

**STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY**

**IN THE MATTER OF APPROVAL OF THE
POPE/DOUGLAS JOINT WASTE DESIGNATION PLAN**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER**

Pope County and Douglas County, through the Pope/Douglas Solid Waste Management joint powers board, submitted a Joint Waste Designation Plan on May 27, 2020, to the Commissioner of the Minnesota Pollution Control Agency (MPCA) for review and approval or disapproval pursuant to Minn. Stat. § 115A.84, subd. 3. Having reviewed the designation plan, the MPCA makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

Authority and Background

1. Minn. Stat. § 115A.80-.893 authorize counties and qualifying solid waste management districts to designate a solid waste processing or disposal facility as the place where all or a portion of the solid waste generated within its boundaries is required to be delivered.
2. Minn. Stat. § 115A.84, subd. 3, requires a county, before commencing the designation process, to submit a designation plan to the MPCA for review and approval. A county's designation plan must be consistent with its solid waste management plan or master plan and with statewide and regional solid waste management goals.
3. Minn. Stat. § 115A.84, subd. 3(a) requires that as part of the designation process a county or district must submit a designation plan to the MPCA Commissioner for review and approval or disapproval. Minn. Stat. § 115A.84, subd. 3(b) provides that the Commissioner shall approve the designation plan if the plan satisfies the requirements of Minn. Stat. § 115A.84, subd. 2. The Commissioner has 120 days after submission of the plan to make a decision 115A.84, subd. 3(b).
4. In the early 1980's Pope and Douglas Counties formed the Pope/Douglas Joint Solid Waste Management Board (Pope/Douglas) pursuant to a joint powers agreement under state law Minn. Stat. §471.59 subd. 11 and Minn. Stat. §400.04 to jointly manage waste generated in the two counties. The joint powers agreement that created Pope/Douglas specifically authorized the joint entity to plan and manage waste for both counties as one unit.
5. The MPCA approved the Pope/Douglas County Solid Waste Management Plan on March 15, 2013 (Solid Waste Plan). The Solid Waste Plan stated that Pope/Douglas would consider designation during the plan period.

6. Pope/Douglas submitted the Pope/Douglas Solid Waste Management Joint Waste Designation Plan, dated May 5, 2020 (Designation Plan), to the MPCA on May 27, 2020 for review and decision.
7. The Designation Plan proposed to designate solid waste generated within the boundaries of Pope County and Douglas County to their jointly owned waste-to-energy facility located in Alexandria, MN (Pope/Douglas Facility).
8. The Designation Plan defines the designation service area as all of Pope and Douglas Counties. Acceptable waste is defined in the Designation Plan and generally includes waste that can be processed at the Pope/Douglas Facility or those wastes included in the unacceptable list to be updated as needed.

Consistency with the County Comprehensive Solid Waste Management Plan and Statewide Goals and Policies

9. Minn. Stat. § 115A.84, subd. 1 provides that a county's designation plan must be consistent with the county's comprehensive solid waste management plan and with local, regional and state waste management goals. Minn. Stat. § 115A.84, subd. 2(b)(6) says that the designation plan must evaluate whether the designation takes into account and promotes local, regional, and state waste management goals.
10. Minn. Stat. § 115A.84, subd. 2(a)(1) requires that the designation plan evaluate the benefits of designation, including the furtherance of local and any district or regional waste management plans and policies, and the state policies in Minn. Stat. § 115A.02.
11. State waste management goals, policies, and purposes are contained Minn. Stat. § 115A.02 and Minn. Stat. § 115A.551.
12. Minn. Stat. § 115A.02 states that the goals of Minn. Stat. § 115A are to protect the state's land, air, water, and other natural resources and public health by reducing the amount and toxicity of waste generated, recovering materials and energy from waste, reducing land disposal, coordinating waste management among political subdivisions, providing for the development and financial surety of waste facilities, and fostering an integrated waste management system.
13. Minn. Stat. § 115A.02(b) provides that the waste management practices in order of preference are: (1) waste reduction and reuse; (2) waste recycling; (3) composting of source-separated compostable materials, including but not limited to, yard waste and food waste; (4) resource recovery through mixed municipal waste composting or incineration; (5) land disposal which produces no measurable methane gas or which involves the retrieval of methane gas as a fuel for the production of energy to be used on site or for sale; and (6) land disposal which produces measurable methane and which does not involve the retrieval of methane gas as a fuel for the production of energy to be used on site or for sale.
14. Minn. Stat. § 115A.551, subd. 2a sets the recycling goal for a county in the non-metro counties at 35 percent by weight of total solid waste generation.

15. The Designation Plan is consistent with the Solid Waste Plan and local, regional, and state waste management goals, and evaluates whether designation takes into account and promotes the goals. The County's Solid Waste Plan includes a draft designation ordinance as an option to direct waste to the Pope/Douglas Facility. The Pope/Douglas Facility would manage wastes in accordance with Minn. Stat. § 115A.02 by utilizing materials recovery and energy recovery which is higher on the state's waste hierarchy.
16. The Designation Plan evaluates the benefits of designation, including furtherance of local and regional waste management plans and policies, and the state policies in Minn. Stat. §115A.02. Pope/Douglas is implementing policies that are consistent with and support the goals in Minn. Stat. § 115A.02 including: reducing land disposal of solid waste, recovering materials and energy from solid waste, supporting orderly and deliberate development of waste facilities including landfills for residuals and ash, providing an optimal waste supply, providing for the development and financial surety of waste facilities, fostering an integrated waste management system, and coordinating waste management among political subdivisions.
17. Pope/Douglas' solid waste plan proposes working toward establishing an integrated solid waste system consistent with Minnesota's waste hierarchy. The recycling rate achieved by Pope/Douglas in 2019 was 40.4%.
18. The solid waste management system, as described in the Pope/Douglas Solid Waste Plan, protects the state's land, air, water and other natural resources and public health by improving waste management. The proposed designation is consistent with the Pope/Douglas Solid Waste Plan as required by Minn. Stat. § 115A.84, subd. 1, the legislative declaration of purpose and goals and the hierarchy of waste management practices as described in Minn. Stat. § 115A.02, and the county recycling goal as required by Minn. Stat. § 115A.551.

Conservation and Recovery of Resources or Energy from Materials

19. Minn. Stat. § 115A.84, subd. 2 (a)(1) and (b)(2) require that the designation plan evaluate the benefits of designation, including the public purposes achieved by the conservation and recovery of resources, and whether the designation will result in the recovery of resources or energy from materials that would otherwise be wasted.
20. The Designation Plan proposes designating waste to the Pope/Douglas Facility, which is a waste-to-energy (WTE) facility that recovers recyclable materials from the waste prior to conversion of the waste to energy. The Pope/Douglas Facility will seek to develop waste delivery agreements with haulers.
21. The designation to the Pope/Douglas Facility supports and enables the Counties to participate in an integrated solid waste management system that results in the recovery of resources and production of energy from waste that would otherwise be lost. The Designation Plan adequately evaluated the benefits described in Minn. Stat. § 115A.84, subd. 2.

Estimated Cost of the Designation

22. Minn. Stat. § 115A.84, subd. 2 (a)(2) requires that the designation plan evaluate the estimated costs of the designation, including the direct capital, operating and maintenance costs of the facility designated, the indirect costs, and the long-term effects of the designation.
23. The Designation Plan outlines the direct capital costs and the operating and maintenance costs are those associated with the capital investment and financing of the operations of the Pope/Douglas Facility. The indirect costs include enforcement, route rearrangement, and other long term impacts.
24. The Designation Plan states that annual tip fee is expected to range from \$80 to \$115. Sale of recyclables and steam generated at the facility will provide the remainder of the facility operating income which will be as much as \$2 million in year 2035.
25. The Designation Plan describes route rearrangement is an indirect cost of designation. Transportation of MMSW from waste generators to a processing or disposal facility is a regular and routine cost for waste management. The Designation Plan states that route disruption should be minimal as the facility is currently the primary delivery option within the two counties.
26. The Designation Plan outlines the enforcement of designation as an indirect cost of implementing designation. The costs related to enforcing county ordinances are variable. The Counties plan to adopt the same designation ordinances to reduce the potential for confusion among haulers and generators and make inadvertent violations less likely.
27. The Designation Plan includes the information to be evaluated concerning the cost of the designation in accordance with the requirements of Minn. Stat. § 115A.84, subd. 2.

Lessen the Demand for and Use of Land Disposal

28. Minn. Stat. § 115A.84, subd. 2 (b)(2) requires that the designation plan evaluate whether the designation will lessen the demand for and use of indiscriminate land disposal.
29. The Designation Plan evaluates whether the proposed designation will reduce the need for land disposal. Pope/Douglas estimates that the designation will divert approximately 3,000 to 6,000 additional tons per year of Mixed Municipal Solid Waste (MMSW) from going to out of county landfills.
30. The Designation Plan states that the environmental benefits of waste to energy are the primary drivers of the designation plan.
31. The Designation Plan outlines that the designation will cause MMSW currently being disposed in landfills to be redirected to resource recovery and thereby will lessen the demand for and use of

indiscriminate land disposal, as required in Minn. Stat. § 115A.84, subd. 2.

Financial Support of the Facility

32. Minn. Stat. § 115A.84, subd. 2 (b)(3) requires that the designation plan evaluate whether the designation is necessary for the financial support of the facility.
33. The Designation Plan describes the loss of revenue would be detrimental to cover the bonds used to provide improvements to the Pope/Douglas Facility. It goes on to say that other assurance methods rely on multiple factors that are outside of the authority of Pope/Douglas.
34. The Designation Plan evaluated whether the designation was necessary for the financial support of the facility in accordance with Minn. Stat. § 115A.84, subd. 2.

Less Restrictive Methods

35. Minn. Stat. § 115A.84, subd. 2 (b)(4) requires that the designation plan evaluate whether less restrictive methods are available for ensuring that an adequate solid waste supply is available.
36. The Designation Plan described the following alternatives to designation: 1) relying on negotiated contracts, 2) publicly owned collection services, 3) enforcement of public entities statutes, and 4) closure of landfills.
37. The Designation Plan stated the following regarding negotiated contracts: Negotiating contracts without designation is inefficient in several respects: 1) it only reaches those haulers willing or available to enter into the contracts and only applies so long as the contract is in effect, 2) it is subject to the efficiency and effectiveness of the negotiation process and may be costly if it requires substantial incentives to persuade parties to enter into the contract, and 3) the contracting process does not reach self-haulers whereas designation will. While the Member Counties will negotiate contracts with the licensed haulers, having designation ordinances in place will serve as a crucial safety net because designation will still apply to those without waste supply agreements.
38. The Designation Plan explored publicly owned collection services: There are no publicly owned collection systems in the Member Counties. Pope/Douglas could invest in the equipment necessary to operate a publicly owned collection service, but that would be expensive and administratively burdensome. Overall, the region as a whole depends on private collection and it would be disruptive, expensive, and potentially inefficient to redo the existing system with public collection.
39. The Designation Plan explored enforcement of laws governing the management of public entity waste: The public entities in both member counties all are required to have their waste delivered

to the Pope/Douglas Facility. No publicly owned collection nor organized systems are within the counties. Although the public entities do assist in the delivery of acceptable waste to the facility, they do not address the comprehensive approach provided by the waste designation process.

40. The Designation Plan explored closure of landfills: The Member Counties do not own nor operate a landfill and there are no existing landfills in the counties that accept MMSW. The counties do not have the ability to close or order the closure of landfills in other jurisdictions.
41. The Designation Plan concluded that designation is the most comprehensive, fair and economically efficient means of ensuring delivery to the Pope/Douglas Facility. The Designation Plan adequately evaluated less restrictive methods in accordance with the requirements of Minn. Stat. § 115A.84, subd. 2.

Feasible and Prudent Waste Management Alternatives

42. Minn. Stat. §115A.84, subd. 2 (b)(5) requires that the designation plan evaluate other feasible and prudent waste management alternatives for accomplishing the purposes of the proposed designation, the direct and indirect costs of the alternatives, including capital and operating costs, and the effects of the alternatives on the cost to generators.
43. The Designation Plan evaluated the above described alternatives to the proposed designation: (1) relying on negotiated contracts, 2) publicly owned collection services, 3) enforcement of public entities statutes, and 4) closure of landfills). The Designation Plan finds that designation is the most comprehensive, fair and economically efficient means of ensuring delivery of Acceptable Waste generated in the Member Counties to the Pope/Douglas Facility.
44. The Designation Plan adequately evaluated feasible and prudent waste management alternatives for purposes of accomplishing the designation, and fulfills the requirements of Minn. Stat. §115A.84, subd. 2.

Designation to Disposal Facilities

45. Minn. Stat. §115A.84, subd. 2 (c) requires evaluation of additional elements when a designation plan proposes designation to disposal facilities.
46. The Designation Plan does not propose designation to a disposal facility.

Exclusion of Certain Materials and Materials Separated at Certain Facilities

47. Minn. Stat. § 115A.84, subd. 4 allows for resource recovery facilities to request an exclusion materials from the designation.

48. No request for an exclusion of materials under Minn. Stat. § 115A.84, subd. 4 has been made.
49. Minn. Stat. § 115A.84, subd. 5 allows for materials to be excluded if they will be separated for recycling at a transfer station located outside of the designation area.
50. No request for an exclusion of materials under Minn. Stat. §115.A.84, subd. 5 has been made.

CONCLUSIONS OF LAW

1. The MPCA has the authority under Minn. Stat. § 115A.84, subd. 3 to review and approve the Pope/Douglas Waste Designation Plan.
2. The Designation Plan satisfies the requirements of Minn. Stat. § 115A.84, subd. 2.
3. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

ORDER

NOW, THEREFORE, IT IS ORDERED that pursuant to Minn. Stat. § 115A.84, subd. 3, the Pope/Douglas Solid Waste Management Joint Waste Designation Plan, dated May 5, 2020 (received May, 27, 2020) is approved.

_____*Heidi Kroening*_____

Heidi Kroening, Supervisor
Solid Waste Management Unit
Minnesota Pollution Control Agency

_____*8/20/20*_____

Date