

October 28, 2021

Michael Mills
Waste Management
20520 Keokuk Avenue
Lakeville, MN 55044

Dear Mr. Mills:

Thank you for providing comments regarding the Minnesota Pollution Control Agency's (MPCA) preliminary determinations for Certificate of Need (CON). The purpose of this letter is to respond to your comments and to clarify all areas where you had questions.

1. Waste Generation Predictions Used for Preliminary CON Determinations

- The county-by-county forecast shown in the PDN Summary shows four counties (Anoka, Carver, Hennepin and Scott) forecasting slow *increases* in waste available for landfill disposal over the next ten years, while others (Dakota, Ramsey, Washington) forecast *decreases* over the same period. Waste Management (WM) is unaware of differences in county policies that would produce such divergent waste generation forecasts for individual counties, WM requests more information on how the MPCA generated the yearly estimates, including copies of the County letters and related correspondence.

The Minnesota Pollution Control Agency (MPCA) waste generation forecast was created by modeling the waste growth (or lack thereof) for each individual county. Each model was developed using an auto-regressive integrated moving average (ARIMA) model based upon population and actual mixed municipal solid waste (MMSW) generated from 2002 to 2019. The MPCA used the per capita point generation, which was then multiplied by forecasted population change from the Minnesota Demographer's Office, to arrive at the total MMSW generation over time. The MPCA worked with each of the seven counties during the development of the forecast.

- During Mr. Sandhei's presentation on 6/16/21, he identified a "margin of error" that the MPCA applied to the County forecasts. What was the margin of error used and how was it generated?

Confidence bands were calculated for all point forecasts using both 80% and 95% confidence levels. Counties were allowed to provide their own forecast for waste provided that the forecast fell within the 95% confidence intervals of the MPCA model. When MPCA staff referred to "margin of error" the 95% confidence intervals of the model were being referenced.

The Counties that provided the alternative forecasts are:

Dakota
Hennepin
Ramsey
Washington

All four county forecasts were within the 95% confidence bands.

- During the 6/16/21 presentation, Mr. Sandhei referenced changes in waste generation patterns to SARS-Covid2. How did that affect the ten-year forecasts used to generate the PDNs?

The most recent solid waste data available during the creation of the forecasts was from 2019, but the MPCA also reviewed the 2020 tax revenue information for the solid waste management tax and those amounts aligned with previous years. Thus, no correction was made to the forecast data for the effect of COVID-19. The MPCA has evidence that waste has shifted in 2020 from commercial to residential, and less waste was generated in the downtown metro area, but the MPCA acknowledges that it is still unclear how waste generation may have been impacted by the pandemic on a large scale, or long term basis.

All forecasts use tonnage information provided by the counties from their MMSW Certification reports and Select Committee on Recycling and the Environment (SCORE) reports. Population estimates and forecasts come from the Minnesota State Demographic Center at the Department of Administration. Additional interpolation has been performed on the forecasts to achieve annual values versus 5-year values.

- The MPCA has acknowledged that plans and forecasts based on the State's 75% recycling objective, including the Metro Policy Plan, are likely inaccurate because progress toward that goal has slowed. What was the base year and basis for the forecast by each county and for the MPCA?
- In that same vein, WM understands that the MPCA is mandated to take County solid waste management plans into consideration, but that appears to have resulted in wildly varying County estimates and methods. WM requests information on how the MPCA vetted the accuracy of the County solid waste management plans.

Unless an alternative landfill tonnage is provided by the counties, the amount of material estimated to go to landfills is determined by the MMSW forecast created by the MPCA. Each individual county worked with the MPCA to determine how much additional diversion was possible over the next ten years based on the specific strategies identified in their respective master plans. That additional diversion was removed from the MMSW. Finally, the MPCA numbers assume that all of the resource recovery facilities are operating at full capacity.

In response to the varying county methodology, the MPCA worked closely with each county and compared their forecasts to the one that the MPCA developed in the same way for each county. All of the individual results stayed within the 95% confidence bounds, so the MPCA accepted the county's forecast.

Speculative and conjectural

- The MPCA has, at various points, rejected certain alternatives as "speculative and conjectural" as allowed by statute. WM is concerned that this standard has not been defined and may not be applied consistently. For example, the MPCA has rejected a potential expansion of

Hennepin Energy Recovery Center (HERC) and additional expansion of organics capacity as speculative and conjectural. Why did the Agency not consider the two non-MSW landfills that have not yet even submitted permit applications to be speculative and conjectural? To the extent that these facilities have indicated they cannot make the investment without some assurance of CON should they successfully complete the process, it would seem that the MPCA could provide assurance now that they will receive CON for their affiliated waste as of the time of approval, without awarding a specific PDN now, attempting to forecast successful completion of permitting, and then adjusting the PDN in unspecified ways based on future developments.

Hennepin County has not demonstrated an interest nor willingness to expand the HERC Waste to Energy (WTE) facility. If at such point that occurs, and they move to request an expansion, that alternative source of disposal would no longer be speculative. While SMSC has applied for a permit to move and thus increase their capacity, it is not expected to be enough additional capacity to relieve the shortage. All operating organics facilities are operating near full capacity at this time, and there are no other facilities that are choosing to process organics. HERC and organics are both in contrast to the Rich Valley and Dem-Con facilities that are demonstrating a desire to accept MMSW at their landfills with CON being the first step in doing that. Similar to Burnsville Sanitary Landfill (BSL), Rich Valley and Dem Con need to complete environmental review and permitting, but that does not make that capacity speculative or conjectural.

2. Minor Permit Modifications to obtain additional CON

- WM understands that major permit modifications and environmental review are required if a facility is seeking to physically expand, but once those are concluded it is appropriate to award CON through the minor modification process. WM requests that the MPCA confirm, either in its responses to comments, or in its Findings of Fact that incremental CON until the next seven-year window arises will be awarded through minor permit modifications if a facility does not otherwise require new environmental review.

CON is intended to be an iterative process. If metro landfill capacity begins to be constrained, the MPCA will open up the CON process again to allocate additional CON to landfills. That process will mirror this current CON process in that a CON application will need to be submitted. However, once that capacity is approved via the CON, then the permit adjustment that takes place afterwards is a simple minor modification to increase capacity, assuming that the air space being used is currently permitted. If additional landfill capacity needs to be constructed, then environmental review and major modification to the permit may be needed, depending on the permit changes required.

The MPCA will open up the CON process for all landfills consistent with the Solid Waste Metro Policy Plan in the future to ensure that the region continues to have sufficient disposal capacity.

The MPCA does not anticipate needing incremental CON adjustments during the seven-year time period, as the MPCA forecast indicates that the waste allocated should last that period of time.

3. Management of CON during permit proceedings of other facilities

- By way of example and for simplicity, assume that the MPCA has provisionally allocated approximately 250,000 tpy each to Rich Valley and Dem-Con. Assume that after two years, Dem-Con has received all necessary permits, but Rich Valley has not. At that point the MPCA should do an updated forecast of how long the Rich Valley permits are expected to take. If the updated forecast is for another year of proceedings, then Rich Valley's 250,000 tpy should be automatically reallocated to BSL, Pine Bend, and Dem-Con, using an accurate and current affiliation formula, without any of these facilities needing to submit new permit modification requests.

MPCA anticipates that permitting for the Rich Valley and Dem-Con facilities will be completed in under two years. If the permitting for these facilities takes more than two years, the MPCA agrees with the concept that the CON allocated to those facilities for those years could be reallocated to other landfills. The MPCA does not necessarily agree that the Pine Bend and Burnsville facilities should be allocated all of that waste (although that's possible). It's also possible that some waste would flow to facilities located in Greater Minnesota (such as the Spruce Ridge, Nobles County, or Elk River facilities) or out-of-state. The waste flow would need to be assessed to ensure that the capacity is allocated to the proper facilities.

4. Environmental Justice (EJ)

- As explained above, EJ is not a lawful criterion and there is no factual basis to disadvantage BSL on EJ grounds in the CON process. To the extent that EJ has been or will be employed in the CON process in a manner that decreases the CON awarded to BSL, WM requests all data and methodologies used. There also appears to be some uncertainty how other facilities do or will fare under EJ metrics if up-to-date information is used. At this point WM has insufficient information to determine the accuracy and completeness of the data, or justification for the methodology.

Environmental Justice did not affect the allotment tonnages at the various facilities. It was one factor along with the closure of Great River Energy (GRE) that led the MPCA to decide that additional facilities should be allowed to accept MMSW in the metro area. Once that decision was made, all four facilities were calculated in the same way, with EJ not a factor in the tonnage allocations. Our methodology for the allocations is attached.

5. Waste affiliation and flows

- WM highlights the following facts:
- WM acquired Advanced Disposal on October 30, 2020. The MPCA should verify that all Advanced Disposal waste is identified as WM-affiliated. This includes 25,000 tons/year of formerly Advanced Disposal waste presently going through the St. Paul transfer station to Elk River Landfill.
- WM currently transfers waste at a rate of 16,000 tons/year of Metro waste at Dem-Con's transfer station, currently hauled to Spruce Ridge. This waste should be considered WM-affiliated.

- WM presently diverts 15,000 tons/year of Minneapolis MRF waste to Elk River Landfill.
- WM presently routes 85,000 tons/year of Metro waste through the Freeway Transfer Station to Lake Mills, Iowa.
- All of this waste is both WM-affiliated and would be disposed of at BSL once BSL has both CON and its requested permit modification. The MPCA's PDN calculations should be adjusted accordingly. WM will provide any other information the MPCA requires regarding these affiliations and waste flows.

The MPCA is aware of the merger with Advanced Disposal as well as the divestment of the landfill in Eau Claire. As such, all of the Advanced Disposal waste that previously went to 7 Mile Creek is now assigned to the BSL. The MPCA was also aware that Burnsville was diverting waste to Lake Mills Iowa temporarily, and the waste that was flowing to that facility was also assigned to BSL. Waste affiliated with the Spruce Ridge and Elk River facilities were not assigned to any facilities as part of this process because those two landfills are not located in the metro area. The waste that flows to those facilities will have to be applied for as part of CON requests in Greater Minnesota.

6. Future CON Proceedings

- As discussed in the foregoing comments and is apparent in the PDN Summary, the MPCA has developed and proposed many new procedures and criteria in the course of the current CON process. These also interact with the Policy Plan and the Agency's statutory authority. Based on the lessons learned through this process, WM requests that the MPCA engage in rulemaking that would memorialize and govern the next seven-year CON process. That would ensure the Agency has clear authority for the procedures employed and give clear direction to all stakeholders.

The MPCA agrees that it is important for CON protocols and procedures to be clear and transparent. The MPCA will be working with metro facilities and other stakeholders during the development of the Metro Policy Plan to put clear language into the criteria and standards section of the policy plan to ensure this process is clear and understandable for all parties.

MN Chapter 473.823 states that criteria and standards be included as part of the Metro Policy Plan, and therefore, the Metro Policy Plan is the appropriate place in which to provide clear process and steps so that both the MPCA and permitted entities better understand what is needed for CON in the Metro. The MPCA intends to work closely with all Metro Landfill operators to ensure that this is addressed appropriately in the upcoming plan revisions.

Michael Mills
Waste Management
October 28, 2021

MPCA would like to thank you for your thoughtful comments to the CON process. We hope that this response helps clarify any questions or concerns that you may have.

Sincerely,

David J. Benke

This document has been electronically signed.

David J. Benke
Division Director