

In re Matter of Elk River Landfill North Development Area Scoping Process	Comment Letter of Sherburne County to Minnesota Pollution Control Agency
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Minnesota Pollution Control Agency
520 Lafayette Rd
St. Paul, MN 55155

INTRODUCTION

Sherburne County submits this public comment letter in response to the Scoping Environmental Assessment Worksheet (SEAW), Draft Scoping Decision Document (DSDD), and supporting documents published on October 28, 2025 in the Minnesota Environmental Quality Board (EQB), Volume 49, Number 43, regarding the Elk River Landfill North Development Area Environmental Impact Statement scoping process. The SEAW and DSDD address a proposed expansion (the “Project”) by Waste Management of the Elk River Landfill (“ERL”). The proposed Project Site, to the north of the existing ERL site, is in Sherburne County (the “County”). The overall scale and term of the expansion is massive. The proposed Project would nearly double the landfill’s acreage (adding a 162.36-acre area), proposing to pile waste at an increased slope than what is allowed by Minnesota Rules or County ordinance.¹ The proposed capacity would more than double the existing permitted volume – from 19.06 million cubic yards to 45.73 million cubic yards. This capacity is projected to last for a staggering 60 years into the future, with the SEAW raising the potential for additional landfilling at the Project Site after that capacity is reached.² A development of such size and magnitude requires all parties to examine

¹ With the proposed expansion in Livonia Township, the County Board would set the final grade elevations of a solid waste landfill. Sherburne County Ordinance No. 180, Section 7.2(A).

² SEAW at p. 13.

exhaustively not only the Project as proposed, but all viable alternatives, in accordance with Minnesota's state and local laws and rules. Per the EQB directive, Sherburne County's comments address the accuracy and completeness of the SEAW and DSDD, including identifying potential impacts that warrant further investigation.

As the DSDD notes, the purpose of the EIS is to generate information "for use by governmental units as a guide in considering permits or approvals for the Project and in identifying measures necessary to avoid or mitigate adverse environmental effects."³ As the host county to the Project, Sherburne County will be involved throughout the Project, for example by making licensing, permitting, and zoning decisions.⁴ Sherburne County therefore is uniquely interested in an appropriately scoped EIS that fully assesses the potential environmental impacts from significant landfill expansion and in ensuring proper restrictions are applied. Importantly, the Minnesota Pollution Control Agency's ("MPCA") role in enforcing the legislature's waste hierarchy on the processing and landfiling of waste should also be studied as part of the project's EIS to determine if there are actions the MPCA and Waste Management should take, or may be required to take, to minimize the need for landfiling. Such actions could reduce the need for landfill permitted capacity, as well as elongate the time before the ERL will reach its permitted capacity, both as it exists now and with any expansion.⁵

Sherburne County's interest in an adequately scoped EIS is deepened because ERL has an existing contaminant plume that is difficult to monitor and remediate, raising serious questions as to the feasibility of monitoring both the existing plume and potential contaminant releases from

³ DSDD at p. 3.

⁴ See SEAW at p. 25 (listing Sherburne County's responsibility over various required permits).

⁵ The MPCA projects that the ERL will reach its current permitted capacity in three years. Ex. 1, MPCA bulletin. Waste Management, the owner of the ERL, represents that the remaining permitted capacity is 15 million cubic yards. Ex. 2, Waste Management fact sheet.

the proposed Project. Further, Sherburne County is concerned that it may be the disproportionate recipient of metropolitan waste. While Sherburne County hosts ERL and the waste deposited there for all time, the County's own waste accounts for only 6.6% of the 434,414.88 tons of MSW landfilled at the existing landfill in 2024,⁶ with over 62% of the waste hauled from Hennepin and Anoka Counties.⁷ The County's small percentage of waste is especially important given that the MPCA has stated that without the expansion, "area businesses and residents won't have a local facility where they can send their waste," presumably because Metro Area counties' waste will fill it to capacity.⁸ While Sherburne County is the host of the proposed site for tens of millions of cubic yards of mixed municipal solid waste, Sherburne County's own waste production would not require expansion of landfill capacity anywhere near the capacity proposed and may not require any expansion at all.

EXECUTIVE SUMMARY OF COUNTY COMMENTS

Based on its current analysis, Sherburne County comments that:

- the SEAW and DSDD fail to address the Minnesota Rules on siting of landfills, and in particular the existing challenges the Project Site and surrounding areas present to monitoring and remediation both an existing plume of contamination and any potential contaminant releases from the Project;
- the SEAW and DSDD should be amended to include an Alternative Site analysis for numerous reasons, including:
 - the hydrogeology and characteristics of surrounding areas are problematic for monitoring and cleanup in the event of a release;

⁶ SEAW at pp. 6-7.

⁷ SEAW at p. 13.

⁸ Ex. 1, p. 3, MPCA bulletin.

- residents in areas near ERL have already been impacted by an existing plume of contamination, the scope and scale of which is not currently precisely defined, and they face serious consequences in the event of a future release that cannot be feasibly monitored and/or mitigated;
- wetlands and protected wild rice areas are at risk in the event of a future contaminant release; and
- other sites may exist that would not face these challenges and should be considered;
- the SEAW and DSDD should be amended to evaluate as an Alternative a modified, smaller scale/magnitude for numerous reasons, including:
 - the Project capacity as planned is based on various design decisions, such as slope height and liner construction, that appear not to comply with Minnesota Rules or Sherburne County ordinance and may require variances from MPCA and a Waiver from Sherburne County as permitting authorities that are not guaranteed to be granted;
 - the overall scale and magnitude of Project capacity is based on an approach for continued landfilling that is inconsistent with Minnesota's statutory hierarchy, which makes landfilling the least preferred method of solid waste management,
 - the overall scale and magnitude of Project capacity is inconsistent with MPCA's Solid Waste Management Policy Plan, which includes projections showing a precipitous drop in the need for landfilling capacity starting by no later than 2030;

- the SEAW and DSDD should be amended to consider additional alternative technologies for the processing of waste, including details on how the MPCA plans to meet the state’s waste hierarchy, MPCA rules, and specifically action plans on waste processing; and
- the SEAW and DSDD rely upon various other questionable assumptions that must be addressed, corrected and remedied, as detailed herein.

I. The SEAW and DSDD fail to address Minnesota Rules mandating that the Project Site be located only in areas where environmental impact is minimized and where monitoring and corrective action are feasible.

The State of Minnesota has enacted a solid waste management hierarchy and the MPCA issued rules to manage to that hierarchy.⁹ Per the rules set by the MPCA, the “waste management goal of the state” is to manage waste in a way that protects “the state’s land, air, water, and other natural resources and the public health.”¹⁰ Ultimately, per MPCA rule, waste may be disposed in land “only after other feasible options have been evaluated or for environment protection.”¹¹ The MPCA is the agency responsible for the cumulative impact of waste on the State’s natural resources.

Despite the need for landfilling as part of the state’s multifaceted approach to waste management, landfill location remains expressly limited. Per the MPCA, “landfills must be located only in an area where:”

- a landfill may be maintained to minimize environmental impacts;¹²
- ground water flow paths and the soil/bedrock are known so that “reliable tracking of pollution movement” is possible when pollution is released from the facility;¹³

⁹ Minn. Stat. 115A.02(b).

¹⁰ Minn. Rule 7035.0350 (referencing Minn. Stat. 115A.02).

¹¹ Minn. Rule 7035.0350.

¹² Minn. R. 7035.2815 subp. 2(A)(1).

¹³ Minn. R. 7035.2815 subp. 2(A)(2).

- a reliable monitoring system is possible to detect and track pollutants in the event of a release from the facility;¹⁴ and
- containment and corrective action of pollutants is possible to “prevent adverse impacts on water supplies and to return the facility to compliance with ground water and surface water quality standards.”¹⁵

The existing ERL site has proven to be a difficult location for landfill operations. That site is home to a large, existing contamination plume that has emanated from the existing landfill operations, discussed in detail below. Sherburne County and its scientific consultants have been analyzing the available data related to that existing plume. The analysis shows there are documented gaps in data and difficulties in the ongoing ability to monitor movements of contaminants. Such monitoring is especially difficult due to surrounding marshlands, wetlands, and a protected wild rice lake. Unfortunately, the available data and scientific analysis are concerning as they are suggestive that the contaminants have moved and are moving in the direction of Rice Lake,¹⁶ Minnesota Department of Natural Resources (DNR) Lake ID 71001500, a natural environment lake with physical geography rendering groundwater monitoring impracticable. The County’s concerns are further exacerbated by recently obtained data raising scientifically significant questions regarding the effectiveness of the current plan for addressing the plume (monitored natural attenuation and well replacement) to address the existing health risks posed to nearby residents and other pollution, impairment and destruction of the environment.¹⁷

¹⁴ Minn. R. 7035.2815 subp. 2(A)(3).

¹⁵ Minn. R. 7035.2815 subp. 2(A)(4).

¹⁶ Water ID 71001500. The SEAW incorrectly classifies Rice Lake as a wetland. SEAW at p. 27.

¹⁷ Ex. 5 at p. 30, EOR’s ELK RIVER LANDFILL: Review of Groundwater Contamination Issues for Sherburne County (hereinafter “EOR Report”), 10/13/25.

These concerns are particularly relevant here because, as the SEAW recognizes, potential future releases from the Project Site are expected to flow in similar ways to that of the existing facility. The SEAW states that the groundwater patterns for the proposed Project Site act “[s]imilarly to the existing Facility, [with] groundwater in the upper outwash (and surficial outwash) discharg[ing] to Rice Lake/Tibbits Brook to the west.”¹⁸ Evidence shows that discharges into these areas are difficult to monitor.

Without addressing the challenges posed by the physical geography of the areas surrounding the proposed Project Site, the SEAW states with minimal analysis or explanation that the “Site is monitorable with a high degree of confidence.”¹⁹ Likewise, the DSDD states that “an alternative site is unlikely to provide significant environmental benefits compared to the Project as proposed.”²⁰ The fact that some monitoring infrastructure exists as a result of a contamination plume emanating from the ERL, which has historically polluted (and continues to pollute) nearby land beyond the footprint of the landfill, does not address whether the monitoring is appropriate or feasible should a release occur from the Project Site. Nor is it a basis for excluding consideration of available alternatives, as discussed further below.²¹

Both the monitorability of the Project Site and surrounding areas and the DSDD’s conclusion that it is unlikely that other sites could be environmentally beneficial must be corrected and factually addressed. This likewise requires corrections to the scope of the EIS and the need to assess alternatives to the Project.

¹⁸ SEAW at p. 31.

¹⁹ SEAW at p. 32.

²⁰ DSDD at p. 7.

²¹ SEAW at p. 32 (“Given that the distribution and hydraulic properties of the hydro stratigraphic units at the Site have been thoroughly characterized, and groundwater flow conditions match well with the physical flow setting.”)

A. ERL has a contamination plume that is out of compliance with MPCA’s own standards.

When waste is buried in land, a landfill is born and pollution created.²² Unless appropriately managed, leachate (liquid created as organics decay in landfills) from landfills “can seep into groundwater.”²³ When the leachate goes into wastewater treatment plants, it in part “ends up in surface waters due to lack of treatment technologies for many of the contaminants.”²⁴ For obvious reasons, management is key.

Due to the permanent nature of pollution once a landfill is sited, the law imposes strict requirements on landfill location. For example, the law mandates that no landfill exist in an area that cannot be easily tracked and monitored through a feasible monitoring system with enough monitoring points to detect pollutants. A landfill must also be located where, in the event of a contaminant release, corrective action may be taken to “prevent adverse impacts on water supplies.”²⁵ If such monitoring and corrective action cannot be taken, by law a landfill cannot exist in that area.²⁶ Sherburne County is concerned that the existing contaminant plume has not been properly monitored or corrected/mitigated, meaning that any potential future releases will likewise experience the same problems.

The primary contaminant of concern in the existing ERL contamination plume is vinyl chloride, (“VC”).²⁷ This plume has been confirmed by MPCA, Barr Engineering (consultant for Waste Management), and EOR (consultant for Sherburne County). The contaminant plume

²² Ex. 3 at p. 44, Metropolitan Solid Waste Management Policy Plan for 2022-2042.

²³ *Id.*

²⁴ *Id.*

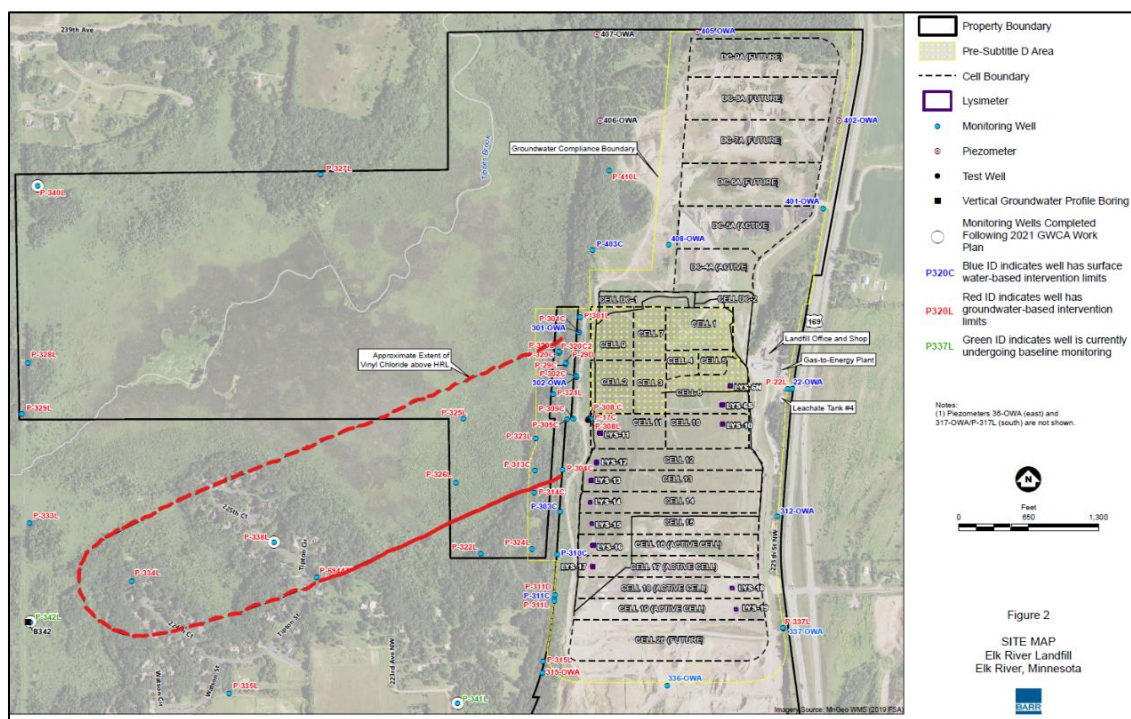
²⁵ Minn. R. 7035.2815 subp. 2(A)(4)

²⁶ Minn. R. 7035.2815 subp. 2(A) (land disposal facilities “*must* be located *only* in an area where” pollution can be easily tracked and monitored through a feasible monitoring system with enough monitoring points to detect pollutants and where corrective action may be taken to stop pollutants from reaching water supplies).

²⁷ Ex. 5 at p. 1 (Executive Summary), EOR Report.

currently stretches 4,700 feet to the west/south-west of the landfill—just south of Rice Lake and through multiple residential neighborhoods.²⁸

Waste Management’s environmental consultant, Barr Engineering, identified the plume contours as follows (highlighted in red below):



In addition to VC, the contaminant plume contains elevated levels of sulfates and other volatile organic compounds, including known carcinogens like trichloroethene (“TCE”) and cis-1,2-dichloroethene (cDCE).²⁹ Over time, TCE and cDCE may break down in further concentrations of VC. In the 2024 Annual Water Quality Monitoring report, Table 7, Groundwater Concentrations Exceeding Groundwater-Based Intervention Limits, three

²⁸ Ex. 6 at 15, at Fig. E10, at Attachment H1, Groundwater Corrective Action Report-Initial Performance Evaluation, Elk River Landfill, Barr Engineering.

²⁹ See also various well results and figures: Ex. 5 at page 4, EOR Groundwater Contamination Report; Ex. 11 at page 9, Table 7, Groundwater Concentrations Exceeding Groundwater-Based Intervention Limits, 2024 Annual Water Quality Monitoring Report, Barr Engineering; Ex. 12 at page 3-5, Table 3, Groundwater Detections Exceeding Groundwater-based Intervention Limits, 2025 Spring Quarterly Report, Elk River Landfill, Barr Engineering.

compliance wells had TCE detections, P-304C, 323L, and P-326L, P-304C and P-326L had detections above the IL (0.1 µg/l) but below the HRL (0.4 µg/l).³⁰ P-323L had detections above the HRL both times that it was sampled that year, 0.927 µg/l and 0.740 µg/l. Similar to 2024, in 2025 P-304C and P-326L had detections above the IL but below the HRL.³¹ In the 2024 Annual Water Quality Monitoring report, Table 7, Groundwater Concentrations Exceeding Groundwater-Based Intervention Limits, 1,2-Dichloroethane (cDCE)³² compliance wells P-302C and P-323L above the IL, The detections were above the 0.25 µg/l intervention limit as listed in Sampling and Analysis Plan, Elk River Landfill, 2015, Appendix B, Reporting Limits and Groundwater Intervention Limits. Likewise, these two wells were above the IL for cDCE during the spring 2025 sampling event.³³ Recently, existing contaminants were identified, including Freon and PFAS. The identification of PFAS requires additional study.³⁴ Sherburne County's consultant's report is attached as Exhibit 5. From the results of the 2025 spring groundwater split sampling results, PFAS contaminants have been detected in wells located within the VC plume, and Freon 21 is evident in many monitoring wells.³⁵ At the County, we are not only concerned with VC, but other detections that are harmful to human and environmental health. As for any land matter, location is key. ERL is located next to a large wetland complex, a Natural Environment Lake (Rice Lake) which is a protected wild rice water, and Tibbits Brook. These land features and the geology of the area make the Project Site a poor location for a landfill. Admittedly, the ERL landfill already exists. Regardless, the fact that the existing location is a poor site for landfill,

³⁰ Ex. 11 at Table 7, 2024 Annual Water Quality Monitoring report.

³¹ Ex. 12 at Table 3, 2025 Spring Quarterly Report, Elk River Landfill.

³² Ex. 11 at Table 7, 2024 Annual Water Quality Monitoring report.

³³ Ex. 13, Eurofins Analytical Report, Prepared for EOR, Elk River Landfill-Split Sampling, Job Number 310-304430-1, 4/30/2025; and Ex. 5, EOR Report. Ex. 12, p. 3, 2025 Spring Quarterly Report, Elk River Landfill.

³⁴ Ex. 5 at p. 2, EOR Report; Ex. 12 at p. 2, 2025 Spring Quarterly Report, Elk River Landfill.

³⁵ Ex. 5 at p. 2, EOR Report; Ex. 12 at p. 2, Table 3, Groundwater Detections Exceeding Groundwater-based Intervention Limits, 2025 Spring Quarterly Report, Elk River Landfill.

due to existing and potential environmental impacts that are not under control or easily monitored in the event of a future contamination, is reason enough not to expand it. At the very least, the idea that the ERL is an easily monitored site and a site that allows for containment before adverse impacts on water supplies is scientifically incorrect and should be corrected in the SEAW and DSDD.

B. Monitoring and containment of the existing contamination plume have failed, meaning that potential future releases based on the same monitoring system would likewise likely fail.

MPCA's long-term plan to manage the existing ERL contamination plume through monitored natural attenuation (or MNA) and well replacement now appears unlikely to be protective of Sherburne County's nearby drinking water supplies.³⁶ Essentially, MNA watches and waits for the plume to reduce and dilute in concentration over time as it spreads out over a wider area. Sherburne County's consultant EOR recently tested the success of the MPCA's plan. MNA can be a proper approach, but here, three problems exist with the MPCA's use of MNA to monitor and contain the existing plume.³⁷

First, although MNA is an acceptable plan for analyzing pollution plumes, the conditions at ERL do not fit one of the primary assumptions required for MNA.³⁸ To use MNA, the plume must be stable/not expanding. The ERL plume is not stable (or in steady state) because the higher concentrations of VC left ERL 35-45 years ago, cannot be validated by use of monitoring well P-342L since the plume is not predicted to have reached that well yet (so the MPCA's reliance on a non-detect at that well to assume stability is meaningless), and the contaminant mass was never measured.³⁹

³⁶ Ex. 5 at pp. 27-30, EOR Report.

³⁷ Ex. 5 at pp. 1, 4, EOR Report.

³⁸ Ex. 5 at p. 11, EOR Report.

³⁹ Ex. 5 at p. 12, EOR Report.

Second, certain scenarios were used to evaluate the plume's movement away from ERL. The evidence shows, however, that higher VC concentrations exist in the plume far downgradient from the compliance boundary (a boundary to ensure pollution does not migrate to a point that could be harmful to human health) near the landfill. In short, new analysis is needed for what is essentially a Human Health Risk Assessment to ensure that the plume is not harmful to residential wells.⁴⁰

Third, bulk attenuation rates were measured using certain VC predictive results. Problems were found with those prediction values. Different results are calculated when the predictive values are substituted with recent VC values for mid plume wells and the appropriate well distances.⁴¹ These new predictive values are magnitudes higher and raise concerns that VC concentrations will not be below acceptable health risk limits.⁴²

The recent scientific analysis shows additional concerns. These include that (a) VC trends are increasing in certain downgradient wells, (b) most of the observed rate at ERL is due to a decrease in dilution (physical processes) with minimal degradation, (c) the groundwater flow indicates the southern side of the plume is most likely to impact private wells over time, but there is a lack or gap of monitoring wells in that area, and (d) likewise the northern side of the plume is not well delineated and there are no wells beyond the wells (P-325L and P-323L) having higher VC concentrations. Although more wells are needed to define and monitor the northern edge, the area is inaccessible for wells due to unstable conditions presented by Tibbits Brook and Rice Lake.⁴³ Overall, MNA is not a reliable solution to protect drinking water wells and water quality. Further, the physical geography surrounding both the existing ERL plume and the

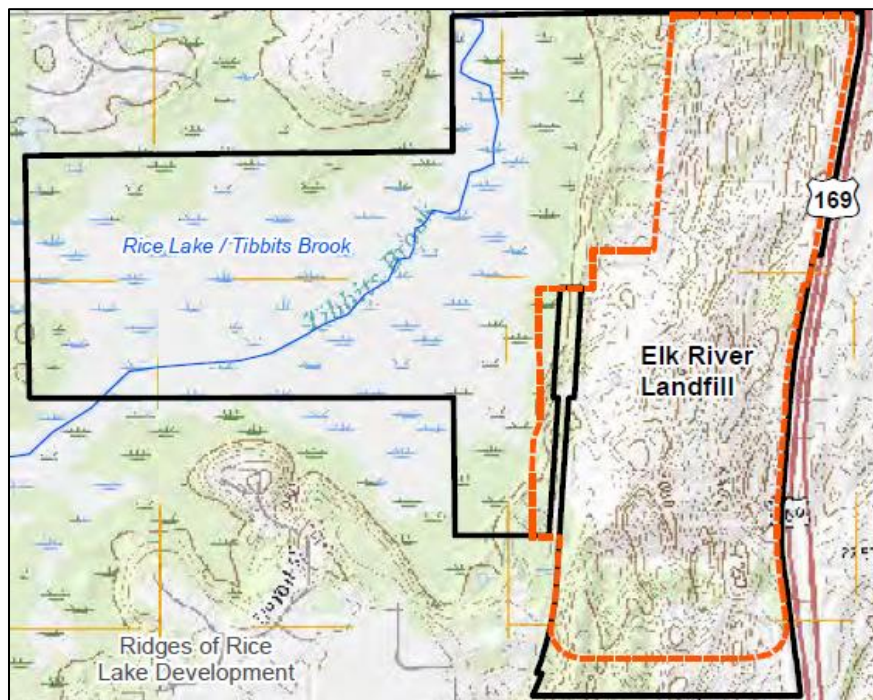
⁴⁰ Ex. 5 at pp. 13-14, 19, EOR Report.

⁴¹ Ex. 5 at p. 14, EOR Report.

⁴² Ex. 5 at p. 14-19, EOR Report.

⁴³ Ex. 5 at pp. 20, 1-2, EOR Report.

proposed Project Site render monitoring challenging. Specifically, immediately west of the proposed Project Site lies Rice Lake, Tibbits Brook, and a large wetland complex:



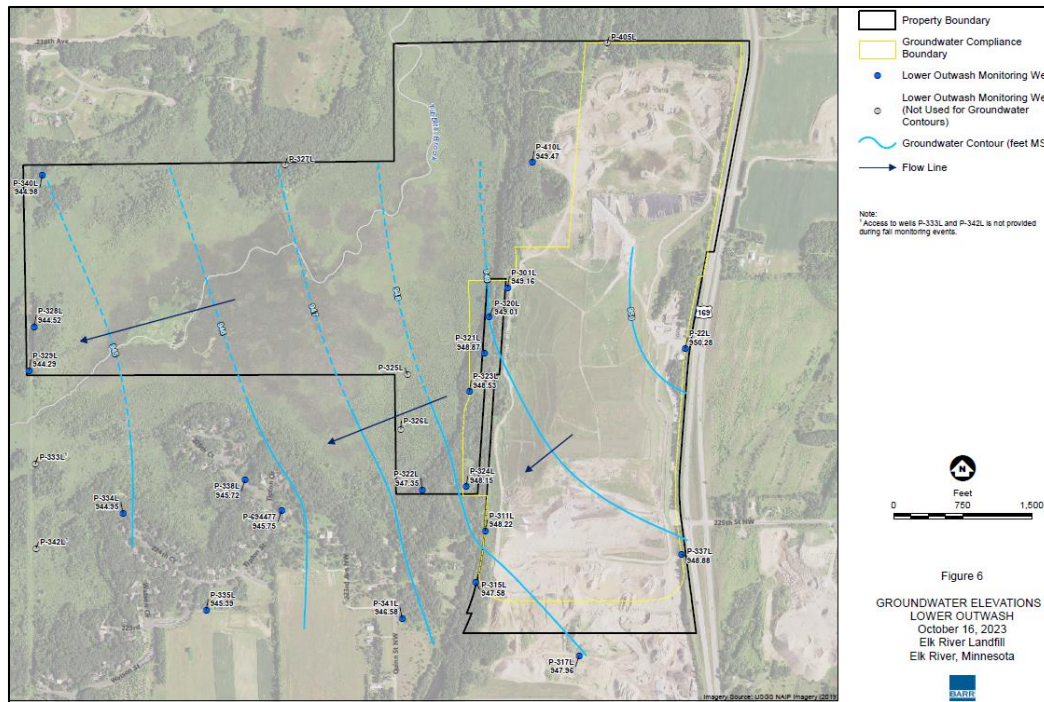
Groundwater flows west and southwest towards Tibbits Brook and Rice Lake.

Groundwater flowing toward Tibbits Brook already has “sulfate levels in monitoring wells reaching up to 132 mg/L, suggesting a potential plume moving toward Rice Lake.”⁴⁴ This is a problem because monitoring is difficult in the Rice Lake area, and “limited data exist on groundwater-surface water interactions” in that location.⁴⁵

If the Project Site expands north of the existing ERL footprint (as proposed), any potential future contaminant releases are likely to flow in the same direction of the wetland complex, Rice Lake, and Tibbits Brook area, with groundwater in the area naturally flowing toward the south of Rice Lake in a westerly/south-westerly direction:

⁴⁴ Ex. 5 at p. 2, EOR Report.

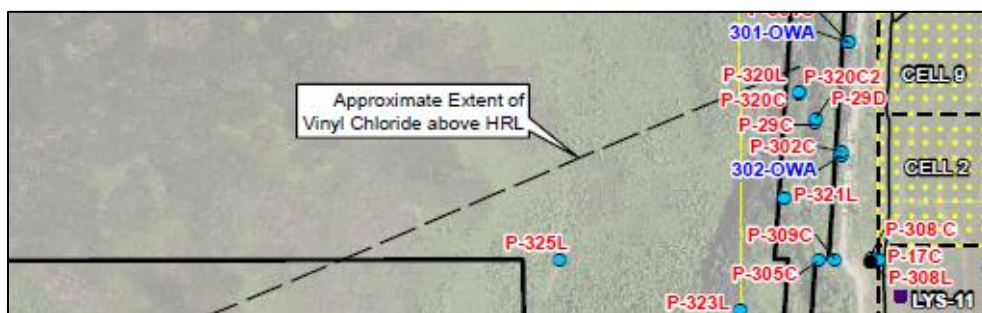
⁴⁵ Ex. 5 at p. 2, EOR Report.



Contrary to Rule 7035.2815(A), the topography of Rice Lake and its geology preclude adequate monitoring systems or containment of any plume. The natural physical geography of Rice Lake and its marshy surroundings do not allow for placement of monitoring wells with ability to generate sufficiently detailed data to reliably monitor potential pollutant releases from any ERL expansion. At the very least, the feasibility of monitoring in these conditions needs to be assessed and explored in detail in an EIS, rather than monitoring being simply assumed to be feasible, as is stated currently in the SEAW.

The inability to confirm the northern extent of the plume is not new. When VC exceedances were discovered outside the compliance boundaries in 2007 and 2008, Waste Management was tasked with delineating the groundwater contamination boundaries. Waste Management suspended its investigation efforts into the Rice Lake/Tibbits Brook area, however,

citing safety concerns regarding access.⁴⁶ Again, this shows the existing ERL fails the location standards under Rule 7035.2815, and at the very least shows that careful study is needed in the EIS regarding these issues for any potential expansion.⁴⁷



Given the mandates of Rule 7035.2815 and the scientific data Sherburne County recently obtained, the Project to expand ERL, which could potentially exacerbate environmental impacts, is premature if not outright in violation of the MPCA's Rules. Action is needed on developing an effective plume management plan to protect the citizens and drinking water wells of Sherburne County from future contamination, and these issues need to be studied in the forthcoming EIS beyond the information proposed in the SEAW and DSDD.

C. The consequences of releases are severe, impacting nearby residents and Rice Lake, which is a Natural Environment Lake and a protected water body for wild rice.

The consequences of the existing contamination plume may be serious and inform the need for thorough examination of alternatives in the upcoming EIS for the Project. The current ERL plume requires alternative groundwater sources to be provided to affected residents, including abandonment of existing residential water supply wells and replacement with deeper

⁴⁶ Ex. 14 at p. 9, Work Plan for 2014 Groundwater Monitoring Network Augmentation, Elk River Landfill, February 2014, Barr Engineering; Ex. 15, App. F, p. 15, Groundwater Corrective Action Evaluation Report, Elk River Landfill, June 2020, Monitoring Well Network Considerations and 2.2 Site Hydrogeology.

⁴⁷ Ex. 6 at Fig. 2, Groundwater Corrective Action Report-Initial Performance Evaluation, Elk River Landfill.

wells due to the contaminants.⁴⁸ It is unknown whether further remedial measures and associated costs will ultimately be necessary. In the Groundwater Corrective Action Evaluation Report,⁴⁹ options for corrective actions were considered to address the groundwater contamination plume, such as:

- Alternative #1, Monitored Natural Attenuation (MNA) and Residential Water Supply Replacement
- Alternative #2, Groundwater Extraction and Treatment with Focused MNA and Residential Water Supply Replacement
- Alternative #3, Pre-Subtitle D Landfill Excavation and Placement on Liner
- Alternative #4, Groundwater Extraction (on and off-site) and Treatment

Further, within the potential path of pollutants lies Rice Lake, which contains protected wild rice. “Wild rice is an important part of the biological community in many Minnesota lakes, streams, and wetlands. Wild rice is also a cultural resource to many, particularly members of Minnesota’s Dakota and Ojibwe tribal nations, and it is an important economic resource to those who harvest and market it.”⁵⁰ Wild rice is a sacred food to the Ojibwe and Dakota people. The EAW lacks any tribal engagement or mention of this connection that indigenous people have with the plant. Ojibwe migration stories began with prophecies telling them to go west to avoid the invaders from the sea, and to go where the food floats on water, wild rice. Ojibwe and Dakota people regard wild rice as a sacred being with a spirit and is a relative. As wild rice lakes were developed in post-glacial periods, indigenous people would have harvested rice from wild rice lakes since the glaciers receded, including Rice Lake. In Minnesota, land has been ceded and

⁴⁸ Ex. 6, at p. 6, Groundwater Corrective Action Report-Initial Performance Evaluation, Elk River Landfill.

⁴⁹ Ex. 15 at p. v, Executive Summary, Groundwater Corrective Action Evaluation Report, June 2020, Barr Engineering.

⁵⁰ Ex. 7, MPCA Bulletin on protecting wild rice waters.

reservations were created, with the aid of the Dawes Act of 1887. The land that is in present day Sherburne County was a part of two major land cessions, 1837 Dakota and 1837 Ojibwe (Indian Land Cessions in the United States, Royce, 1899). Rice Lake is in the area of the 1837 Dakota ceded territory. Private land ownership has changed access to Rice Lake and other wild rice lakes similar to it. Ojibwe and Dakota people no longer have access to harvest rice lakes as they did before being put on reservations. The letter from the MN SHPO is incomplete. There may not be structures located within the proposed expansion area, yet there may be archaeological evidence that cannot be recovered on the shores of Rice Lake. Further study is recommended such as wild rice phytolith extraction from lake sediments evidence or environmental DNA would be suggested methods for findings. Rice Lake was listed in the Natural Wild Rice in Minnesota study document submitted to the Minnesota Legislature by the Minnesota Department of Natural Resources, February 15, 2008, as a wild rice lake in Sherburne County.⁵¹ The MPCA designated Rice Lake in Sherburne County as a protected wild rice water.⁵² Rice Lake is also a Class 2B water under Minn. R. 7050.0140 and Minn. R. 7050.0222. These rules prohibit waste discharges and pollutants that would impair the quality of such waters and their aquatic biota, among other prohibitions.⁵³ To protect wild rice, which is found primarily in low-sulfate waters, the state of Minnesota and MPCA implemented water quality standards limiting sulfate to 10 mg/L in waters identified for “production of wild rice.”⁵⁴

Sulfate is a known groundwater contaminant produced from landfills. For example, according to historical EPA studies that evaluated and sampled groundwater near landfills,

⁵¹ Ex. 16 at 78, Natural Wild Rice In Minnesota, a Wild Rice Study document submitted to the Minnesota Legislature by the Minnesota Department of Natural Resources, February 15, 2008.

⁵² Ex. 8, MPCA Bulletin on wild rice.

⁵³ *See, e.g.*, Minn. R. 7050.0222 subp. 7.

⁵⁴ *See* Minn. R. 7050.0224.

“[g]roundwater samples from under and downgradient from landfill showed elevated levels of sulfate in every case.”⁵⁵

Within the groundwater monitoring network, there are detections of sulfate. With Rice Lake and Tibbits Brook abutting the landfill to the west of ERL, the concern for creating conditions non-conducive for wild rice production is a concern. The Work Plan for 2014 Groundwater Monitoring Network Augmentation, February 2014, pg. 9, states that there is upwelling occurring in the floating bog. It is well documented that shallow groundwater flows east to west, toward Rice Lake and Tibbits Brook. When shallow groundwater discharges into Rice Lake and Tibbits Brook, additional sulfate levels are possible. Sulfate contamination above the 10 mg/L violate the state limit for wild rice lakes.⁵⁶ Sulfate by itself is not toxic to wild rice, however, the reduction of sulfate to sulfide in the wild rice lake sediments is detrimental to the wild rice plant.⁵⁷ Accordingly, there is a present concern with ERL, and any expansion could exponentially make this concern worse. Robust study of contaminants in and around ERL is needed now, which is another reason why alternatives to the Project site should be mandated – contrary to the SEAW’s dismissal of alternative siting.

Overall, Sherburne County requests that further analysis be required to show compliance at least with Minn. Stat. 115A.02, and MPCA Rules 7035.0300, 7035.0350, and 7035.2815, for the monitoring and containment of the existing plume and for potential future releases that could result from the Project.

⁵⁵ Ex. 9 at p. iv, US EPA, *Chemical and Physical Effects of Municipal Landfills on Underlying Soils and Groundwater*, (May 1978).

⁵⁶ Minn. R. 7050.0224, subp. 2 (Class 4A waters).

⁵⁷ Ex. 17, Sulfide Generated by Sulfate Reduction is a Primary Controller of the Occurrence of Wild Rice (*Zizania palustris*) in Shallow Aquatic Ecosystems, Myrbo, et al., 2017; Ex. 7, MPCA Bulletin on protecting wild rice waters.

II. The DSDD and SEAW should be amended to consider analysis on Alternative Sites and other site-specific limitations.

The apparent foundational rationale for the proposed Project is that ERL is already a landfill so its potential capacity should be maximized. This reasoning overlooks that the rules for siting apply equally to landfill expansions as to the creation of a new landfill; to expand further into an unfit site simply compounds an error made long ago.

The DSDD states that MPCA will *not* consider any other location for a landfill beyond proposed maximum expansion, stating that “[a]n Alternative Site analysis will be excluded from the alternatives studied in the EIS.”⁵⁸ The decision to exclude Alternative Sites from the EIS scope is erroneous, rests on incorrect assumptions, and overlooks key aspects of the topography near the Project Site that is likely to experience contamination in the event of a release.

A. Alternative Sites exist that do not share the pitfalls of the Project Site.

As shown above, the topography, geology, the existing plume, and monitoring challenges of the Project Site and surrounding areas should disqualify it as a location for landfilling, or increased landfilling, in the state. The DSDD nonetheless proposes not to consider any potential Alternative Site.⁵⁹ While the analysis in the DSDD on this point is minimal, it appears to rest on two premises, the first being the incorrect presumption that the Project Site is a well-suited location for a landfill (the County’s response on location addressed above).

B. Per the MPCA’s own projections, there is no urgent need to maximize landfills.

The second rationale appears to rely on a perceived need for increased landfilling within and beyond the next three years.⁶⁰

⁵⁸ DSDD at p. 6.

⁵⁹ DSDD at pp. 6-7.

⁶⁰ DSDD at p.7 (“Therefore, an alternative site is unlikely to provide significant environmental benefits compared to the Project as proposed. Additionally, the need for the expansion arises from the projected MSW capacity reached within the next three years; timing associated with relocation of the landfill to an alternative site would not meet the Project’s purpose and need.”)

The DSDD’s apparent urgency to maximize the ERL expansion runs contrary to the MPCA’s 2024 Metropolitan Solid Waste Management Policy Plan for 2022-2042.⁶¹ The Plan documents a precipitous drop in the amount of waste to be landfilled, starting in 2030 (just one year after the Project would be set to start accepting waste) and persisting for more than a decade into the future. The MPCA’s projections on the rebalancing away from landfills is illustrated in MPCA Figure 6 for Twin Cities Metro Area’s (“TCMA”) solid waste:

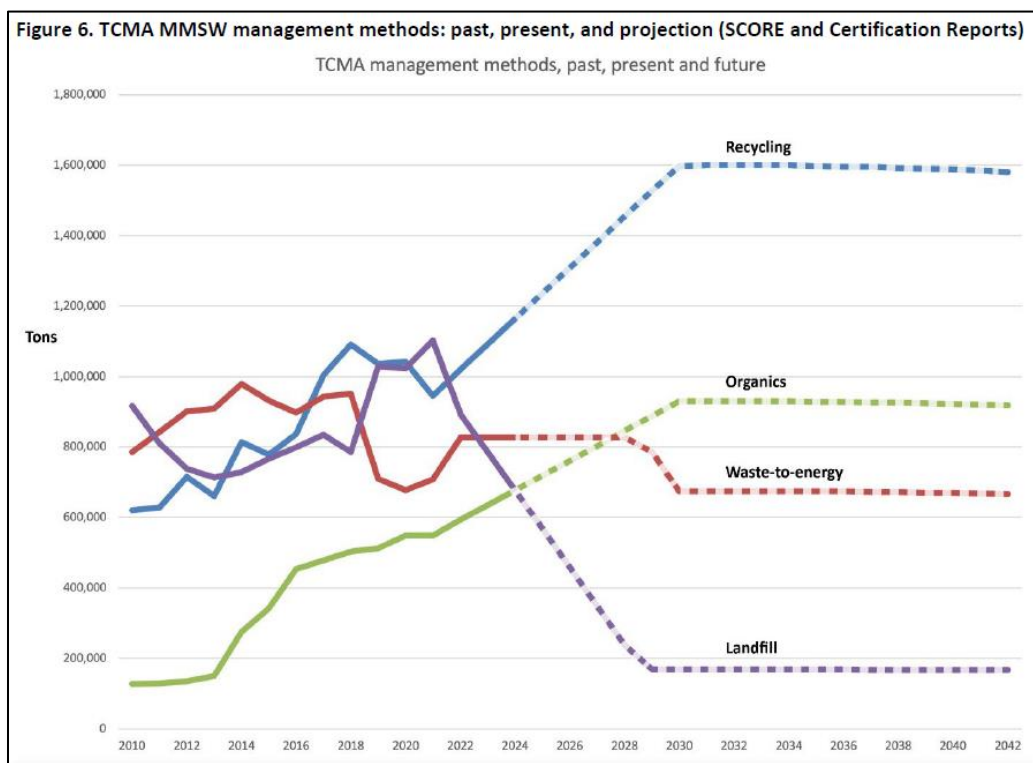


Figure 6 shows a precipitous drop in landfiling (from roughly 1.1 million tons in 2022 to 180,000 tons in 2030) when the ERL expansion is predicted to open. Presumably, the MPCA intends for its Plan, including Figure 6, to be accurate and relied upon by Sherburne County and all participants in Minnesota’s waste management industry. Moreover, additional landfill space has been approved with an approximate 13 million cubic yard expansion at WM’s Burnsville

⁶¹ Ex. 3, p. 17, Figure 6, 2024 Metropolitan Solid Waste Management Policy Plan for 2022-2042.

Landfill, which extends its operational life through 2062, and approximately 8.2 million cubic yard expansion at Republic Services Pine Bend Landfill, extending its operational life through 2045. Given MPCA's approved landfill expansions elsewhere, the need for a massive, immediate expansion of ERL is questionable. As discussed below, the MPCA's prediction of more processing of waste and less landfiling is also critical to both the MPCA exercising its authority and to planning.

The SEAW and DSDD do not reference this anticipated drop in landfiling projected by the MPCA's Policy Plan. Instead, the SEAW projects landfiling to increase, relying on a small sample size of landfiling from a five-year window to project future increases for the next 60 years.⁶² This is contrary to the MPCA's Policy Plan, which projects 2024 levels of over 600,000 tons of TCMA MMSW will drop to 200,000 tons in 2030, and remain at that lower level until at least 2042. Meanwhile the SEAW projects an annual 0.15% increase in landfiling to persist for over half a century; never accounting for the state's projection of a roughly 66% drop in landfiling from 2022 to 2030. As discussed below, this drop necessitates an alternative scale or magnitude analysis be conducted for a landfill capacity far below the massive size proposed by the Project. In addition, this anticipated decline in the percentage of TCMA MMSW to be landfilled undercuts the rationale given in the DSDD of an urgent need for greater capacity to justify the decision to exclude any assessment of an Alternative Site analysis.

III. The DSDD and SEAW should be amended to a modified, smaller scale or magnitude of the Project.

If the Project is to proceed at the Project Site, alternatives to maximum-permitted landfiling should be considered. These alternatives include (a) limitation to the term,

⁶² SEAW at p. 9 ("The waste disposal rates from the five-year period between 2019 and 2023 indicate an average annual increase of 0.15 percent (%). If the annual increase continues at the same rate, the proposed MSW disposal area will be consumed in 2085.")

height/slope, liner construction and scale of the expansion, (b) the alternatives identified in the SEAW and DSDD, and (c) enforcing the legislative and MPCA existing mandate that before waste is landfilled it must be processed and that the MPCA must work to expand processing availability. The DSDD fails adequately to consider these options in reaching its conclusion that “the EIS will not consider modified scale or magnitude as an alternative separate from other alternatives being evaluated.”⁶³ Sherburne County believes this decision in the draft DSDD should be reversed, and a smaller scale or magnitude of the Project should be included in the final scoping decision document, for the reasons stated below.

In stating that the EIS will not even consider the impacts of a smaller scale expansion, the primary justification given is that landfills should be “sized to reach optimal capacity.”⁶⁴ But it is impossible to know whether capacity is “optimal” if the EIS does not study other possibilities and compare the relative benefits and drawbacks to a smaller sized project and then compare the sizing requirements to overall need. It appears the SEAW and DSDD equate “optimal” with “maximum,” as supported by the Project’s scale with 26.67 million cubic yards of additional MSW capacity beyond ERL’s currently permitted 19.06 million cubic yards, a capacity which would not be consumed by the Project’s estimates until 2085.⁶⁵ Applying the SEAW’s assumptions, even a capacity of half that size – 13 million cubic yards – would last more than 30 years into the future, leaving ample opportunity for creation of additional capacity if and when it becomes needed. Of course, applying the MPCA’s Policy Plan’s assumptions about the amounts of TCMA MMSW to be landfilled from 2030 to 2042, 13 million cubic yards of capacity would last far, far longer than 30 years. Based on those MPCA Policy Plan’s projections, there is reason

⁶³ DSDD at p. 7.

⁶⁴ DSDD at p. 7.

⁶⁵ SEAW at p. 7.

to believe that no such massive capacity needs will be necessary 60 years from now.

Additionally, the scale of the Project as proposed does not comply with current Minnesota Rules and Sherburne County ordinances, providing an independent basis for considering an alternative scale or magnitude of the Project, as explained below.

A. The Project slope, grade, and proposed liners fail to comply with existing Minnesota Rules and local ordinances.

As currently proposed, the Project maximizes capacity to the fullest extent, seeking 26.67 million cubic yards of additional MSW capacity beyond ERL's currently permitted 19.06 million cubic yards, capacity which would not be consumed by the Project's estimates until 2085. A number of questionable design assumptions and decisions contribute to that size, including a proposed slope that exceeds current Minnesota Rules and Sherburne County's ordinance. Likewise, the project calls for use of a geosynthetic clay liner (GCL) in place of one-foot (1) of clay that presents significant risks to the environment and that may not comply with Sherburne County's ordinance; as such, a liner constructed out of a minimum of two-feet (2) of a soil barrier layer that would be compliant with best practices and County ordinance should be evaluated in the EIS (recognizing that use of a safer, thicker liner will lead to a modified scale or magnitude of the overall capacity).

1. The proposed cover slopes exceed allowable limits.

The capacity and parameters used by the Proposer exceed allowable limits under both the Minnesota Rules and Sherburne County's ordinance.

The SEAW mentions "[t]he Project's final cover includes slopes ranging from a maximum of 33% (3H:1V) on the stormwater diversion berm backslopes to a minimum of 3% on the top of the landfill."⁶⁶ Slopes of 33% exceed the applicable Minnesota Rule of a slope no

⁶⁶ SEAW at p. 11.

more than 25%.⁶⁷ The proposed final grade side slope of 33% also exceeds the applicable Section 7.2 of Sherburne County Solid Waste Management Ordinance No. 180, which provides that solid waste landfills shall not “exceed final contours of a minimum 2 percent and a maximum of 20 percent over the entire fill for solid waste landfills.”

Failing to cite these standards, the SEAW cites to a “variance approved in the last solid waste permit issued in 2015 to increase the grade of the final cover slope to 33% using MPCA guidance on final cover slopes.”⁶⁸ A grant of a 2015 variance is an insufficient basis to decline to even study alternatives for the Project.

First, the 2015 variance for the solid waste permit pertained to the then-existing ERL site, not any proposed expansion area. The Project is new, requiring a new permit. As the MPCA has recognized, the Project Site is distinct from the existing ERL site, the Project is a not a “connected” or “phased” action per Minnesota Rule 4410.3000, and there is a need for environmental review “based on the potential for new impacts associated with the Project.”⁶⁹

Second, the 2015 variance neither implies nor guarantees that any future variance will be granted. No ruling on a variance would be given until such time as it is applied for and considered by the applicable RGUs, including the County.

While Waste Management, and potentially the MPCA, may desire for the Project to exceed the slopes permitted by law, there is no basis to *exclude* all analysis on alternatives that fall within the law from the SEAW or DSDD, as the DSDD has proposed. At the very least, both the Rules compliant and variance scenarios should be studied so that Sherburne County may make an informed decision of the consequences associated with whether to grant a Waiver

⁶⁷ Rule 7035.2815, subp. 6 (C)(2) (“The final cover system must be graded to prevent surface water ponding and must have a minimum slope of two percent and a maximum slope of no greater than 25 percent.”)

⁶⁸ SEAW at p. 11.

⁶⁹ SEAW at p. 7.

request, when and if one is made. Indeed, helping to inform RGUs in their permitting decisions is the very purpose of conducting an EIS.⁷⁰

2. The proposed liner provides inadequate protection and may not comply with Minnesota's Rules and County Ordinance

Next, Minnesota Rules set forth various liner requirements for landfills.⁷¹ Sherburne County's Solid Waste Ordinance incorporates those requirements and also sets forth additional liner system requirements.⁷² The Project as designed indicates it may use either "[a] conventional composite liner, consisting of two feet of compacted clay overlain by 60-mil HDPE geomembrane, or [a] modified composite liner, consisting of one foot of compacted clay overlain by a doubled-sided non-woven GCL, overlain by 60-mil HDPE geomembrane."⁷³ Sherburne County questions whether either alternative is adequate to ensure compliance with Minnesota Rules, which require at a minimum "a barrier liner capable of containing leachate generated at the facility and surface water that has come in contact with waste."⁷⁴ To ensure compliance with the Rules and County Ordinance in this regard, Sherburne County believes that studying more than the two alternatives proposed in the SEAW the EIS is necessary. Specifically, given the characteristics of the Project, the less than suitable location, and the site's history of unmanaged contaminants, Sherburne County believes the EIS should also study a composite liner that exceeds standards set forth in Minn. Rules 7035.2815 of no less than three feet of compacted clay overlain by 60-mil HDPE geomembrane, which may be necessary to adequately contain leachate. A liner that exceeds current standards as set forth in Minnesota Rules may be

⁷⁰ DSDD at p. 3 ("EIS is for use by governmental units as a guide in considering permits or approvals for the Project and in identifying measures necessary to avoid or mitigate adverse environmental effects.")

⁷¹ See, e.g., Minn. R. 7035.2815 subp. 7.

⁷² Sherburne County Solid Waste Management Ordinance, Section 7.6(K).

⁷³ SEAW at p. 36.

⁷⁴ Minn. R. 7035.2815 subp. 7(D)(2).

warranted given that the proposed location does not meet the locations set forth in Minn. Rules, 7035.2815, subp. 2, and Section 7.1 of the County's Solid Waste Management Ordinance.

B. The Project's scale, magnitude, and time frame should be limited, with smaller scale alternatives evaluated.

As stated, the projections in the SEAW and DSDD propose a Project that will last until 2085, with an additional assessment of whether more landfilling at the Project Site should proceed then.⁷⁵ The County believes that 60 years is too long to wait before conducting another environmental assessment. If the proposed Project was cut in half, the Project would have capacity for landfilling until roughly 2055. No compelling reason is given in the SEAW or DSDD for not at least *considering* a smaller scale project at this time, and none would be convincing given that, as discussed above, MCPA's projections call for a massive drop in waste landfilling over the relevant time period.

For informed decision-making regarding viable alternatives to proceed, the DSDD should consider a smaller scale project and compare that smaller scale expansion's relative strengths and weaknesses to the Project as designed.

IV. Landfilling is disfavored by state law, necessitating study of a smaller scale Project.

The State of Minnesota has a waste hierarchy that ranks landfilling as the least desirable way to manage waste. In accordance with that policy decision of the Legislature, the SEAW and DSDD should explore alternatives to direct landfilling of waste. This would require the MPCA to exercise the authority it already has and enforce its rules as written. The MPCA dedicating resources (or even exerting influence to do so and to guarantee a waste stream) to the

⁷⁵ SEAW at pp. 9; ("If the annual increase continues at the same rate, the proposed MSW disposal area will be consumed in 2085."); 13 ("it is understood that the Facility will eventually reach its permitted capacity, at which point any potential expansions or development will be evaluated based on need, regulatory requirements, and environmental review at that time.")

establishment of processing centers to comply with the waste hierarchy and redirecting unprocessed waste outside of ERL are necessary steps that should be considered in the forthcoming EIS. Sherburne County, along with the Tri-County Solid Waste Management Commission (a joint powers board consisting of Stearns, Benton, and Sherburne counties) is exploring options for managing solid waste and reducing overall dependence on indiscriminate landfilling. The Tri-County Solid Waste Management Commission is specifically looking at options regarding its current waste disposal agreement with Pope-Douglas Solid Waste Management which requires delivery of waste generated within the Tri-County service area to Pope-Douglas. This agreement is set to expire on December 31, 2031, and identifying methods to reduce overall landfilling is paramount to Sherburne County and Tri-County at this time.

A. To comply with the State’s waste hierarchy mandate, the MPCA must change course and prioritize waste processing.

A brief history of waste management shows that before the 1960s, open or burning dumps were used for waste disposal. In the Great Depression and post-war era, people generated less waste and commonly scavenged dumps. In the late 1960s, there was a shift toward environmental awareness. The 1969 Minnesota Solid Waste Act authorized the MPCA to manage waste. In the 1980s, the Minnesota Waste Management Act (MN Stat. 115A) prioritized waste, creating a waste hierarchy (with landfilling of waste as the lowest priority), a landfill siting process, and SCORE (Select Committee on Recycling and the Environment) was passed to financially support implementation of the hierarchy, including processing facilities.⁷⁶

⁷⁶ The Minnesota Legislature created a capital assistance program to develop waste processing facilities. Minn. Stat. § 115A.49(a). The program encourages development of “feasible and prudent alternatives to disposal.” Minn. Stat. § 115A.49(b). MPCA runs the program. *See also, e.g.*, MN Stat. 115A.0716 subd. 1 (empowering the Commissioner to “make grants to any person for the purpose of researching, developing, and implementing projects or practices related to collection, processing, recycling, reuse, resource recovery, source reduction, and prevention of waste”); *id.* at subd. 2 (empowering the Commissioner to “make loans, or participate in loans, for capital costs or improvements related to any of the” same activities).

The State of Minnesota has environmental protection statutes mandating the “protect[ion of] the state’s land, air, water and other natural resources,” declaring it state policy to improve “waste management in the state” by adhering to certain objectives and a waste hierarchy. Those objectives include: (1) reduction of waste, (2) separation and recovery of materials from waste, (3) reduction on “indiscriminate dependence on disposal of waste,” (4) coordination of waste among political subdivisions, and (5) “development and financial security of waste facilities.”⁷⁷. To meet these goals, the Legislature passed a waste hierarchy declaring the State’s statutory preference for how waste is to be handled. The MPCA illustrates this hierarchy:⁷⁸

Figure 2. Minnesota’s solid waste management hierarchy of preferred methods



MPCA “is bound by statute to follow” this waste hierarchy.⁷⁹

In the late 1980s, there was a boom of waste to energy processing centers, including Hennepin Energy Recovery Center (HERC) and Great River Energy (GRE). In the 1990s, recycling increased, awareness for groundwater protections at landfills became mainstream, and landfill growth became an established problem.⁸⁰

⁷⁷ Minn. Stat. § 115A.02(a).

⁷⁸ Ex. 3 at p. 6, Fig. 2, Metropolitan Solid Waste Management Policy Plan for 2022-2042.

⁷⁹ Ex. 3 at p. 44, Metropolitan Solid Waste Management Policy Plan for 2022-2042.

⁸⁰ See generally Ex. 10, Chapter 1. Solid Waste Management.

A state law was enacted restricting disposal of waste so that the weight of the waste remaining after processing and to be disposed in a landfill is “not more than 35 percent of the weight before processing.”⁸¹ This waste processing mandate should have created a guaranteed waste stream for processing centers, like GRE, so that they could operate at maximum capacity, thus allowing for financial stability. Instead, the MPCA did not seek active enforcement of its waste rules, and GRE struggled to have enough waste to process. With GRE never operating at full processing capacity – despite no shortage of waste in need of processing – eventually GRE was forced to close as not economically viable. GRE offered to sell its facility for \$1, but with no guaranteed waste stream for processing not even that offer allowed GRE to remain open.

Closure of GRE led to at least 250,000 tons of additional waste being landfilled instead of being processed as waste to energy.⁸² With HERC’s anticipated closure, an additional 365 tons of waste (roughly 45% of Hennepin County’s waste) will be landfilled. To the County’s knowledge, there is no identifiable plan to increase waste processing centers. The MPCA does not appear to be enforcing its rules as written, which require waste processing. Instead, the MPCA encourages landfill expansion as an alternative to processing of waste.

The MPCAs indifference for enforcement of the waste hierarchy is now being openly exploited. Despite decades of environmental awareness and waste management laws, the Restriction on Disposal law allows waste to be landfilled when no “resource recovery facility serving the metropolitan area is capable of processing the waste.” MN Stat. 473.848, subd. 1. This loophole is used for waste to be directly landfilled – as a result – the MPCA seems intent to allow landfills to fill up at an alarming rate. The MPCA is the gatekeeper for waste to be

⁸¹ Minn. Stat. § 473.848, subd. 5.

⁸² MPCA admits GRE’s closure “resulted in more than 250,000 tons of waste going to landfill,” and “directly increased landfill expansions.” Ex. 3 at p. 5, 2024 Metropolitan Solid Waste Management Policy Plan for 2022-2042.

landfilled,⁸³ with the State’s mandate to process waste to 35% of its original waste before landfilling. The MPCA is armed with existing authority to fund processing centers to create a processing pipeline of waste. Yet, the MPCA’s decades-long failure to follow the waste hierarchy and enforce its own rules is responsible for closure of GRE’s waste processing center and the failure of new ones to open. Failing to consider alternatives of additional waste processing in EIS such as for the Project is another step in the wrong direction of not following the waste hierarchy.

This is not waste management; it is a failure of the system. When failures are recognized, solutions emerge. Before the ERL is expanded, there should be a requirement for front end processing of waste to remove recyclables and source separated compostable materials. This will be a new beginning to achieving the state’s mandate of landfilling as the last resort.

B. Landfilling pollutes.

By definition, landfilling waste pollutes the State’s natural resources.

With the anticipated closure of HERC, landfilling will likely skyrocket unless alternatives to landfilling are required.⁸⁴ For example, in recent years the waste received at ERL from Hennepin County has increased significantly, with over 131,000 tons being attributed to Hennepin County in 2024 alone⁸⁵—utilizing more and more cubic air space on an expedited timeframe to fulfill just one TCMA county’s needs.⁸⁶ An estimated 93% of all metropolitan

⁸³ The MPCA is the only statewide regulatory body with authority to manage waste processing and disposal and is empowered to implement the State’s waste policy. *See e.g.*, Minn. Stat. § 115A.02; § 115A.06; § 473.801-473.834; Minn. R. Chapter 7035.

⁸⁴ In 2021, approximately 1,102,177 tons of waste generated in the metropolitan area was deposited into landfills, “with 93% of total waste headed to landfill classified as unprocessed MMSW.” Ex. 3 at p. 59, Metropolitan Solid Waste Management Policy Plan for 2022-2042. The waste was considered “unprocessed” due to lack of processing availability – making this a negative spiral.

⁸⁵ SEAW at p. 6.

⁸⁶ The MPCA’s goal and legislative directive is to reduce “waste generated and recycling/composting by 75% of our solid waste by 2030.” Ex. 3 at p. 9, Metropolitan Solid Waste Management Policy Plan for 2022-2042. In 2021 the metropolitan area generated 3.3 million tons of waste, and the MPCA forecasts this will “grow to 3.92 million tons by 2042.” *Id.* at p. 10.

waste⁸⁷ being landfilled is unprocessed – meaning this waste goes from home garbage cans to a landfill.

MPCA’s public projections show significantly less need for landfilling, which if true, show no need to expand ERL especially when other TCMA landfill(s) have newly approved landfill expansions. As shown in Figure 6 above on waste projections, MPCA projects landfilling need to drop significantly, waste-to-energy to drop slightly, and recycling waste and organics (by homeowners) increasing dramatically.

MPCA has resources (financial and legislative) to achieve these reductions. If this happens, partnership opportunities between government and private entities could emerge.

C. Alternative technologies to landfill expansion, such as increasing processing capacity, should be investigated and evaluated in the forthcoming EIS.

As the sole entity with cumulative authority over management of waste processing and disposal, the MPCA is mandated to improve waste management in the State by ensuring separation and recovery of materials and energy from waste⁸⁸ and by ensuring reduction in indiscriminate dependence on disposal of waste.⁸⁹ When MPCA makes clear that it will enforce its own rules requiring waste to be processed and sorted before landfilling, opportunities will arise.⁹⁰

⁸⁷ In 2021 “93% of total waste headed to landfill classified as unprocessed MMSW.” Ex. 3 at p. 59, Metropolitan Solid Waste Management Policy Plan for 2022-2042.

⁸⁸ Minn. Stat. § 115A.02(a)(2).

⁸⁹ Minn. Stat. § 115A.02(a)(3).

⁹⁰ Minnesota has a capital assistance program for waste processing facilities – yet it appears it is not being leveraged. Minn. Stat. § 115A.49(a) (“There is established a program to encourage and assist cities, counties, solid waste management districts, and sanitary districts in the development and implementation of solid waste management projects and to transfer the knowledge and experience gained from such projects to other communities in the state.”). This “program must be administered to encourage local communities to develop feasible and prudent alternatives to disposal,” including not only the reduction of waste generation, but also “resource recovery,” “waste separation by generators, collectors, and other persons,” and “waste processing.” Minn. Stat. § 115A.49(b).

Feasible alternatives range from simple processing solutions (from encouraging residents to raise chickens to eat food waste, to manually sorting waste, encourage and support source separated organics composting facilities, or use of automated technology to process waste) to large private/public agreements (including potentially with Sherburne County) to fund new processing centers. Of course, until local processing centers are feasible, the MPCA could require waste to be processed outside of the County.

As currently constructed the DSDD states that the “EIS will evaluate several Alternative Technologies that may reduce the volume of waste placed in the landfill.”⁹¹ A focus on the reduction of waste placed in landfills is proper, but in a number of instances, such as for “composting” and “source-separate materials,” the DSDD states it will review these technologies to “extend the landfill’s life.”⁹² But rather than assuming any processing of waste merely enables a longer lifetime for massive landfiling capacity, the DSDD should be amended to consider the effects of these alternative technologies in their ability to reduce the permitted and necessary capacity – that is, to make the Project smaller. Even if these alternative technologies will not fully “replace the land disposal capacity proposed for the project,”⁹³ potential processing capacity which may become available should be considered to the extent it can reduce the need for landfiling and therefore affect the scale or magnitude of the expansion capacity.

Further, the DSDD appears to assume that processing capacity will remain stagnant over the next 60+ years of the project. As one example, the DSDD states that the “EIS will not evaluate incineration because the system-wide incineration capacity does not currently exist to

⁹¹ DSDD at p. 7.

⁹² DSDD at p. 7.

⁹³ DSDD at p. 7.

replace the land disposal capacity proposed for the project.”⁹⁴ This reasoning is flawed and does not justify refusing to consider alternative technologies in the EIS.

The lack of present-day processing capacity (whether for waste to energy or another type of processing) does not mean that processing capacity will not become available in time, throughout the 60+ year proposed life of the Project. On the contrary, given the state’s hierarchy and MPCA’s mandate to ensure that cumulative landfilling across the state is minimized, the MPCA should be considering the impacts of proactive steps to increase processing capacity, whether those be: the MPCA providing funding and financial support to increase the amount of processing capacity; exploring public/private partnerships for processing, guaranteeing waste streams to entities interested in processing waste (such as the now-closed GRE plant), or other means. Those methods and more should be considered in the forthcoming EIS as alternative technologies, which may reduce the necessary landfilling capacity and allow for a smaller scale expansion in the Project.

V. The SEAW includes various mistakes as to County groundwater behavior, landfill design, leachate collection system, stormwater management, and other topics.

The County attaches as an Appendix hereto a spreadsheet with detailed observations on various page-by-page comments to the SEAW and DSDD, categorized by topics such as Location Criteria, Groundwater and Monitoring, Leachate Management, Design. Comments raised therein include but are not limited to include the following:

- Project Description:
 - Use of GCL poses various construction and operational challenges and concerns such as potential for differential settlement, slippage and slope

⁹⁴ DSDD at p. 7.

failures, punctures from underlying waste materials, and possible impacts to groundwater.

- Upper end value of 68,000 gallons per day of leachate generated equates to 90 percent of the permitted capacity of both the MCES treatment plant and the city of Elk River wastewater treatment plant. Contingency plans need to be developed if leachate generation exceeds anticipated volumes and/or MCES or city of Elk River no longer accept leachate.
- Minn. R. 7035.2815, subp.6(C)(2) provides that final cover slopes shall not exceed 25 percent. Section 7.2 of Sherburne County SWO also provides that final contours do not exceed 20 percent slope.
- Geology:
 - Further documentation is needed to demonstrate how a possible release of contaminants will remain in the upper outwash aquifer, when the lower outwash aquifer is already impacted.
 - Further documentation is needed to demonstrate the ability to provide for downgradient monitoring and mitigation in the event of a release of contaminants from the landfill.
- Groundwater:
 - Page 42 of the Scoping EAW states: *"The downgradient-most extent of the groundwater detections has been defined (i.e., a clean downgradient well exists) and natural attenuation is occurring."* Explain how it was determined that "a clean downgradient well" indicates that natural

attenuation is occurring, when instead the plume just hasn't reached that monitoring point.

- Groundwater monitoring needs to account for PFAS.
- Lower Outwash needs to be included in the narrative.
- Further information is needed to demonstrate placement of downgradient monitoring wells in the wetland complex and Rice Lake. Also demonstrate how mitigation/corrective action could occur in the event that contamination occurs beyond the compliance boundary.
- Additional concerns were identified in review of the SEAW such as, Noise, Transportation, Landfill Gas Emissions, and Visual, of which information is missing and need further study.

A number of the topics commented upon in this comment letter and its Appendix touch on the EIS Scoping Criteria categories for which the SEAW and DSDD rank topics as A, B, or C.⁹⁵ Those topics include Geology, Soils and Topography/Landforms, Water Resources, Contamination/Hazardous Materials/Wastes, Visual, and Transportation.⁹⁶ Sherburne County notes that the EQB recommends using criteria designated as A-D, with “D” being “the topic is significant and information beyond what was in the EAW will be included in the EIS.”⁹⁷ Based on Sherburne County’s comments throughout this comment letter and the attached Appendix, Sherburne County believes that the “D” category is appropriate, with additional information needed beyond that in the SEAW, for at least the topics of:

- Geology, Soils and Topography/Landforms

⁹⁵ DSDD at p. 8.

⁹⁶ DSDD at p. 8.

⁹⁷ 2010 EQB Guide to Minnesota Environmental Review Rules p. 25.

- Water Resources
- Contamination/Hazardous Materials/Wastes

And a “C” category is appropriate for:

- Visual
- Transportation
- Cover Types

The County agrees with the remaining EIS scoping criteria as listed in Table 4.

Further, the SEAW has various mistakes impacting wetlands, land use, required permits, and zoning. For example, on page 24 of the SEAW, 2.24 acres of wetland are listed as being eliminated by the Project. SEAW Figure 17, however, lists 2.494 acres of wetland removal areas. Clarification is needed. This mistake is repeated throughout. *See* Table 8.1, page 30 at 12(a), page 40, 12(b)(4), page 63, 21(c).

SEAW page 25-26, Table 9-1 lists an amendment as needed to the Wetland Conservation Permit Act. That previously issued permit, however, was for a mining operation to a different company. Now a landfill is proposed, and the impacts have changed for this new Project. A new Wetland Conservation Act Permit/Replacement Plan is required.

SEAW, page 26-27, at 10.a3 states: “Sherburne County classifies Rice Lake as a Natural Environment” lake in Section 14 of its zoning ordinance. Industrial development is not prohibited in a shoreland district of a Natural Environment Lake.” This statement is false. The chart for Sherburne County Zoning Ordinance, Section 14 – Shoreland District – 4.23 Land Uses for Lake Classification has an N, which stands for “Not Permitted Uses” for the industrial Land Use under a Natural Environment Lake.

SEAW page 27 at 10.b shows that although the Sherburne County 2040 Comprehensive Plan's Future Land Use Map (Figure 13) shows Heavy Industrial, the proposed areas of expansion are not zoned Heavy Industrial. A landfill must be located in a Heavy Industrial Zone; therefore, the project proposer will need to request to have applicable parcels rezoned. In addition, a Conditional Use Permit is needed to be applied for and approved for a landfill to expand to the north.

SEAW page 27 at 10.c, references "Rice Lake wetland complex." Rice Lake is a Natural Environment Lake and should be listed as such.

Additional concerns are raised in the attached spreadsheet, *see* Appendix.

C. Protective limitations are needed given the risk to healthy drinking water and the environment

The SEAW and DSDD should be limited to require certain protections to the environment given the documented difficulty to monitor and control the existing ERL pollution plume. These include the following:

- Installing more monitoring wells on the north and south side of the plume to provide for sufficient downgradient monitoring to assure that pollutants can be detected and tracked in the event of a contaminant release, as would be detailed typically in a plan for consideration and approval by the County.
- To help in containing any potential contaminant release, sufficient setbacks should be required to allow for downgradient monitoring points.
- The liner and leachate collection system should be required to be engineered and constructed to provide for containment, using the best-known technology.⁹⁸ This could

⁹⁸ The best-known technology changes over time. This is another reason not to permit the entire ground now for a 60 year term, and instead permit a much smaller area. This ensures that in 30 years the then state-of-the-art system will be used for any needed future landfill.

include a double lined system or an additional foot of clay that provides for, at minimum, three (3) feet of a soil barrier layer that meets the requirements set forth in Section 7.7 (C) of the County's Solid Waste Management Ordinance. .

- As explained in detail above, front end processing of waste should be required to remove recyclables and source separated compostable materials prior to landfilling. This is consistent with the state's mandate to reduce overall landfilling and increase processing.

Dated: November ____, 2025

SHERBURNE COUNTY

/s/ _____

Gary Grey

Chair, Sherburne County Board of Commissioners

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