

Minnesota House of Representatives

State Office Building
100 Rev. Dr. Martin Luther King Jr. Boulevard
St. Paul, Minnesota 55155



Minnesota Senate

Minnesota Senate Building
95 University Avenue West
Saint Paul, Minnesota 55155

September 16, 2023

Katrina Kessler, Commissioner
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

Dear Commissioner Kessler,

Thank you for the opportunity to comment on the Minnesota Pollution Control Agency (PCA) draft Metropolitan Solid Waste Management Policy Plan 2022-2042 (MPP).

We are concerned that the draft completely omits discussion of three major legislative directives that were recently signed into law. These new statutes directly relate to the topics that must be addressed in the plan.

The new laws pertain to cumulative environmental impacts, 100 percent clean energy standard, and the conditions that must be met prior to capital support of an anaerobic digester in Hennepin County.

In addition, the draft lacks specificity in its evaluation, and enforcement of recycling and composting goals for the Metropolitan Area as set forth in Minnesota Statute.

1. Minnesota Statutes, Section 115A.551, Recycling and County Recycling Goals

The MPP correctly identifies the challenges in attaining the region's goal to recycle 75 percent by weight of total solid waste generation by 2030 (Subd. 2a). The plan does not, however, address critical implementation and enforcement strategies as set forth in Subd. 4 and 5 of the statute.

Metropolitan counties have not made appreciable progress in working towards the 75 percent goal since 115A.551 was enacted. As such, the law states, "If the commissioner finds that a county is not progressing towards the goals in subdivision 2a, the commissioner shall negotiate with the county to develop and implement solid waste management techniques designed to assist the county in meeting the goals, such as organized collection, curbside collection of source separated materials, and volume based pricing."

Recommendation: The MPP should include 1) county specific information regarding recycling and organics composting rates in each metropolitan county at the time of 115A.551 enactment, 2) the 2023 recycling and composting rates for each metropolitan county, and 3) a record of negotiation between the commissioner and counties to assist counties in meeting the 2030 goals,

including a specific PCA recommended implementation plan. If the commissioner has not engaged in negotiations as envisioned in 115A.551, the MPP should make note of that.

We support the inclusion of a numeric waste reduction goal in the MPP and recommend a significant increase to the five percent waste reduction standard. Such an increase will help meet the recycling goals in 115A.551, will reduce greenhouse gas emissions, and will offset significant health and safety concerns with burning and landfilling waste.

2. Minnesota Statutes 115A.97 Special Waste; Incinerator Ash

The draft MPP incorrectly asserts that garbage incineration is needed to end the practice of landfilling. We believe that both landfilling and incineration carry significant environmental risks. In fact, garbage incineration perpetuates the need for landfilling as roughly one third of the original trash entering an incinerator ends up in an ash landfill. The combustion process concentrates toxic heavy metals such as lead, cadmium, chromium and mercury in the ash. The environmental risks and dangers of managing incinerator ash are so great that ash must be managed as a "special" waste under the Federal Resource Conservation and Recovery Act (RCRA).

Minnesota Statutes 115A.97 was enacted to address the significant environmental risks associated with the landfilling of incinerator ash. The law stipulates policy goals that involve “reduction in the toxicity of incinerator ash, [and] reduction of the quantity of incinerator ash.”

Recommendation: Incineration is not an alternative to landfilling but merely leads to a different form of landfilling. The report should quantify the amount of incinerator ash generated by metropolitan counties—including instances when waste is incinerated outside of the metropolitan region. The MPP should include an accounting of the public costs of managing incinerator ash, the reasons why ash is classified as a special waste, and how the state is implementing the goals of 115A.97.

3. Minnesota Laws 2023, Chapter 60, Article 8, Sections 3 and 5, Cumulative Impacts Analysis, Permit Decisions in Environmental Justice Areas, and Air Toxics Emissions Rulemaking

The legislature passed a groundbreaking law to analyze the cumulative impacts of pollutants in Environmental Justice (EJ) areas. The MPP makes no mention of this law. While acknowledging the concerns of EJ communities in the vicinity of the HERC garbage incinerator, the PCA only offers general assurances that impacts will recede at an unspecified time when waste is reduced. This passing reference is vague and insufficient to address the significant health, safety and environmental impacts of waste facilities in EJ areas, particularly the downtown Minneapolis trash burner operated for Hennepin County. The draft offers a short reference to health, stating that, “environmental and health impacts of management methods should be considered.” That consideration should include discussion of toxic air emissions from the HERC incinerator, and

other facilities that burn garbage. These facilities emit harmful air toxins including mercury, lead, dioxins, furans and PFAS.

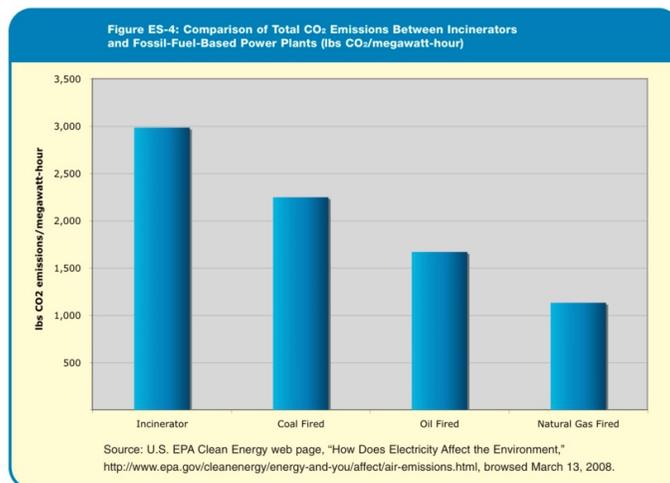
Recommendation: The report must evaluate and analyze waste management facilities in EJ areas in the context of the new cumulative impacts law with a specific emphasis on the HERC garbage burner. The final MPP report must consider the requirements of the new law as it pertains to the HERC incinerator permit renewal schedule, and air toxics rule-making. The report should include an extensive discussion of the health impacts of air toxins from incinerators including hazardous air pollutants and criteria air pollutants as defined in the federal Clean Air Act.

We request inclusion of policies that will require continuous monitoring of air toxins from garbage incinerators such as those enacted in Oregon's SF 488 in August, 2023. Enactment of such a law in Minnesota will help to implement the health and safety considerations embedded in the Cumulative Impacts legislation.

4. Minnesota Statutes 2023, Chapter 7, Section 4, amendment to section 216B.1691, Subd. 1A, Energy Recovery Facility is not eligible technology for renewable energy credits

The legislature passed a 100 percent clean energy mandate in the 2023 legislative session. The new law is a response to the growing climate emergency. The legislative intent of the bill is to significantly reduce the burning of fossil fuels by 2040. The legislation recognized that the combustion of municipal garbage, which includes fossil fuel derived plastics, is a major contributor of greenhouse gas emissions. In fact, the HERC incinerator is listed as the 31st largest single point source of greenhouse gas emissions in Minnesota and among the highest in the Metropolitan Area.

As such, the legislature revoked the use of renewable energy credits for the HERC facility. This action recognized that there is no equivalency between trash incineration and renewable energy sources such as wind and solar power. Furthermore, studies utilizing data from the Environmental Protection Agency (see chart below) indicate that on a per megawatt hour basis, garbage incineration emits more greenhouse gas emissions than coal.



The MPP perpetuates continued reliance on incineration as a waste management strategy as evidenced in Policy 5: “Promote recovery of energy when disposing of waste through waste to energy.” This policy runs counter to previous PCA statements, including those made in the MPP. For example, the MPP states, “while the PCA recognizes that waste will continue to be processed at resource recovery facilities, and disposed at landfills, the aggressive objectives established in this MPP encourage [the region] to significantly reduce reliance on these less preferable management methods.” Yet the MPP, in fact, does not reduce reliance on incineration and calls for increasing the amount of waste to be burned by 2042.

In denying a 1992 permit for a trash burner in Dakota County, the PCA found that mercury, and dioxin emissions and incinerator ash from the proposed facility would pollute, impair and destroy natural resources, and that there were feasible and prudent alternatives to the proposed facility.

Recommendation: The MPP should eliminate advocacy and promotion of incineration as an energy policy and waste management tool. This position would be consistent with the MPP's stated goal to reduce reliance on less preferable waste management techniques. As such, the MPP should include a specific plan to phase-out the use of incineration and ash landfilling in the region along with the MPP's stated goal to reduce utilization of mixed municipal waste landfills.

5. Minnesota Statutes 2023, Chapter 71, Article 1, Section 3, Subd. 4 Hennepin County Anaerobic Digester

The legislature included rider language in the Capital Investment bill to incentivize Hennepin County's development of a plan to cease operation of the HERC garbage incinerator in downtown Minneapolis. This policy reflects growing concern among the public and in the Legislature regarding the continued operation of the HERC facility given its impacts on climate, environmental justice, public health, air toxics emissions, and the challenges posed by managing ash management. In addition, waste composition studies continue to indicate that there is a high percentage of recyclable and compostable products in the HERC waste stream.

Recommendation: The MPP must acknowledge legislative intent regarding the future of HERC, as stated in the Capital Investment rider language in Chapter 71, Article 1. The MPP should include specific ways in which the PCA can assist Hennepin County in developing a plan to phase out the HERC, including a specific timeline for such a phase-out.

Conclusion

Large portions of the draft MPP must be revised to reflect growing public and legislative concerns with garbage incineration. These concerns are reflected in recently enacted legislation expressing opposition to use of incineration as a waste management tool and source of energy in the metropolitan region. The current draft's continued advocacy of incineration will not reduce greenhouse gas emissions from the waste sector, end landfilling of ash, or maximize recycling.

Katrina Kessler, Commissioner
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Thank you very much for your consideration of our recommended changes to the MPP.

Very truly yours,

Frank Hornstein
State Representative, District 61A

Fue Lee,
State Representative, District 59A

Esther Agbaje,
State Representative, District 59B

D. Scott Dibble,
State Senator, District 61