

SWAA Briefing: CON Certificate of Need for MMSW Landfill Capacity



**Minnesota Pollution
Control Agency**

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; and
- (5) orderly and deliberate development and financial security of waste facilities including disposal facilities.



Outline of Discussion/Briefing

- What is CON and why does State Law require CON?
- What's the link between landfills & County Plans?
- What else should you know about CON?



115A.917 CERTIFICATE OF NEED.

No new capacity for disposal of mixed municipal solid waste may be permitted in counties outside the metropolitan area without a certificate of need issued by the commissioner indicating the commissioner's determination that the additional disposal capacity is needed in the county. A certificate of need may not be issued until the county has a plan approved under section 115A.46. If the original plan was approved more than five years before, the commissioner may require the plan to be revised before a certificate of need is issued under this section. The commissioner shall certify need only to the extent that there are no feasible and prudent alternatives to the additional disposal capacity, including waste reduction, source separation, and resource recovery, that would minimize adverse impact upon natural resources. Alternatives that are speculative or conjectural are not feasible and prudent. Economic considerations alone do not justify the certification of need or the rejection of alternatives. (1984 assigned to MPCA)



What is CON?

MPCA may not permit MMSW landfill capacity without the landfill obtaining a CON

- Based on County Solid Waste Plans
 - Plans identify alternatives to MMSW disposal
 - Plans assess landfill alternatives
 - CON must be consistent with Plans
 - CON enforced through SW Permit
- MPCA may certify need only to the extent that no feasible and prudent alternatives



Why does MN need CON

- CON helps Counties implement programs and goals in the WMA Act
- Landfills need to be developed in an orderly and deliberate fashion in concert with County Plans
- More landfill capacity undermines alternatives due to landfill pricing
- Landfills can become stranded assets if too much capacity is permitted



Chapter 400.Solid Waste Management

400.01 POLICY AND AUTHORIZATION.

In order to protect the state's water, air, and land resources so as to promote the public safety, health, welfare, and productive capacity of its population, it is in the public interest that counties conduct solid waste management programs.



What's the link between Counties and landfills?

- State law put Counties in charge of solid waste management (Chapter 400/473)
- County Plans must under-write landfill development permits (Minn. Stat. § 116.07)
- County support is essential for the orderly and deliberate development and financial security of landfills (public or private)



Plan

- County Plan/Metro Plans specify landfill needs
- Plans outlines landfill abatement programs
- MPCA approves County Plans

CON

- Calculates landfill capacity based on the Plan(s)
- CON request must **demonstrate** no alternatives to landfill
- MPCA certifies MMSW disposal need (at landfill)

Permit

- **Permit application may trigger EAW or EIS**
- Grants MMSW capacity as per CON
- Grants other capacity as necessary



Minn. Stat. § 116.07 Subp. 4j:

“The agency may not issue a permit for new or additional capacity for a mixed municipal solid waste resource recovery or disposal facility as defined in section [115A.03](#) unless each county using or projected in the permit to use the facility has in place a solid waste management plan approved under section [115A.46](#) or [473.803](#) and amended as required by section [115A.96, subdivision 6](#). The agency shall issue the permit only if the capacity of the facility is consistent with the needs for resource recovery or disposal capacity identified in the approved plan or plans. Consistency must be determined by the Pollution Control Agency....



MN's 21 MMSW landfill picture

Regional County landfills	Regional Private landfills	County (primarily) landfills
ECSWC Mora - 6	Republic Pine Bend	Saint Louis, Clay
Lyon County - 6	WM Burnsville (BSL)	Rice, Steele, Olmsted
Mar-Kit – 7 + ND	WM Elk River	Morrison, Crow Wing
Ponderosa - 6	WM Spruce Ridge	Brown, Cottonwood,
Polk - 6	Waste Connections Nobles	Kandiyohi
5 SLF's serve 31 Counties	25 Million cubic yards proposed by BSL	Regional opportunities



MMSW processing picture?

Regional County facilities	Regional Private Facilities	County Facilities (primarily)
REC Newport – 2+	GRE – Closed	HERC
Prairieland Truman - 3		Olmsted - 2
Prairie Lakes - 5		Red Wing
Polk County - 6		
Pope Douglas - 6		
NSP La Crosse – 2 MN		



Metro CON

- WMI Elk River and Spruce Ridge have previously permitted capacity - No CON until capacity remaining is filled
- MPCA adopted CON criteria and standards for metro in the 2016 Metro Policy Plan
- WMI Burnsville and Republic Pine Bend likely to request additional CON
- MPCA may not issue CON unless ROD compliance is obtained



Conclusions

- *To administer CON effectively:*
 - Participation of MN County Boards
 - Minnesota needs leadership to reduce land disposal - reuse, organics, recycling, WTE etc.
 - The Metro Plan and County Solid Waste Plans should function to change status quo
 - Recognize the necessity of ongoing State and County support of landfill abatement systems



CON resources

- ❑ Greater MN Landfills submit CON requests after County Plan is approved.
- ❑ CON request must be submitted before the preliminary landfill permit app. Is submitted
- ❑ Greater MN CON Statute – Minn. Stat. § 115A.971
- ❑ GM CON Rules Minn. Rules Pts. 9215.0890-0950
- ❑ Metro CON in Minn. Stat. § 473.823 Subd. 6 & process outlined in Metro Policy Plan





Minnesota Pollution Control Agency

Certificate of Need – 2-28-2020

PowerPoint Prepared by:
Sigurd Scheurle
RMAD Division – 612.669.1377

