Minnesota Pollution Control Agency

Office of the Commissioner

February 10, 2000

SW-57

Commissioner Gene Hugoson
EQB Chairman
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, Minnesota 55155

RE: Minnesota Pollution Control Agency's Position on Environmental Review for the Proposed Burnsville Amphitheater Project

Dear ~~Commissioner~~ Hugoson: Gene,

Three Bloomington Legislators and the Bloomington City Council have requested the Environmental Quality Board (EQB) to make a determination that the Minnesota Pollution Control Agency (MPCA) should be the Responsible Governmental Unit (RGU), instead of the city of Burnsville, on the proposed Burnsville Amphitheater project. The MPCA is recommending, however, that Burnsville remain the RGU for the proposed project. The MPCA already has adequate jurisdiction and authority over issues concerning proper closure of the landfill, noise, stormwater discharge, and indirect source emissions. All of these are addressed through the MPCA's authorities in the closed landfill program, enforcement of noise standards, and issuance of National Pollutant Discharge Elimination System (NPDES) and indirect source permits.

However, even with Burnsville as the RGU, we believe there is an opportunity for the MPCA to take on an "enhanced" role in the drafting and review of the Environmental Assessment Worksheet (EAW). We envision an enhanced role coming about as a result of a written agreement between the city of Burnsville and the MPCA that gives the MPCA a more active role in preparation and review of the EAW than there would be otherwise through the normal review process. This agreement is beyond the scope of the EQB's decision, but something that the MPCA will pursue on its own with Burnsville.

The question before the EQB is whether the MPCA has greater expertise than the city of Burnsville regarding issues to be addressed by the EAW. Our conclusion is that while the MPCA would naturally have expertise on environmental issues, this expertise does not outweigh Burnsville's expertise in addressing local land use concerns or their ability to include correct environmental information in the EAW.

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We have evaluated six key factors in formulating our decision. Each is discussed below.

1. Building a good EAW and an adequate record. The MPCA does not have expertise beyond the city of Burnsville to develop a sufficient record to support a good EAW.

2. Assuring adequate coverage of MPCA issues. Although our role as RGU would ensure this coverage, we believe the appropriate outcomes can still be achieved with the city of Burnsville as the RGU.

Closed Landfill Issues:
MPCA staff in the Closed Landfill Program have been negotiating a Binding Agreement with the landowners since 1994. This agreement allows the landfill to enter into the Closed Landfill Program, and will include a closure redesign plan. There will be a public meeting to discuss the details of the closure plan. The MPCA will also be involved in negotiating the Development Agreement with the landowners and the city of Burnsville. It is our understanding that the Development Agreement will be signed concurrently with the Binding Agreement. Once both of these agreements are signed, and the requirements of the Binding Agreement are met, the MPCA can issue a Notice of Compliance. The proposed amphitheater cannot be built unless these agreements are in place and a Notice of Compliance signed.

Because the MPCA will be partly responsible for remediation of the landfill if it enters the Closed Landfill Program, the MPCA cannot separate closing the landfill from its proposed development. We believe that through normal review channels, or better yet, an enhanced role with the city of Burnsville on the EAW, issues concerning the landfill closure plan can be properly addressed. An enhanced role would assure that the city of Burnsville incorporates MPCA's issues.

Noise:
An outdoor amphitheater is obviously a significant noise source. The MPCA was most recently involved with the proposed amphitheater sited in Brooklyn Park. We worked closely with the city of Brooklyn Park and the proposer on the noise issues associated with their proposed outdoor amphitheater. The resulting noise portions of that EAW would not have been significantly different if the MPCA were the RGU for the following reasons:

- The MPCA does not issue noise permits or have source standards for noise.
- State rules are receiver based noise standards that protect the acoustical environment of all neighboring properties.
- The MPCA is the state agency responsible for enforcing state noise standards regardless of who the RGU is for the project.

In an enhanced role, the MPCA could provide up front input and feedback on the noise analysis performed for the EAW. A complete noise study will provide the most accurate assessment of the situation. This could identify possible noise problems that are of concern to the public.

Stormwater Discharge:
The need for a NPDES permit has been conveyed to the proposers of this project. As stated above, the MPCA will have final issuance authority over the contents of this permit. In an enhanced role, the MPCA can make sure that the necessary information needed to issue the permit is contained accurately in the EAW.

Air Emissions:
The MPCA will evaluate additional traffic and parking through the Indirect Source Permitting (ISP) program. The previous ISP issued for this project in 1989 has expired.

3. Allowing for coverage of other state agency issues. Both the city of Burnsville and the MPCA have the same opportunities for soliciting input from other state agencies. The MPCA does not have more expertise or greater capacity for this exercise than the city of Burnsville.

4. Consistent with past review procedures. The EQB has reassigned an RGU four times since 1982. These were:

- two changes from a county to the DNR for marina-type projects (where the county had no permits to issue);
- one change from a township to the county; and
- one change from the DNR to the Department of Agriculture.

In all cases, both parties amicably agreed to the reassignment. This is not the case with the decision before the EQB. The city of Burnsville believes it should retain their RGU status, and the MPCA agrees.

5. Expertise for issues beyond our authority. The MPCA believes that the city of Burnsville has more expertise with local concerns such as land use issues, litter, loitering, and bright lights.

6. Investment of staff time. We realize that this factor is different than the expertise question, but it is an issue that the MPCA would need to address if RGU status were to be transferred to the MPCA. Major MPCA staff time would need to be invested, and without additional resources, other EAWs in progress would be indefinitely delayed.

In summary, the MPCA already has a great amount of authority in the areas of closed landfill procedures, noise, stormwater runoff, and indirect source emissions. Because of this authority, the MPCA will have input on the environmental impact of the proposed Burnsville amphitheater without becoming the RGU. The MPCA will pursue an enhanced relationship with the city of Burnsville to give greater assurance to interested parties that all essential environmental information will be included in the EAW.

Sincerely,

Karen A. Studders
Commissioner

KAS/SH:hw

cc: EQB Board Members