riteria" "c" and "d.III" are the expressed key to MPCA's current 2012 proposal. This "criteria" thrice defines "unprocessable" by reference to "reasonably available capacity." And it clarifies in "c" that, "[i]n determining reasonably available capacity, consideration will be given to the specific geographic area that typically supports each of the processing facilities that serve the TCMA." (Emphasis added). MPCA's recognition that "geographic" realities would continue to be "consider[ed]" "[i]n determining reasonably available capacity" was reinforced by MPCA's oral explanation at the 8/8/12 MPCA Meeting and its draft permits. MPCA's "Draft Paragraph for Inclusion in Permits for Disposal Facilities" and "Draft Paragraph for Inclusion in Permits for Resource Recovery Facilities" both provide that "the Permittee may dispose of specific loads of unprocessed MMSW generated in the 7-county metropolitan area . . . if each load is certified as unprocessable by the county where the waste was generated in accordance with Minn. Stat. § 473.848 and Appendix D, paragraphs 2.c. and 2.d.iii. of the Policy Plan." *Id.* App. C (emphasis added).

MPCA's recognition that "geographic" realities would continue to be "consider[ed]" opens the door that the full complement of other "market" realities — *e.g.*, hours of operation, routing, tipping fees, etc. — would also continue to be "consider[ed]" "[i]n determining reasonably available capacity." Indeed there is nothing in the "criteria" which limits the "consideration" of what is "reasonably available capacity" to just "geographic" realities. But, beyond the express recognition that "geographic" realities would continue to be "consider[ed]," MPCA provides no other specific guidance or procedures for "determining reasonably available capacity."

There is no suggestion in the 2011 MPCA Metro SW Plan, including its "criteria," that MPCA would try to add to the Subdivision 2(a)-required "planning" — *i.e.*, "annual certification reports" — process an unauthorized "enforcement" — *i.e.*, "county real-time certification" — process. And the multiple references in the "criteria" to "TCMA counties," "county reports," "work with the metropolitan counties" and "work with the county or counties" presupposes that Subdivision 2(a)'s duty would continue to rest alone with each of the metropolitan counties. There is, therefore, also no suggestion in the 2011 MPCA Metro SW Plan that the responsibility to apply this "criteria" would be extended to the regulated parties — *i.e.*, the waste industry.

In other words, the 2011 MPCA Metro SW Plan, including its "criteria," did nothing to warn either the metropolitan counties or the waste industry of the dramatic proposal that was to

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come. In fact, it now appears that the specifics of MPCA's current 2012 proposal has only come to light because the legislature mandated MPCA's publication of its report, which MPCA actively lobbied against.

2. **The 8/1/12 MPCA Report's full description of MPCA's current 2012 proposal**

MPCA describes, as follows, its proposal in its 8/1/12 MPCA Report at 18-21:

**Restriction on Disposal - Compliance Plan**

The MPCA began considering a compliance strategy to implement the statutory restriction on disposal after the Agency was assigned the duty to administer the Metropolitan Landfill Abatement Act in 2005. MPCA began formally discussing a compliance strategy that could implement the restriction on disposal through resource recovery and landfill permits in 2009. Both landfills and resource recovery facility permits already require the operators to comply with all applicable provisions of Minn. Stat. §§ 115A and 473. However, the present land disposal and resource recovery facility permits do not specify how facilities should operate in order to demonstrate compliance.

The substance of MPCA's proposal for implementing the restriction on disposal requirement is that landfill permits be amended to restrict landfills from accepting unprocessable metropolitan MMSW.<sup>2</sup> The Policy Plan contains criteria for counties certifying when a waste is unprocessable. A waste is unprocessable when all reasonably available capacity within the Twin Cities Metropolitan Area processing system is fully utilized. In determining reasonably available capacity, the criteria in the Policy Plan provides that consideration will be given to the specific geographic area that typically support each of the processing facilities that serve the metropolitan area. Currently, the four landfills serving the

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<sup>2</sup> Even though its current 2012 proposal also calls for the amendment of the permits for the MSW processing facilities (8/1/12 MPCA Report, App. C), MPCA admits "the substance of [its] proposal" is on its proposed landfill permit amendments. This is because, as has historically been the case, the only material amounts of processible MMSW that have been landfilled have come directly to the landfills, not from the MSW processing facilities. Indeed, as illustrated by Hennepin County's decision in August 2009 to terminate its delivery of approximately 100,000 tons/year of MMSW to GRE's RDF Facility, each of the MSW processing facilities are economically incentivized to reject any material amounts of processible MMSW that it cannot process because the receiving facility, upon acceptance of the processible MMSW, becomes responsible for the cost to transport and properly dispose of it.

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metropolitan area would have this operating condition added to their permit to operate. For consistency, the remaining landfills in the state and all new landfills would also have this condition added to their permit to operate.

MPCA's proposal would also require resource recovery facility permits to be amended to require that MMSW delivered to be processed could not be landfilled if another resource recovery facility could process the waste. The resource recovery facilities would also be required to certify waste as unprocessable if MMSW had to be bypassed and landfilled.

The MPCA proposes that permit conditions will require monthly reports from resource recovery facilities and landfills that receive metropolitan area MMSW. The permit modification would also specifically call out the existing requirement that facilities comply with the restriction on disposal as outlined in Minn. Stat. § 473.848, the Policy Plan, and the seven metropolitan area County Master Plans. Monthly reports from resource recovery facilities would inform MPCA as to MMSW delivery and capacity. If one or more resource recovery facilities did not have MMSW delivery equivalent to operating capacity, the landfills would be restricted from accepting metropolitan area MMSW.

It is clear that at the present time resource recovery facilities and land disposal facilities are **not in compliance with the restriction on disposal**.<sup>3</sup> Permit modifications are needed.

The MPCA proposes to specify the duties of facilities in terms of their compliance with Minn. Stat. § 473.848. In 2011, and early 2012, MPCA proposed to facility operators that facility permits would be modified to require monthly reports from resource recovery facilities and landfills that receive metropolitan area MMSW. The permit conditions would also specify the requirement that facilities comply with the restriction on disposal as outlined in Minn. Stat. § 473.848, the Policy Plan, and the seven metropolitan area County Master Plans.

The text of draft permit modifications and reporting forms, as they were proposed to facilities in late 2011 and early 2012, are attached in Appendix B and C.

Several conditions are precedent to MPCA's decision to formally move toward obtaining compliance with the restriction on disposal requirements of Minn. Stat. § 473.848:

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<sup>3</sup> This is demonstrably false. *See* below.

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### **Reorganization**

Consolidation of statewide authority for solid waste management made it possible for MPCA to begin to develop an effective plan for gaining compliance with the restriction on disposal. Up until 2005, the authority for administering Minn. Stat. chs. 473 and 115A, and administering solid waste facility permits were divided among several Executive branch agencies. In 2005, the Legislature consolidated all duties within the MPCA.

### **Clear and consistent standards**

The basis of MPCA's strategy for gaining compliance with the restriction on disposal required MPCA to promulgate and adopt standards for determining when waste is processible and unprocessable. MPCA also needed to establish procedures for expediting certification and reporting of unprocessed waste. These duties are assigned to MPCA and outlined in Minn. Stat. § 473.848. The MPCA crafted a clear definition of "unprocessable waste" in the Policy Plan. In the Policy Plan's Appendix D "Review Criteria", the MPCA stated that MMSW generated in the metropolitan area could be defined as unprocessable (and thereby, disposed in or on the land) only when all **reasonably available capacity** within the Twin Cities Metropolitan Area resource recovery system is fully used.

### **County master plans and certification**

All seven 2012 County Solid Waste Management Master Plans adopt the MPCA's Policy Plan's approach to implementing the restriction on disposal requirements.<sup>4</sup>

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<sup>4</sup> Each of the seven metropolitan counties' 2012-2030 solid waste management plans was approved by MPCA on May 24, 2012. This is critical because, at that time, the only MPCA proposal was as set forth in its 2011 MPCA Metro SW Plan. And, as discussed above, the 2011 MPCA Metro SW Plan provided no notice to the metropolitan counties or anyone else of what MPCA was to propose with its 8/1/12 MPCA Report and its four appendices, including no mention of the "us[e] [of] monthly reporting." Per the public record of their decisionmaking (which is what controls), none of the metropolitan counties clairvoyantly anticipated in their 2012 plans MPCA's much later proposal. See "2012 Anoka County Solid Waste Management Plan," "Carver County Solid Waste Master Plan 2012-2030," "Dakota County, Minnesota Solid Waste Master Plan 2012-2030," "Hennepin County Solid Waste Management Master Plan," "Ramsey County's Solid Waste Master Plan 2011-2030," "Scott County Solid Waste Management Master Plan," and "Washington County Waste Management Master Plan 2012-2030." Regardless, to the extent that they adopted without more MPCA's proposal, the county plans have the same deficiencies as does MPCA's current 2012 proposal.

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Each county's Master Plan states that the county will perform certification in cooperation with MPCA and use the criteria and standards related to restriction on disposal as outlined in Policy Plan. All of the metropolitan counties expressed their support for MPCA gaining compliance with Minn. Stat. § 473.848 using monthly reporting.<sup>5</sup> Several metropolitan counties commented that they had tried and failed to enforce Minn. Stat. § 473.848. Their authority ended at county boundaries. County regulation of waste haulers alone was not seen as an effective method of gaining compliance with the restriction on disposal since most counties did not host a processing facility. MMSW is hauled into and out of counties making their ability to restrict disposal unmanageable.

#### **Permits governing landfills and resource recovery facilities**

Essentially the entities most able to ensure compliance with the restriction on disposal requirements are facilities engaged in MMSW resource recovery and MMSW disposal. In Minnesota, these activities require permits from MPCA. Resource recovery facilities and landfills must obtain state permits. These permits require compliance with applicable state laws. MPCA permits generally require compliance with Minn. Stat. Chapters 115A and 473. However, MPCA permits have not previously specified how MMSW processing and land disposal facilities are to comply with the restriction on disposal requirements in Minn. Stat. § 473.848.

#### **Accountability for disposal**

The MPCA needed to determine principal accountability for MMSW disposal. Disposal is defined in the Waste Management Act, Minn. Stat. § 115A.03 as follows:

**Subd. 9 Disposal or dispose.**

*"Disposal" or "dispose" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that the waste or any constituent thereof may enter the environment or be emitted into the air, or discharged into any waters, including groundwaters.*

**Subd. 10 Disposal facility.**

*"Disposal facility" means a waste facility permitted by the agency that is*

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<sup>5</sup> With regard to "[m]onthly reporting of MMSW," MPCA plainly explained, in its internal documents, that it "needs 'real time' metro area MMSW tracking." (Emphasis added).

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*designed or operated for the purpose of disposing of waste on or in the land, together with any appurtenant facilities needed to process waste for disposal or transfer to another waste facility.*

Therefore, in obtaining compliance with the restriction on disposal requirement, MPCA views permitted landfills as the entity primarily accountable for "disposal" of MMSW generated in the metropolitan area. Currently, the four permitted MMSW landfills serving the metropolitan area are the primary facilities receiving "unprocessed MMSW" in violation of the restriction on disposal. Waste generators, metropolitan local units of government, and most MMSW haulers do not engage in MMSW disposal. These entities are engaged primarily in MMSW waste collection and patronize both resource recovery and disposal facilities.

#### **Proposed permit modifications and reporting to implement the restriction on disposal**

The MPCA has formulated permit modifications for MMSW resource recovery and MMSW land disposal facilities (landfills) that accept metropolitan area MMSW. The proposed permit conditions were crafted to be consistent with the Minn. Stat. § 473.848 and the Policy Plan. The proposed permit modifications are designed to be workable for the owners and operators and for waste haulers using the facilities. The proposed permit modifications lay out facility restriction on disposal compliance and reporting requirements (Appendix C). The MPCA has proposed that resource recovery facilities and landfills report information regarding their management of metropolitan MMSW (Appendix B). Monthly reporting of MMSW delivery, origin, and disposition are the key to compliance management. Both MMSW resource recovery facilities and landfills already gather the information contained in the report. Several of the facilities already prepare monthly reports to other entities for other purposes. In consultation with representatives from each of the facilities, none of the owners or operators asserted that reporting was not workable.

#### **Resource recovery facility permits**

Resource recovery facilities would see the addition of several permit conditions that require specific actions, including:

- Submit a monthly summary of MMSW delivery, processing, and disposal.

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- Provide information demonstrating that the facility performed "processing" through recycling, incineration for energy production, production and use of refuse-derived fuel, composting, or any combination of these processes so that the weight of the waste remaining that must be disposed of in a MMSW disposal facility is not more than 35 percent of the weight before processing, on an annual average.
- Certify that waste that the facility cannot process is in fact "unprocessible".
- Assure that if MMSW is delivered to the facility and the waste cannot be processed, it is transferred to another metropolitan resource recovery facility that has capacity for recovery, if available.

#### **Land disposal (landfill) permits**

Land disposal facilities (MMSW landfills) would see modifications to their permit that would require specific actions, including:

- Submit a monthly MMSW delivery report.
- Prohibit the disposal of processible metropolitan MMSW.
- Restrict land disposal of MMSW generated in the metropolitan area to MMSW that is "unprocessible".

Once permit modifications are in place and reports from facilities are submitted, the MPCA will review reports from MMSW landfills and resource recovery facilities to determine if MMSW that is bypassing resource recovery facilities is being accepted at land disposal facilities in violation of the permit. If so, MPCA will attempt to resolve the violation. If not, MPCA will take no action and continue to monitor monthly.

Compliance with the restriction on disposal will not be difficult for [(1)] waste haulers, [(2)] transfer stations, [(3)] land disposal facilities and [(4)] resource recovery facilities to achieve. Owners and operators already communicate and work with each other to arrange residual disposal from resource recovery facilities, assist hauler and transfer stations to arrange residual disposal from resource recovery facilities, assist hauler and transfer stations to arrange waste deliveries, and work cooperatively during scheduled and un-scheduled outages of resource recovery facilities. It is reasonable to anticipate that land disposal

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facilities operators can readily obtain the information and take the actions needed to comply with the restriction on disposal. The MPCA does not need to direct MMSW deliveries. The [(1)] facility owners, [(2)] MMSW haulers and [(3)] counties are accountable and responsible for making the MMSW delivery arrangements needed to comply with the restriction on disposal requirement. However, MPCA does need to monitor and assure metro MMSW management is in compliance with the restriction on disposal and other applicable laws.

The MPCA believes that the time required to complete permitting could be 8 to 16 months. Delay would cause tens of thousands of tons of processible MMSW to be landfilled. Permitting delays would increase land disposal, reduce renewable energy production and reduce recovery of ferrous and non-ferrous metals from MMSW. Unit costs for resource recovery facilities (cost per ton of MMSW) may increase if resource recovery facilities continue to operate below capacity.

The MPCA recommends that Legislative leaders retain the restriction on disposal requirements in Minn. Stat. § 473.848 as an essential element of effective waste management policy for Minnesota and support obtaining compliance without further delay.

(Bold in heading and italics in original; emphasis in text and bracketed information added).

The shaded paragraph contains the essence of MPCA's current 2012 proposal. This paragraph sets forth MPCA's three-part rewrite of § 473.848:

- (1) The addition to the Subdivision 2(a)-required "planning" — *i.e.*, "annual certification report" — process of an unauthorized "enforcement" — *i.e.*, "real-time (by "specific loads" or "in advance during the month") certification" — process;
- (2) The extension of the responsibility for the Subdivision 2(a)-required certification process from just the seven metropolitan counties to these counties and the four MSW landfills; and
- (3) The adoption of "criteria" for certifying on a "real-time" (by "specific loads" or "in advance during the month") basis that which is "unprocessible" MMSW — *i.e.*, when there is "reasonably available [processing] capacity" — that is void for vagueness.

But, other than its insistence that "the restriction on disposal will not be difficult," MPCA nowhere describes how its proposal would operationally and logistically work.

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3.     **The "Draft Paragraph for Inclusion in Permits for Disposal Facilities" for MPCA's current 2012 proposal**

As part of its current 2012 proposal, MPCA proposes to amend the landfill permits. MPCA's proposed amendment is as follows:

Draft Paragraph for Inclusion in Permits for Disposal Facilities

The Permittee shall not accept and dispose of at the Facility any unprocessed mixed municipal solid waste (MMSW) generated in the 7-County metropolitan area [(1)] unless the **county** in which the waste was generated has certified that waste is unprocessable under Minn. St. § 473.848 and the standards for waste certification in Appendix D, Paragraph 2.c and 2.d.iii. of the Metropolitan Solid Waste Policy Plan 2010-2030 (Policy Plan), or [(2)] unless land disposal of MMSW is **consistent with the standard** for waste certification in Appendix D, Paragraph 2.c. and 2.d.iii. of the Metropolitan Solid Waste Policy Plan 2010-2030 (Policy Plan) or [(3)] unless the waste has been certified as unprocessable by a **resource recovery facility** under Minn. Stat. § 473.848.

For the purpose of this section of the Permit, waste is defined in Minn. Stat. § 473.848, subd. 5 as "unprocessed" if it has not, after collection and before disposal, undergone separation of materials for resource recovery through recycling, incineration for energy production, production and use of refuse-derived fuel, composting, or any combination of these processes so that the weight of the waste remaining that must be disposed of in a mixed municipal solid waste disposal facility is not more than 35 percent of the weight before processing, on an annual average.

The Permittee may dispose of specific loads of unprocessed metropolitan MMSW coming from a resource recovery facility if each load is certified as unprocessable by the operator of the resource recovery facility.

If the MMSW does not come from a resource recovery facility, the Permittee may dispose of **specific loads** of unprocessed MMSW generated in the 7-County metropolitan area [(1)] if there is no **reasonably available capacity** to process the waste at a processing facility serving the metropolitan area of [(2)] if **each load** is certified as unprocessable by the county where the waste was generated in accordance with Minn. Stat. § 473.848 and Appendix D, Paragraph 2.c. and 2.d.iii. of the Policy Plan. The Permittee shall keep records showing that processing facilities were not available to process the MMSW.



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**Table 2: County Certified Unprocessed MMSW by County of Origin**

Enter the tons of unprocessed MMSW from each county that were disposed and certified by that county as unprocessable in advance during the month.

County Certified MMSW	Anoka	Carver	Dakota	Henn.	Ramsey	Scott	Wash.	Total

**Table 3: Resource Recovery certified Unprocessed MMSW by County of Origin**

Enter the tons of unprocessed MMSW from each county that were disposed and certified by that county as unprocessable in advance by a resource recovery facility during the month.

Resource Recovery certified MMSW	Anoka	Carver	Dakota	Henn.	Ramsey	Scott	Wash.	Total

8/1/12 MPCA Report, App. B (bold in original; underlining added). Per MPCA's "Draft Paragraph for Inclusion in Permits for Resource Recovery Facilities" and its representations at the 8/8/12 MPCA Meeting, the MSW processing facilities would be required to submit a similar monthly report.

The "monthly reporting" form is largely, though not completely, consistent with its 8/1/12 MPCA Report and its "Draft Paragraph for Inclusion in Permits for Disposal Facilities." First, in addition to the Subdivision 2(a)-required "planning" — *i.e.*, "annual certification report" — process, MPCA's form imposes an unauthorized "enforcement" — *i.e.*, "real-time" (or "in advance during the month") certification — process. Second, MPCA's form appears to recognize that § 473.848 only authorizes the seven metropolitan counties, per Subdivision 2, and the processing facilities, per Subdivision 3, to "certif[y]" MMSW as "unprocessable." The form does so by (1) providing "table[s]" for "County Certified Unprocessed MMSW by County of Origin" and "Resource Recovery certified Unprocessed MMSW by County of Origin" (*id.* (emphasis added)) and (2) not providing a "table" for the "Landfill Certified Unprocessed MSW by County of Origin." (Arguably, this omission eliminates any independent obligation on the MSW landfills to become the "MMSW Processing Regulators.") And, third, the form would require, for the frequent loads with MMSW generated from multiple counties, to get the "real-time" (or "in advance during the month") certification from each county in which the MMSW was generated. But, other than its insistence that "the restriction on disposal will not be difficult," MPCA no where describes how compliance with these "monthly reporting" requirements would operationally and logistically work.

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## ANALYSIS

### **I.    THE SEVERAL FATAL PROBLEMS WITH MPCA'S CURRENT 2012 PROPOSAL**

MPCA's current 2012 proposal seeks to use its discretion under Subdivision 4 to "adopt standards for determining when waste is unprocessable" (*i.e.*, by purportedly further defining what is "processable") in order to add to the Subdivision 2(a)-required county "planning" — *i.e.*, "annual certification report" — process an "enforcement" — *i.e.*, county and MSW landfill "real-time" (by "specific loads" or "in advance during the month") certification — process without the authority, let alone the guidance and procedures, for doing so. MPCA cannot use its proposed new "standards for determining when waste is processible" to rewrite Subdivision 2. As illustrated by MPCA's overt failure to do so in its 8/1/12 MPCA Report, there is no conceivable construction of Subdivision 2 to support MPCA's proposal.

Moreover, while it misrepresents to the legislature that "[c]ompliance with the restriction on disposal will not be difficult for waste haulers, transfer stations, land disposal facilities and resource recovery facilities to achieve" (8/1/12 MPCA Report at 21 (emphasis added)), neither metropolitan counties nor the primarily-affected parties — *i.e.*, the two owners of the four MSW landfills (Waste Management and Republic) — would or could assume the "MMSW Processing Regulator" task which MPCA wishes to assign to them. Indeed the Minnesota counties which previously tried to enforce their constitutionally-infirm "waste designation" ordinances can readily attest to the extraordinary difficulty in enforcing such "real-time" waste flow of the MSW generated from one or two counties to a single designated processing facility.

And the task at hand under MPCA's current 2012 proposal would be monumentally more difficult — *i.e.*, directing the "real-time" waste flow of MMSW from seven counties, first, to the four processing facilities and, then, to the four MSW landfills. Such waste direction would require the coordination of over 200 competing private waste haulers, 13 competing private transfer stations, four competing private MSW landfills and four competing MSW processing facilities, two of which are private. The attached diagram illustrates in red the multitude of possible routes from MPCA's proposal and the resulting complexity. Attach. A. Without the standard market forces to dictate the waste flow between these competing facilities with divergent pricing and scattered geographic locations, there are no established standards or procedures for directing this flowage.

Indeed the task is made even more difficult by MPCA's impossible to understand, let alone to apply "real time" (by "specific loads" or "in advance during the month") to an entire market, "criteria" for determining what "specific loads" of MMSW are "processable." Such a confusing definition — *i.e.*, when there is "reasonably available [processing] capacity" — is void for vagueness.

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Even if MPCA's proposal did not contravene the plain language of Subdivision 2, was not void for vagueness, and the endless operational and logistical issues could somehow be resolved, Waste Management is deeply concerned with the federal and state antitrust implications of MPCA's proposal. At the 8/8/12 MPCA Meeting, MPCA staff, to its credit, readily acknowledged that it had by then not yet even considered these antitrust issues. But, since being apprised of this issue, neither MPCA nor any of the seven metropolitan counties have given Waste Management its requested legal opinion on how the seven metropolitan counties and the two owners of the four adversely affected competing MSW landfills (*i.e.*, Waste Management and Republic) can "cooperatively" direct the flow of MMSW from the over 200 competing private haulers and the 13 competing private MSW transfer stations, first, to the four divergently priced and geographically scattered competing MSW processing facilities and, then, to the four divergently priced and geographically scattered competing MSW landfills, particularly under the impossible to understand "reasonably available [processing] capacity" standard.

## II. SEVEN ADDITIONAL PROBLEMS WITH MPCA'S CURRENT 2012 PROPOSAL

MPCA is well aware of the above-discussed several fatal problems with its current 2012 proposal. But, rather than renounce its self-described seven-year "mandatory processing" quest (8/1/12 MPCA Report at 18), MPCA has tried to mask the fatal deficiencies with its proposal by overstatements and misstatements. As elaborated below, MPCA in its report (1) overstated the alleged processing facility "shortfall," which either does not exist or is readily corrected by the affected private processing facilities; (2) created that "[t]he growing gap could lead to closure of existing resource recovery facilities" and that the "replace[ment]" cost would be "approximately one billion dollars" (8/1/12 MPCA Report at 1); (3) misrepresented that the "land disposal facilities are not in compliance with the [§ 473.848] restriction on disposal"; (4) misplaced its concern with "the legacy costs of landfills" which it knew were unrelated to any of the four affected MSW landfills (*id.* at 14); (5) disregarded the very real prospect that its proposal will result in massive exportation of MMSW, thereby undermining the very processing facilities that it seeks to prop up; (6) neglected to acknowledge the United States Environmental Protection Agency's (U.S. EPA) nuanced classification of MSW processing and MSW landfilling with methane gas collection on the waste management hierarchy; and (7) threatened to enforce its current 2012 proposal months before the legislatively-prescribed February 16, 2013 first date to do so.

### A. MPCA overstated the alleged "shortfall"

The key to MPCA's cry for action is the supposed "shortfall" in the amount of MMSW delivered to the four MSW processing facilities. In order to exaggerate this "shortfall," MPCA's November 2011 "Legislative Message" based the supposed "shortfall" on the unrealistic and never used "permitted capacity" of these facilities. Waste Management's June 29, 2012 DPA

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letter called MPCA out for this misstatement. In its 8/1/12 MPCA Report, MPCA was forced to correct — though it did not expressly recognize — the error.

In its 8/1/12 MPCA Report, MPCA used the undefined "operational capacity," thereby reducing its target "capacity" by over 21%—*i.e.*, from "1,435,000 tons/year" to "1,130,000 tons/year." 8/1/12 MPCA Report at 15. As a result, MPCA's identified "shortfall" was dramatically reduced by over 60%—*i.e.*, from 358,758 tons/year (MPCA "2012 Legislative Messages" at 2 ("only 75 percent of metro area's processing capacity")) to "139,154 tons/year" (8/1/12 MPCA Report at 15). But even MPCA's significantly-reduced claimed "shortfall" is highly suspect.

With regard to the alleged "9,313 tons/year" "shortfall" of Red Wing's waste-to-energy (WTE) facility in Red Wing (Red Wing's WTE Facility) with its alleged "30,000 tons/year" capacity (*id.*), MPCA fails to explain how its "criteria" for "determining reasonably available capacity" would include this facility. MPCA's proposed "criteria" provides that, "[i]n determining reasonably available capacity, consideration will be given to the specific geographic area that typically supports each of the processing facilities that serves the TCMA." 2011 MPCA Metro SW Plan, App. D-10 (emphasis added). And MPCA's own internal documents provide as follows:

Currently three MMSW processing facilities serve the 7-County metro area:

1. HERC in Minneapolis
2. RRT Newport in the City of Newport
3. [GRE] [E]lk River in the City of Elk River

(Emphasis added). Conspicuously omitted from this list is Red Wing's WTE Facility. Hence, even MPCA must recognize that Red Wing's WTE Facility is excluded from its "criteria."

With regard to the alleged "30,190 tons/year" "shortfall" at Resource Recovery Technologies' (RRT) RDF facility in Newport (RRT's RDF Facility) with its alleged "430,000 tons/year" "operational capacity" (8/1/12 MPCA Report at 15), Washington County's May 24, 2012 MPCA-approved "Waste Management Master Plan 2012-2030" clarifies that RRT's "Processing Agreement" with Ramsey and Washington counties is only for "280,800 tons per year," or 149,200 tons per year below the capacity MPCA uses to claim a "shortfall." And the Solid Waste Management Coordinating Board (SWMCB), which represents six of the seven metropolitan counties (including Ramsey and Washington counties), previously reported that RRT only "needed 335,000 tons [per year] of MSW." (Emphasis added). Using SWMCB's represented "need[]" for RRT to assess the alleged "shortfall," RRT is above its "needed" capacity by 64,810 tons per year and it has no "shortfall." Moreover, RRT, as a successful private investment company that has owned and operated RRT's RDF Facility for years and

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previously owned and operated GRE's RDF Facility, knows that the key to increasing its MMSW input at its facility is by lowering its price. But it has elected not to do so.

And, with regard to the alleged "99,651 tons/year" "shortfall" at GRE's RDF Facility with its alleged "300,000 tons/year" "operational capacity" (8/1/12 MPCA Report at 15), MPCA fails to explain how this non-metropolitan area facility fits within its "criteria" for "determining reasonably available capacity." Because the "criteria," as reinforced by MPCA at the 8/8/12 MPCA Meeting, requires that "consideration will be given to the specific geographic area that typically supports each of the processing facilities," few, if any, "geographic area[s]" within the seven-county metropolitan area would be in play. Indeed, the "shortfall" at GRE's RDF Facility, if it exists, is largely due to the facility's prohibitive distance from much, if not all, of the MMSW being generated. And, to make up for being outside of the "specific geographic area" for MMSW, GRE must lower its tipping fee. GRE has operated its facility long enough to know that it can shore up any "shortfall" with tipping fee reductions. Yet, GRE has maintained very high tip fees, placing their confidence in government assistance — that is, relying on MPCA's proposed enforcement strategy to allow them to prevail in the market with a very high tip fee to support its private enterprise.

**B. MPCA created that "[t]he growing gap could lead to closure of existing resource recovery facilities" and that the "replace[ment]" cost would be "approximately one billion dollars"**

Red Wing's WTE Facility is, as discussed above, excluded by MPCA's own internal documents and "criteria" from being included within the processing capacity at issue under § 473.848.

RRT has not stated publicly that there is such a sizeable "shortfall" at RRT's RDF Facility that the viability of the facility is being threatened. Per Ramsey and Washington counties, RRT only has to contract for "280,800 tons/year" to be viable and RRT, according to SWMCB, only "needed 335,000 tons [per year]." At MPCA's estimated annual receipt of "399,810 tons/year" (8/1/12 MPCA Report at 15), RRT's RDF Facility would exceed its contractually-required capacity by 119,010 tons/year and its SWMCB-determined "needed" capacity by 64,810 tons/year. And, even at MPCA's estimated "30,190 tons/year" "shortfall" in its purported "operational capacity" of "430,000 tons/year," RRT's 7% "shortfall" could not threaten its viability.

Like Red Wing's WTE Facility, GRE's RDF Facility is, as discussed above, excluded by MPCA's "criteria" from being included within the processing capacity at issue under § 473.848. Regardless, GRE has, like RRT, not publicly suggested that there is such a sizeable "shortfall" at GRE's RDF Facility that the viability of the facility is threatened. Rather, GRE just purchased its facility three years ago for approximately \$9,000,000 and GRE did so when the facility was, per

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MPCA's internal documents, operating at "180,000 tons/year," or close to where MPCA reports it to be operating at today. Moreover, earlier this year, Hennepin County agreed to deliver "50,00 to 75,000 tons per year" to GRE. There is, therefore, no credible basis to suggest GRE's closure of its RDF facility.

In any event, the "replace[ment]" cost of these only two supposedly threatened MMSW processing facilities is nowhere near the "one billion dollars" that MPCA suggested is being threatened. In fact, MPCA knew when it made this statement that GRE had in 2009 purchased its RDF facility for approximately \$9,000,000 and RRT had recently offered to sell its RDF facility for less than twice that price. Hence, the, at most, \$27,000,000 market value of these two supposedly threatened facilities is but 2.7% of MPCA's inflated number.

**C. MPCA misrepresented that the "land disposal facilities are not in compliance with the [§ 473.848] restriction on disposal"**

The resulting reports from the seven metropolitan counties' Subdivision 2(a)-required "planning" — *i.e.*, "annual certification reports" — process have been rejected by MPCA only once — *i.e.*, on October 19, 2009. For every other year, MPCA approved of the counties' "annual certification reports" and, by so doing, MPCA necessarily found that the counties and, by extension, the waste industry were in compliance with the law. Per Subdivision 2(b), MPCA was, with one year's exception, annually "determin[ing] that the county is reducing and will continue to reduce the amount of unprocessed waste, based on the report and the county's progress in development and implementation of techniques to reduce the amount of unprocessed waste transferred to disposal facilities."

The seven metropolitan counties have, in fact, objected to the suggestion of any such non-compliance. Scott County colorfully responded on April 14, 2010 as follows:

**473.848 is a dead horse** as it is written and was recognized as such by the MPCA in the mid 1990s. That is why the issue of certification of waste for disposal was removed from the SCORE reporting form. Below are the responses Scott County sent to the MPCA in response to the SCORE Report form questions related to waste certification and 473.848 in 1995 and 1996.

(Emphasis added).

Finally and perhaps most determinatively, neither MPCA nor any of the seven metropolitan counties ever cited the "land disposal facilities" with being "not in compliance with the [§ 473.848] restriction on disposal."

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**D.   MPCA misplaced its concerns about "the legacy costs of landfills" which were unrelated to any of the four affected MSW landfills**

MPCA sought to justify its proposal by warning of the possible "doubl[ing]" of the amount of landfilling if there was an "[e]liminati[on] [in the] delivery of MMSW to resource recovery facilities." 8/1/12 MPCA Report at 14. MPCA explained that this would be a problem because, in contrast to landfills, "resource recovery facilities do not create long term liability and perpetual care costs." *Id.* MPCA added that it "has extensive experience with the legacy costs of landfills through administration of the Closed Landfill Program. Through 2011, MPCA has spent over \$366,000,000 at 112 landfills in the state." *Id.* (emphasis added).

But, as it relates to the four affected MSW landfills, MPCA's fears were misplaced. MPCA cannot in good faith maintain that the four MSW landfills pose a material threat of unfunded environmental liability. To do so, MPCA would have to acknowledge that it has neglected its permitting and financial assurance obligations which, as discussed below, are specifically designed to protect against such liability exposure

Per Minn. R. ch. 7035, MPCA has extensive "technical requirements" for "closure" (Minn. R. 7035.2625-.2635 and .2815, subp. 16), "postclosure care" (Minn. R. 7035.2645-.2635 and .2815, subp. 16) and "contingency action" (Minn. R. 7035.2615 and .2815, subp. 15) for MSW landfills. These "technical requirements" include MPCA's review and approval for each MSW landfill of a "closure plan" (Minn. R. 7035.2625, subp. 3), a "postclosure care plan" (Minn. R. 7035.2645, subp. 2), and a "contingency action plan" (Minn. R. 7035.2615). The "contingency action plan" is defined as "mean[ing] a document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of solid waste, waste by-products, or leachate that could threaten human health or the environment." Minn. R. 7035.0300, subp. 21.

Based on these "technical requirements," MPCA also has extensive "financial requirements" for the costs of "closure, postclosure care, and corrective actions" for MSW landfills. Minn. R. 7035.2665-.2775. These "financial requirements" are generally referred to as "financial assurance." Minn. R. 7035.2695 defines "financial assurances" as follows:

**7035.2695 FINANCIAL ASSURANCES REQUIRED.** The owner or operator of a facility shall establish financial assurance for closure, postclosure care and corrective action at the facility by using one or more of the financial assurance mechanisms specified in parts 7035.2705 to 7035.2750.

Bold and capitalization in original; underlining added). And MPCA explains, as follows, this "financial assurance" requirement:

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Permittees are required to demonstrate, in advance, their financial ability to meet expenses that may be incurred during closure, postclosure care and contingency action operations. The financial assurance rules were adopted to standardize methods for permittees so they could demonstrate financial ability to pay and provide adequate financial security.

MPCA's April 2003 "Solid Waste Financial Assurance," available at <http://www.pca.state.mn.us/index.php/view-document.html?gid=12790> (emphasis added).

As it is statutorily and by its own rules responsible for doing, MPCA uses its permitting and financial assurance requirements to protect the public against the very liability which it now claims justifies processing versus landfilling at these four MSW landfills. As it relates to the four MSW landfills, which are owned and operated by the two largest solid waste disposal companies in the country (*i.e.*, Waste Management and Republic), MPCA has met this responsibility. And these landfills are in full compliance with not only MPCA's requirements but also the like requirements of the local host municipalities and counties.

MPCA and these local host municipalities and counties have, in fact, for decades approved of and issued permits and licenses for these four MSW landfills. This is significant because these approvals necessarily mean, per the Minnesota Supreme Court, that these governmental bodies have determined that all of their regulatory requirements have been met. City of Elk River has, for example, by contract and permit condition recently agreed that its permit and license conditions on the Elk River Landfill will "fully mitigate the adverse effects on the City [of Elk River] of ERL's landfill and its expansion." (Emphasis added).

**E. MPCA disregarded the very real prospect that its proposal will result in massive exportation of MMSW, thereby undermining the very processing facilities it seeks to prop up**

After its current 2012 proposal was already prepared and set, MPCA met separately with the two most affected parties — *i.e.*, Waste Management and Republic. Among several other issues raised at these meetings, both companies candidly disclosed that they would, in response, seriously consider exporting some or all of their and their landfill customers' MMSW.

Internally, MPCA took this matter seriously. MPCA calculated that "Republic/WMI mkt. share" for the three metro MSW processing facilities — *i.e.*, "HERC," "GRE-Elk River," and "RRT-Newport" — was "47%," "47%," and "42%," respectively. MPCA orally acknowledged at the 8/8/12 MPCA Meeting that the MMSW waste industry, including these two companies, had previously reacted similarly to such heavy-handed government efforts at flow control. And MPCA knew that such massive exportation would render the existing alleged "shortfall" at these processing facilities a mere footnote.

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Despite all of this, MPCA made literally no mention of this potential — if not likely — risk to its proposal. It has no excuse for failing to do so. It is misleading and potentially dangerous for MPCA to pretend to the legislature that such an obvious and serious risk does not exist.

**F. MPCA neglected to acknowledge EPA's nuanced classifications under the waste management hierarchy**

MPCA relies heavily on Minnesota's solid waste management hierarchy and declaration of policy and purposes to justify a rigid interpretation and enforcement of the hierarchy. In so doing, MPCA fails to fully recognize the U.S. EPA's interpretation of the hierarchy that, in one instance, places any solid waste management process that results in energy generation as equivalent to one another. <http://www.epa.gov/wastes/monhag/municipal/wte/index.htm>. MPCA fails, for example, to recognize U.S. EPA's explanation of the hierarchy, its qualifications and caveats for implementation of these waste management practices, and its two representations of the hierarchy, one of which places waste to energy and landfill gas to energy, or any other waste practice that results in energy generation, on the same level.

MPCA states that the "U.S. EPA waste hierarchy **favours** materials recovery and combustion for energy recovery over land disposal." 8/1/12 MPCA Report at 1. But, while the U.S. EPA may "favor" materials recovery and combustion for energy recovery over land disposal, the U.S. EPA does not view the hierarchy as a rigid prescription for integrated solid waste management. Rather, the U.S. EPA presents two versions of the hierarchy and acknowledges the following: (1) the choice of and implementation of specific waste management practices is a local decision; (2) the local decisionmaking process must weigh the costs and benefits of each technology type; and (3) the decision by local government to choose a particular type of waste management practice should be based on whether the local market can support a given technology or waste disposal method. <http://www.epa.gov/wastes/monhag/municipal/wte/index.htm>. Indeed, the U.S. EPA website includes a local planning guide for cost/benefit consideration of various waste management technologies and in one version of the hierarchy, views energy recovery from landfill gas to energy as equivalent to and on the same rung of the hierarchy as energy recovery from waste processing.

The legislature, as well as the metropolitan counties and their constituents who are being asked to pay for MPCA's rigid preference for processing over landfilling, should be informed by MPCA of this environmental debate amongst the regulators. These interested parties should be given, at a minimum, the U.S. EPA-encouraged cost/benefit analysis for the specific facilities at issue. Indeed Minnesota's "waste designation" statute, which is largely what MPCA is trying to impose, requires just such an economic analysis. *See* Minn. Stat. § 115A.84, subd. 2.

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G. MPCA's improper timetable for implementing MPCA's current 2012 proposal

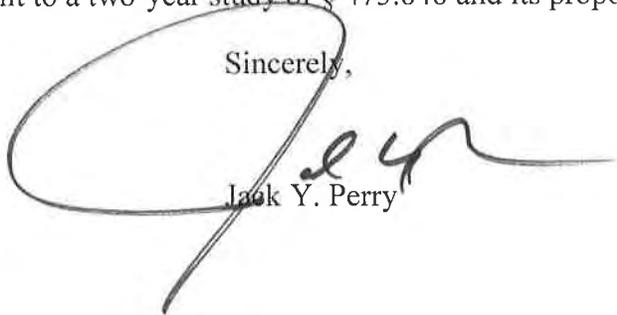
The legislature acted to ensure that it had four and one-half months after MPCA's filing of its October 1, 2012 final "Mandatory Processing Report" (or until February 15, 2013) to review and, if appropriate, amend its 27-year-old law before MPCA could implement its new proposal. Indeed MPCA expressly recognized that, per the legislative mandate, "[t]he agency may not require compliance with Minnesota Statutes, section 473.848 before February 15, 2013." 8/1/12 MPCA Report at cover page (emphasis added) (quoting legislation).

MPCA announced, nevertheless, its intention to contravene this deadline. *Id.* at 22 ("[P]roposed facility permit modifications to implement the restriction on disposal which could be in place by **late 2012/13**") (emphasis added). Evidently, MPCA construes the legislative limitation as excluding MPCA's primary "enforcement" tool — *i.e.*, its permit amendments. But such an interpretation would eliminate the legislatively-prescribed four and one-half months after MPCA's filing of its October 1, 2012 report to review and respond as necessary to the report. Stated otherwise, MPCA's reading of the legislation would undermine the plain language of any legitimate purpose for the report.

CONCLUSION

Waste Management supports the State's policies that advance the processing of MSW. But Waste Management does not support MPCA's proposed rewriting of § 473.848 so as to transform a perfunctory annual "planning" process into extremely complex and impossible to understand "real-time" enforcement tool, without any of the required public vetting. At most, MPCA should voluntarily commit to a two-year study of § 473.848 and its proposal.

Sincerely,



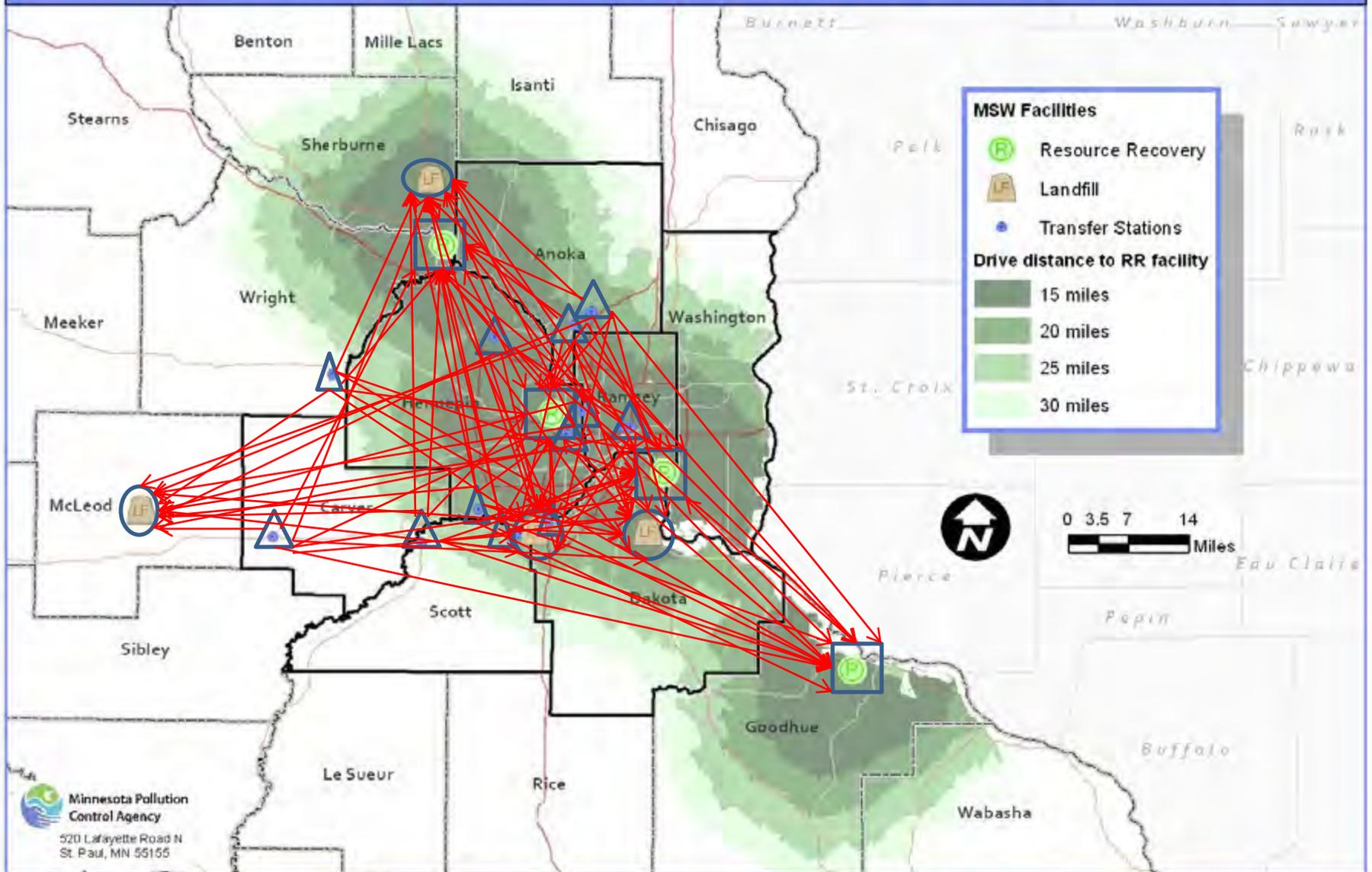
Jack Y. Perry

JYP/kg

Attachment

cc: S. Scheurle (via email)  
B. Jeffry (via email)  
M. Fleming (via email)  
J. Ketchum (via email)

# Primary MSW Facilities Serving Twin Cities Metro Area



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