



## **Request for City Council Committee Action from the Department of Community Planning & Economic Development—Planning Division**

Date: July 23, 2009

To: Council Member Gary Schiff, Chair, Zoning & Planning Committee and Members of the Committee

Referral to: Zoning & Planning Committee

**Subject:** Appeal of the decision of the City Planning Commission denying an application for an amended conditional use permit for a waste disposal facility for the property located at 419 5<sup>th</sup> Street N in the I3 General Industrial District and DP Downtown Parking Overlay District.

**Recommendation:** The following action was taken by the Planning Commission on June 22, 2009 (BZZ-4401):

**2. HERC (BZZ-4401, Ward: 5), 419 5th St N (aka 505 6th Ave N) (Kimberly Holien). This item was continued from the June 8, 2009 meeting.**

**A. Conditional Use Permit:** Application by Covanta Energy, on behalf of Hennepin County Environmental Services, for an amended conditional use permit for a waste disposal facility for the Hennepin Energy Recovery Center located at 419 5th St N (aka 505 6th Ave N) to allow the facility to process at its designed capacity of 1,212 tons of waste per day.

**Action:** Notwithstanding staff recommendation, the City Planning Commission **denied** the amended conditional use permit for a waste disposal facility at the property of 419 N 5th St (aka 505 6th Ave N), based on the following findings:

1. Increasing the capacity of the garbage burner, in all probability, could be detrimental to public health, safety, comfort or general welfare.
2. Increasing the capacity of the garbage burner, in all probability, could be injurious to the use and enjoyment of other property in the vicinity and, in all probability, could impede the normal or orderly

development and improvement of surrounding property for uses permitted in the district.

3. This use is not consistent with some policies of the Comprehensive Plan, including the following: 7.1, 7.8, 7.11, and 7.12.

**Ward:** 5

Prepared by: Kimberly Holien, City Planner (612-673-2402) Approved by: Jason Wittenberg, Development Services Supervisor Presenters in Committee: Kimberly Holien, City Planner
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**Financial Impact**

- No financial impact

**Community Impact**

- Neighborhood Notification: The North Loop Neighborhood Association and the Downtown Minneapolis Neighborhood Association were notified of the applications.
- City Goals: See staff report
- Comprehensive Plan: See staff report
- Zoning Code: See staff report
- End of 60/120-day decision period: On June 16, 2009, staff sent a letter to the applicant extending the 60 day decision period to no later than September 2, 2009.

**Supporting Information**

Covanta Hennepin Energy, on behalf of Hennepin County Environmental Resources, filed an appeal of the decision of the City Planning Commission denying their application for an amended conditional use permit for a waste disposal facility at 419 5<sup>th</sup> Street N in the I3 General Industrial District. At its meeting on June 22, 2009, the City Planning Commission voted to deny the application to remove a condition from the original 1987 Conditional Use Permit that would allow the facility to process 1,212 tons average daily throughput of municipal solid waste in lieu of the 1,000 tons average daily throughput initially permitted. The Planning Commission voted 6-2 to deny the application for an amended conditional use permit. The appeal (attached) was filed on July 2, 2009. The City Planning Commission minutes and Planning Division staff report are attached.

In their application, the appellants dispute the findings made by the City Planning Commission. First, they dispute the finding that *"increasing the capacity of the garbage burner, in all probability, could be detrimental to the public health, safety, comfort or general welfare."* The applicant cites the reports, charts and other supporting documentation submitted as part of the original application that, they assert, demonstrate the public health is not negatively impacted by the request to amend the CUP. The applicant also cites an e-mail City staff received from the Environmental Quality Board (EQB), a memo prepared by the Assistant City Attorney and the required MPCA permit to dispute this finding made by the Commission.

The applicant also disputes the finding made by the Commission which states, *"This use is not consistent with some policies of the Comprehensive Plan, including the following: 7.1, 7.8, 7.11 and 7.12."* The applicant again references reports, charts

and other supporting documentation submitted as part of the original application and the required MPCA permit to challenge this finding.

The appellants' complete statement of the actions and reasons for the appeal are attached.

**Department of Community Planning and Economic Development - Planning Division**  
Conditional Use Permit  
BZZ-4401

**Date:** June 22, 2009

**Applicant:** Hennepin County Environmental Services

**Address of Property:** 419 5<sup>th</sup> Street N

**Project Name:** HERC

**Contact Person and Phone:** Durwin Fitch, Covanta Energy (612) 333-7303

**Planning Staff and Phone:** Kimberly Holien (612) 673-2402

**Date Application Deemed Complete:** May 5, 2009

**End of 60 Day Decision Period:** July 4, 2009

**End of 120 Day Decision Period:** September 2, 2009

**Ward: 5 Neighborhood Organization:** North Loop

**Existing Zoning:** I3 General Industrial District, DP Downtown Parking Overlay District

**Zoning Plate Number:** 13

**Legal Descriptions:** Not applicable

**Existing Use:** Waste disposal facility

**Concurrent Review:**

**Conditional Use Permit:** To amend a Conditional Use Permit for a waste disposal facility.

**Applicable zoning code provisions:** Chapter 525, Article VII Conditional Use Permits; Chapter 550 Industrial Districts; Chapter 536, Specific Development Standards

**Background:** Covanta Energy, on behalf of Hennepin County Environmental Services, has submitted an application to amend their existing conditional use permit for a waste disposal facility in the I3 District. This item was heard at the June 8, 2009 City Planning Commission meeting and was continued one cycle to allow for additional information to be distributed regarding the potential increase in emissions. Additional attachments have been provided accordingly. These attachments include information on environmental impacts from the EIS prepared for the HERC facility in 1986, the Revised Air Dispersion Modeling and Risk Assessment prepared by ENSR in May 2007, a memo from the applicant and supporting documentation, including relevant portions of the Ballpark EIS, as well as a link to the full EIS on the Hennepin County website. A memo from the City Attorney regarding the

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City's authority to regulate air emissions in a manner that is more restrictive than state and federal laws has also been attached.

The existing waste disposal facility, known as the Hennepin Energy Recovery Center (HERC), received a conditional use permit in 1987 to allow the construction and operation of a large-scale energy recovery facility. The facility is a mass-burn municipal waste combustor owned by Hennepin County and operated by a subsidiary of Covanta Energy. The initial permit was approved with seven conditions, as follows:

1. The resource recovery facility shall not exceed a size and capacity necessary to reclaim, burn, use, process or dispose of more than 1,000 tons average daily throughput of mixed municipal solid waste.
2. Compliance shall be required with all emission standards specified in the permit approved by the MPCA on January 27, 1987.
3. All reports required to be furnished to the City of Minneapolis by the permit by Agency regulations shall be furnished to the City of Minneapolis at the time such reports are furnished to the MPCA.
4. The applicant shall furnish to the City of Minneapolis all records requested by the City to allow it to determine compliance with condition No. 1.
5. The resource recovery facility shall have two scales for truck and garbage weighing, in order to facilitate the movement of vehicles on and off the property.
6. Fly ash and bottom ash shall be tested monthly for one year after the initial base line testing has been completed. Thereafter, testing shall be done annually. Appropriate procedures as determined by the MPCA shall be used in all testing and disposal of fly ash, bottom ash or any other hazardous materials.
7. The furnaces or boilers shall be inspected annually for chlorine corrosion with reports thereof to the MPCA and the City of Minneapolis. Devices shall be appropriately used to provide advance warning of potential problems which may be caused by chlorine corrosion.

The applicant is now requesting to remove or amend condition number 1 to increase the average daily throughput of the facility. Specifically, the request is to allow the facility to process at the designed capacity of 1,212 tons per day (TPD). The existing condition establishing the 1,000 TPD throughput limit was a result of action taken by the state legislature on a bill that required four-fifths of the Minneapolis City Council to approve any plan for a 2,000 TPD facility, and granted the County the right to override City approvals in the siting of two facilities with up to 1,000 TPD average throughput each. The result of that bill was the Hennepin County pursued two 1,000 TPD facilities, one of which, the HERC facility, was constructed.

The facility is currently designed to operate at the proposed level. In January 2000, Minnesota State Statute 383B.235 was revised to eliminate the 1,000 ton per day condition, as follows:

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Subd. 3. Existing facility may use its capacity. *Notwithstanding subdivisions 1 and 2, an existing resource recovery facility may reclaim, burn, use, process, or dispose of mixed municipal solid waste to the full extent of its maximum yearly capacity as of January 1, 2000. The facility must continue to comply with all federal and state environmental laws and regulations and must obtain a conditional use permit from the municipality where the facility is located.*

The revised statute does not require that the City allow the facility to use its capacity, but allows the facility to do so upon approval of a conditional use permit. The applicant's request at this time is consistent with the revised statute. According to the narrative submitted by the applicant, the additional processing of municipal solid waste is expected to generate 275 million additional pounds of steam with energy-from-waste at costs less than steam generated natural gas. This is expected to ultimately result in reduced heating and cooling costs for downtown businesses. The increase from 1,000 tons of municipal solid waste per day to 1,212 tons of municipal solid waste per day will result in a reduction of approximately 40,000 tons of waste that would have otherwise gone to landfills. The change would also increase ferrous recycling by approximately 1,200 tons annually.

In terms of the other conditions from the previous CUP, the applicant has been submitting all required information to the City's Environmental Services Department in a timely manner and staff is not aware of any issues with the previous conditions of approval. The facility has historically been compliant with federal and state laws pertaining to the environment and public safety. The requested change to the average daily throughput will also require a major modification to the existing MPCA permit. According to the applicant, the MPCA has stated that they will not consider an application for a major modification to the facility's Title V permit until the City of Minneapolis takes action on the amended conditional use permit request.

In a letter sent to the North Loop Neighborhood Association and Councilmember Don Samuels, the applicant states that the facility will credit Hennepin County 10 percent of the additional waste fees received as part of the increase in processed waste. This is expected to be up to \$100,000 annually. The County will use this revenue for environmental projects within the City of Minneapolis.

No physical modifications are proposed for the site as part of this application. The facility is currently designed to operate at the proposed throughput. However, Hennepin County Environmental Services has submitted preliminary plans for a separate project that includes various site improvements. These site improvements include additional landscaping and groundcover, particularly on the east side of the site, surfacing changes from concrete to asphalt and a reconfiguration of overhead doors which will result in a change to truck traffic. This reconfiguration will create a truck traffic pattern that enters and exits the building from the south side, as opposed to exiting from the east side under the current configuration. The new door on the south side will include an airlock to reduce potential odors.

The North Loop Neighborhood Association voted on May 28, 2009 to support the amended Conditional Use Permit. A copy of their letter of support is attached.

### **CONDITIONAL USE PERMIT (to allow changes to a waste disposal facility)**

#### **Findings as Required by the Minneapolis Zoning Code:**

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The Minneapolis City Planning Department has analyzed the application and from the findings below concludes that the establishment, maintenance, or operation of the proposed conditional use:

**1. Will not be detrimental to or endanger the public health, safety, comfort or general welfare.**

The use has operated on the site since 1989. The requested modification to the Conditional Use Permit coincides with the recently revised Minnesota State Statute 383B.235, which permits the facility to process the requested 1,212 tons per day subject to the CUP. This statute, in its entirety, is attached for reference.

In 2006-2007 an Environmental Impact Statement (EIS) was prepared for the new Twins ballpark site, directly adjacent to the HERC facility. That EIS also assessed potential health impacts of HERC emissions on ballpark users at the proposed level of 1,212 tons per day. The Air Dispersion Modeling and Risk Assessment study of the HERC facility referenced in the EIS concluded that the health risks associated with the HERC emissions are below EPA levels of concern. As a result of the HERC air quality analysis, no adverse effects were anticipated, thus no mitigation proposed.

In addition to emissions, the EIS also evaluated the HERC site in terms of odors. During the monitoring period from April to November 2005 it was found that neighborhood odors such as sewer smells and car and diesel exhaust were more prevalent and intense than odors from HERC. As such, it was concluded that odors from HERC should not have an impact on ballpark users and no mitigation was found to be necessary. Given the nature of the proposed use, it is subject to ongoing monitoring review by the Minnesota Pollution Control Agency (MPCA). Therefore, the proposed modification to the CUP should not prove detrimental to public health, safety, comfort or general welfare, provided the use complies with all applicable state and local ordinances and permits.

**2. Will not be injurious to the use and enjoyment of other property in the vicinity and will not impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.**

The Planning Division does not believe that the increase in operation from 1,000 tons of waste per day to 1,212 tons of waste per day would be injurious to the use and enjoyment of other property in the vicinity or impede the normal or orderly development and improvement of surrounding property. The property is zoned I3 and has been used as a waste disposal facility since 1989. The proposed increase in the amount of municipal solid waste processed does not require any physical modifications to the site.

The site is bordered by industrial uses to the west, office uses to the north, and a residential use to the south. The new Minnesota Twins ballpark is being constructed directly east of the site. As stated above, the EIS for the ballpark site took into account emissions and odors from the HERC facility, assuming the increase in operation to 1,212 tons per day, and found that no adverse effects are anticipated. Previous air modeling for HERC in terms of stationary source air

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emissions has established that the facility is operated in a manner such that resultant ground level concentrations are well below concentration levels that protect public health and welfare

**3. Adequate utilities, access roads, drainage, necessary facilities or other measures, have been or will be provided.**

Roads and utilities are existing and adequate. No changes to access or other physical modifications are proposed at this time. Internal traffic circulation will be modified as part of a separate project.

**4. Adequate measures have been or will be provided to minimize traffic congestion in the public streets.**

The use is existing and no significant additional traffic congestion is expected to result from the requested modifications. The facility currently receives an average of 210-220 trucks per day during the week and 60-70 trucks per day on the weekends. The applicant projects that the proposed modification will increase truck traffic to 230-240 trucks per day during the week and 65-75 on the weekend. However, truck deliveries to the site vary depending on demand, outage schedules, and operating conditions. In each of the last four years, the facility had more than 50 days in which deliveries exceeded 230 trucks per day

**5. The conditional use is consistent with the applicable policies of the comprehensive plan.**

*The Minneapolis Plan for Sustainable Growth* designates the site as a transitional industrial area on the future land use map. This land use designation is given to areas suitable for industrial development. Transitional industrial districts specifically may transition to other uses over time. The proposed increase in daily throughput is consistent with this land use designation.

**6. And, does in all other respects conform to the applicable regulations of the district in which it is located upon approval of this conditional use permit.**

With the requested modifications the conditional use permit will conform to the applicable district regulations.

### **Specific Development Standards:**

In addition to the conditional use standards, the following specific development standards also apply to waste disposal facilities:

1. A vicinity plan that includes the following:
  - A description of natural features, including streams, rivers, lakes, wetlands and major topographical features within 350 feet of the site.
  - A description of the proposal and how it compares to land uses within 350 feet of the site.
  - A description of any potential environmental hazard due to existing or proposed land uses, including soil, water and air contamination.

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*Staff comment:* The facility has operated on the site for approximately twenty years. There are no such natural features within 350 feet of the site. The immediately surrounding land uses include vehicle related uses, office uses, the new Twins Ballpark, Sharing and Caring Hands and Mary's Place, a residential facility. The multiple-family residential facility, which was established after the HERC facility was constructed and operating, is located south of the site. The use is buffered by a significant grade change and existing landscaping. The impact on the Twins Ballpark and immediate area was reviewed in the EIS referenced above.

2. An air quality plan describing stationary and mobile source air emissions, their quantities and composition, and indicating performance with all applicable air quality regulations. .

*Staff comment:* Previous modeling for HERC in terms of stationary source air emissions has established that the facility is designed and operated such that resultant ground level concentrations are well below concentration levels that protect public health and welfare. According to a chart submitted by the applicant, the average emissions from 2005-2008 were well within the current air permit limits and in most cases, operating at 10 percent of the air permit limit or less. The applicant has stated that the modification to the annual processing limit will be consistent with the past performance in terms of air permit limits.

The EIS performed for the Twins Ballpark included a human health risk assessment that looked at emissions from HERC and modeled how people could be exposed to these emissions. Risk assessments combine information on the toxic properties of chemicals and the extent of exposure to determine potential risks. This assessment found that the health risks associated with HERC emissions are below EPA levels of concern. All EPA criteria pollutants were well below ambient standards. The Ballpark EIS assumed the requested average daily throughput of 1,212 tons per day. The facility is required to obtain a permit through the MPCA that sets emission limits to ensure that people in the surrounding area are not harmed. Compliance with this permit was a condition of approval from the previous CUP, and will be conditioned again as part of this application.

In terms of odors, the Ballpark EIS also included an analysis of odors from the HERC facility. Daily odor monitoring was performed on the HERC property and in the surrounding neighborhood starting in March 2004, in order to determine the potential impact of any odors from HERC on the proposed Ballpark Site. The data collected included the type of odor detected and the strength of the odor. Based on this analysis, it was concluded that odors from HERC should not have an impact on Ballpark users. In comparison, neighborhood odors such as sewer smells and car and diesel exhaust were more prevalent and intense than odors from HERC. The new airlock door proposed as part of the separate project should assist in reducing any potential odors from other adjacent land uses as well.

3. A dust management plan describing dust emission sources, their quantity and composition, and how dust will be collected, managed and disposed of, and indicating conformance with applicable dust emission regulations.

*Staff comment:* No additional dust is expected as part of the amended Conditional Use Permit and the facility has no significant dust emission sources. Roadway dust is controlled with periodic roadway sweeping. The initial EIS prepared for the HERC facility in 1985 addresses dust as follows:

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- Acid flue gases leaving the economizer section of the boilers will be treated with hydrated lime droplets in the atomizing spray dryers where sulfur dioxide, hydrochloric acid and hydrofluoric acid will be respectively neutralized to calcium sulfite or calcium sulfate, calcium chloride and calcium fluoride. The hot flue gas will evaporate the water in the droplets, resulting in a dry powder residue which will flow into the particulate control device for removal. The design removal efficiencies for the SO<sub>2</sub> and HCl are 90% and 95% respectively.
  - Flue gases partially neutralized in the spray dryer will be further neutralized by the unreacted lime contained in the particulate layer on the bags of the baghouse collector.
  - Within the baghouse, the dust and particulate laden gas impacts the surface of the bags, which are of Teflon coated fiberglass material.
  - The particulates will collect on the surface of the bags and be periodically blown off by a pulse jet of air inside the bag. The particulates will drop to the hopper at the bottom of the module for subsequent removal.
4. A sound attenuation plan describing sources of sound and indicating conformance with applicable sound and noise regulations.

*Staff comment:* No additional noise is expected as part of the amended conditional use permit. During normal operations the facility runs in a constant state with regard to noise.

5. A vibration and dampening plan describing the sources of vibration and indicating conformance with application vibration regulations.

*Staff comment:* No additional vibration is expected to occur as a result of the increase in daily throughput.

6. A drainage plan for stormwater management and runoff

*Staff comment:* The building is existing and no physical changes are proposed to the site as part of this application. The property owner is proposing site improvements as part of a separate project, including some changes to grade and impervious surfaces. The stormwater management and runoff implications from those improvements will be reviewed through the Preliminary Development Review process.

7. A landscape plan showing compliance with the requirements of Chapter 350, Recycling Activities and Salvage Yards, of the Minneapolis Code of Ordinances and Chapter 530, Site Plan Review.

*Staff comment:* The applicant has submitted a site plan illustrating existing landscaping and green space on the site. However, the application does not require site plan review. The applicant has also provided a rendering of the proposed landscaping and site improvements. While, those improvements are not part of this application, staff has reviewed the plans which show 299 overstory trees and nearly 6,000 perennials. There are approximately 190 trees on the site currently, 177 of which will remain, for a total of 476 trees after the site improvements are completed. Of the trees proposed to be removed, eight of them are on the east side of the site, between the HERC facility and the publicly accessible promenade adjacent to the northwest side of Target Field. The majority of these trees are either dead or in distress.

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Additional landscaping, as referenced above, will be provided near the location of the trees proposed for removal. The remaining 5 trees proposed for removal are near the existing entry door.

8. A traffic plan describing the number of truck trips the proposal will generate and the principal access routes to the facility, including a description of the facility's traffic impact on the surrounding area.

*Staff comment:* The use is existing and the principal access routes to the facility will remain unchanged as part of the application. As stated in the background section, there will be a modification to the internal traffic circulation, with trucks entering and existing on the south side of the building. This modification is not expected to have an impact on traffic in the surrounding area.

The facility currently receives an average of 210-220 trucks per day during the week and 60-70 trucks per day on the weekends. The applicant projects that the proposed modification will increase truck traffic to 230-240 trucks per day during the week and 65-75 on the weekend. However, truck deliveries to the site vary depending on demand, outage schedules, and operating conditions. In each of the last four years, the facility had more than 50 days in which deliveries exceeded 230 trucks per day. The applicant anticipates that the maximum number of 240 trucks per day will remain unchanged. Instead, there will be more days in a given year with this level of traffic.

### **RECOMMENDATIONS:**

#### **Recommendation of the Community Planning and Economic Development Department - Planning Division for the amended conditional use permit:**

The Community Planning and Economic Development Department - Planning Division recommends that the City Planning Commission adopt the findings above and **approve** the amended Conditional Use Permit for a waste disposal facility at the property of 419 N 5<sup>th</sup> Street (aka 505 6<sup>th</sup> Avenue N), subject to the following conditions:

- 1) The conditional use permit shall be recorded with Hennepin County as required by Minn. Stat. 462.3595, subd. 4 before building permits may be issued or before the use or activity requiring a conditional use permit may commence. Unless extended by the zoning administrator, the conditional use permit shall expire if it is not recorded within one year of approval.
- 2) Condition number 1 of the previous permit C-993 shall be amended to read: The resource recovery facility shall not exceed a size and capacity necessary to reclaim, burn, use, process or dispose of more than 1,212 tons average daily throughput of mixed municipal solid waste.
- 3) The applicant shall obtain all necessary permits through the MPCA to accommodate the increase in daily throughput. Compliance shall be required with all emission standards specified in the permit modification approved by MPCA.
- 4) The facility must continue to comply with all federal and state environmental laws and regulations.

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**Attachments:**

1. Statements from applicant
2. Letter from the applicant to the North Loop Neighborhood Organization and CM Don Samuels dated April 30, 2009
3. Correspondence received after June 8, 2009
4. 1987 Conditional Use Permit (C-993)
5. Zoning maps
6. Minnesota State Statute 383B.235
7. MPCA statement on waste-to-energy
8. Site plans
9. Photos
10. Future site improvements
11. Memo from John Sigmond and Daniel Fish with Covanta Energy dated June 15, 2009 and supporting information from the Ballpark EIS
12. Link to ballpark EIS:  
<http://www.co.hennepin.mn.us/portal/site/HCInternet/menuitem.3f94db53874f9b6f68ce1e10b1466498/?vgnextoid=b0927242019e2110VgnVCM1000000f094689RCRD&vgnnextfmt=default>
13. Additional attachments are available on the City's website, as follows:
  - a. Revised Air Dispersion Modeling and Risk Assessment prepared by ENSR in May 2007
  - b. Environmental Impact portion of the 1986 Environmental Impact Statement prepared for the facility

**Excerpt from the  
CITY PLANNING COMMISSION  
MINUTES**

**Minneapolis Community Planning & Economic Development (CPED)  
Planning Division**

250 South Fourth Street, Room 300  
Minneapolis, MN 55415-1385  
(612) 673-2597 Phone  
(612) 673-2526 Fax  
(612) 673-2157 TDD

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**MEMORANDUM**

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DATE: June 30, 2009

TO: Steve Poor, Planning Supervisor – Zoning Administrator, Community Planning & Economic Development - Planning Division

FROM: Jason Wittenberg, Supervisor, Community Planning & Economic Development - Planning Division, Development Services

CC: Barbara Sporlein, Director, Community Planning & Economic Development Planning Division

SUBJECT: Planning Commission decisions of June 22, 2009

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The following actions were taken by the Planning Commission on June 22, 2009. As you know, the Planning Commission's decisions on items other than rezonings, text amendments, vacations, 40 Acre studies and comprehensive plan amendments are final subject to a ten calendar day appeal period before permits can be issued:

Commissioners present: President Motzenbecker, Bates, Cohen, Gorecki, Huynh, Luepke-Pier, Norkus-Crampton, Schiff and Tucker – 9

Not present: Nordyke

Committee Clerk: Lisa Baldwin (612) 673-3710

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**2. HERC (BZZ-4401, Ward: 5), 419 5th St N (aka 505 6th Ave N) ([Kimberly Holien](#)). This item was continued from the June 8, 2009 meeting.**

**A. Conditional Use Permit:** Application by Covanta Energy, on behalf of Hennepin County Environmental Services, for an amended conditional use permit for a waste disposal facility for the Hennepin Energy Recovery Center located at 419 5th St N (aka 505 6<sup>th</sup> Ave N) to allow the facility to process at its designed capacity of 1,212 tons of waste per day.

**Action:** Notwithstanding staff recommendation, the City Planning Commission **denied** the amended conditional use permit for a waste disposal facility at the property of 419 N 5th St (aka 505 6th Ave N), based on the following findings:

1. Increasing the capacity of the garbage burner, in all probability, could be detrimental to public health, safety, comfort or general welfare.
2. Increasing the capacity of the garbage burner, in all probability, could be injurious to the use and enjoyment of other property in the vicinity and, in all probability, could impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.
3. This use is not consistent with some policies of the Comprehensive Plan, including the following: 7.1, 7.8, 7.11, and 7.12.

Staff Holien presented the staff report.

Commissioner Schiff: We specifically were looking for emissions information about the existing plant. Where do we find that in the ballpark EIS or do you have a summary of it in front of you?

Staff Holien: That summary was put together...that was in the Air Dispersion Modeling and Risk Assessment document. Also, the applicant in their memo dated June 15<sup>th</sup>, put together a summary of that information that also included the chart that was submitted at the June 8<sup>th</sup> meeting in terms of where the emissions are at in terms of what's allowed by the MPCA permits. The commission also asked for some information on how each of the emissions on this chart would increase as part of the requested 1212 ton per day increase. There isn't a specific document that's been provided at this time by the applicant that shows...I don't know if they'll have specific comments on that at this time. I think the general summary was that there will be some increase in emissions but the actual percentage of those have not been provided to date.

Commissioner Schiff: What you put on the overhead we did see and discussed how inadequate it was for us to talk about conditions on the amount of emissions, where in the EIS do we find the actual levels of emissions that the plant is producing annually?

Staff Holien: It's in a couple different places here. The EIS, basically, is a summary of the information that's in the Air Dispersion Modeling and Risk Assessment so, really, the summary and the EIS is just what says everything is below EPA levels of concern. They don't break it out by saying this is where this percentage is at in terms of what's permitted. This chart also shows the air concentrations that are lower than the Minnesota Ambient Air Quality Standards. This table 331 shows the estimated air concentrations based on emissions at...

President Motzenbecker: Sorry, it's not on our screen. Can we get that on there while she's speaking about it?

Staff Holien: It's page five of the document put together by the applicant. These tables also show the air concentrations and how they relate to the Minnesota Ambient Air Quality Standards.

Commissioner Schiff: Table 3-31 shows estimated emissions?

Staff Holien: That's correct.

Commissioner Schiff: At the permit levels and...help us interpret the terminology meaning the amount of pollutants they release into the air or the maximum allowable under the permit they received?

Staff Holien: The Minnesota Ambient Air Quality Standards is what is allowed under the permit and the applicant can speak to this in much more detail than I can. Basically, the summary here is that they're within the permitted limits.

Commissioner Schiff: Nowhere else in the EIS is there any disclosure of the actual tonnage or the amounts of pollutants released annually, is that correct?

Staff Holien: In terms of the most concise summary, I think this is probably the most concise summary, but really the entire Air Dispersion Modeling document relates to those emissions and what happens to them once they're released into the air.

Commissioner Schiff: Summarized in a chart?

Staff Holien: Summarized in the EIS by saying that there's no mitigation needed and...

Commissioner Schiff: We can just refer to the EIS as whole in any amendments or motions we make?

Staff Holien: Right.

President Motzenbecker: I just wanted to follow up on that because I had a few questions related to the data used for that. There was reference in the Air Dispersion piece to data that was from 1986 to 1990 and that seemed like 20 plus year old information and was a little old to be modeling on. Is there any information on where they chose that particular data set from? As well as kind of the new EPA's if there are new EPA standards on the 2.5 micron particle matter.

Staff Holien: I don't have anything that relates specifically to why that dataset was chosen, but again the applicant may be able to speak to that.

Commissioner Huynh: I was just wondering if there is additional information that was provided that spoke to the emissions level that was measured in the neighborhood. When you look through the EIS it only talks about the air modeling that refers to the ballpark in terms of emissions level for ballpark users and occupants in terms of events for games in terms of limited time. Has there been any reports submitted in terms of how this has been affecting the general public in terms of within the vicinity or any of that other information that doesn't just necessarily pertain to the ballpark I guess?

Staff Holien: Not that I've seen beyond the information that's been provided in the EIS and the Air Dispersion Modeling.

President Motzenbecker: Commissioner Huynh, the closest thing was on figures 2.5 and 2.6 and then I think there were more figures. I think there was a one hour dispersion factor, I think that's what I found too, the highest levels.

Commissioner Bates: Given that the primary reason for us to be able to decide or find that the

added burning is not going to be detrimental to the health of Minneapolis citizens, is based on the environmental impact of the ballpark and there are not other studies that follow that in terms of the impact on an ongoing basis to the surrounding community. I'm curious as to how staff understood that that being sufficient response to this discussion because it seems to me that the money spent and the time spent on environmental impact study for a ballpark and the people who are spending time at the ballpark since there was sufficient cause to do that for the ballpark, then it seems like there would even be a higher standard for people who are actually living around the area.

Staff Holien: Again, staff relied on that conversation with the EQB as to whether or not an additional EIS would be needed for this. Their response basically was...

Commissioner Bates: Could you explain a little bit about the EQBS in that process?

Staff Holien: Typically an EIS is site specific which is why we consulted the EQB in the first place. In this case, the EIS that was done isn't on the site; it's on the ballpark property which is adjacent to the site so we contacted them. The determination of whether a project requires environmental documents or an EAW or EIS is based on the physical activity to be undertaken, not the government process. Basically they determined that because the previous EIS done on the ballpark site took into account the 1212 tons per day in terms of emissions and odors, that the CUP or amended CUP wouldn't trigger an additional EAW or EIS because that information was sufficient. That was their determination. We also ran that by the City Attorney who concluded that that seemed to be the best approach at this time.

Commissioner Bates: I really find that an incorrect assessment of what's going on so I really would like to ask again, what is this EQBS process and how did that work? I'm sorry, I'm new to the City Planning Commission. What's the EQBS?

Staff Holien: The EQB, the Environmental Quality Board. It's who we go to in terms of whether or not an EIS would be required. That's really who we look to. They're really the governing regional authority on the environmental impacts of projects.

Commissioner Bates: Do we have, in writing, what their response was, that they supported that?

Staff Holien: I have an email, yes.

Staff Wittenberg: Commissioners, if I can just clarify; there are two different environmental impact statements that we're talking about here. One is the environmental impact statement that was done for the HERC facility in the 1980s, which the air quality information from that environmental impact statement, which did assess health impacts of the facility, was linked to for all commissioners and the public to see through the Planning Commission's agenda. The ballpark EIS, which was not a do-over of the HERC EIS, but being the ballpark EIS analyzed the impacts of the HERC associated with the ballpark, that's the more recent information and that information was all provided to you as well. We're not acting solely on the information from the ballpark EIS. There is the HERC EIS air quality information that was provided as well.

Commissioner Bates: That is the very old study, correct?

Staff Holien: The HERC EIS is the study that was done in 1986 before the facility was constructed.

Commissioner Bates: One would think that our standards of being able to measure impacts might have changed a little since then.

Commissioner Schiff: I found table 3-33, the Acute Risk Summary Actual Emissions. Can you verify, bottom of page 3-58? This is the maximum emissions in one hour? I just want to make sure I'm interpreting this table correctly.

Staff Holien: This is looking at the maximum one hour air concentration based on measured emissions.

Commissioner Schiff: So actual today, what is coming out?

Staff Holien: Again, the applicant is much more versed in all these charts as they put them together so you may ask those more specific questions for the applicant.

Commissioner Bates: I have a follow up. I feel like, for me, it's really the issue about the EIS being specifically targeted at the ballpark site and for there to be pages in here that talk about the difference of the impact on children season ticket holders versus adult season ticket holders on the impact of the emissions on the trays, etc., seems to me that there's such a level of specificity and concern about the ballpark users that I guess I need to hear from the EQB people exactly why they would find that sufficient for the city as a whole in terms of the impact of increased burning by over 20 percent. I just don't understand what the rationale is here from them. I think that that rationale would just not be something that should be too difficult for a lay person to understand.

Staff Holien: Staff can certainly consult the EQB again, but we've been relying on their previous determination that no additional EIS or EAW is required because of the actual physical activity that's changing isn't great enough to trigger an additional...

Commissioner Bates: You mean the physical activity of what, more trucks coming into the area?

Staff Holien: Trucks, construction, emissions...all that.

Commissioner Bates: They don't consider to be 20 percent plus more emissions to be significant?

President Motzenbecker: Apparently not.

Staff Holien: They did not when they were consulted.

Commissioner Bates: I'd be curious to understand why.

Staff Wittenberg: If I may, the environmental impact statement for HERC was done based on the facilities maximum capacity that it was designed to. That, as I understand it, is why EQB felt that a new EIS is not needed for the facility because that EIS analyzed the level that we're talking about potentially approving at this point.

President Motzenbecker: At this time, I would like to pose the question...you'll recall that we did close the public hearing in the previous meeting. I would like to get a feel of the pleasure of the commission if you would like to reopen the public hearing if you feel there are interesting or more distinct information that you have not heard that could help clarify anything for you. I would like to take a vote on that to see if we reopen. If we do, I have some things I'd like to lay out for how that would go. Those who are in favor? Opposed? That carries so we will reopen the public hearing. This particular testimony, as well as any others tonight, I just want to lay a couple ground rules for you. If you are going to testify and you haven't signed up on the sheet outside where you picked up the green sheets, please do so on your way out. I'm going to ask...we had quite a few people here last time to testify and I'm going to ask that we have new folks testify with new information from last time. I would like to have a show of hands for those in favor of this project and then those opposed. I'm going to ask that if you could please talk amongst yourselves and get two to three people that you can then come up and we'll allow about five or seven minutes each from you to hear your side of the coin. I think that would help us. I would prefer those that have not previously testified to testify first so we can get that new information. I think we would like to hear from the applicant first to answer some of the questions that commissioner Schiff and others have had.

Commissioner Norkus-Crampton: I wanted to guide the people wishing to testify. As we talked at length at the last hearing...where do we really have the authority in the decision making process on this application. Our authority are the conditions for the conditional use permit, the findings. What would really be helpful to me is that the comments that you present here today deal specifically with the findings for the conditional use permit. If you have a copy of the staff report, please look at that and focus your comments on there because that is where our authority begins and ends is with that CUP process. I think for the public interest and for the best job we can do here as a commission under these circumstances focusing on those findings would be very helpful.

Jeffrey Hahn (876 Mountainview Drive, Lafayette, CA): I work for Covanta Energy. Maybe I can help walk people through table 3-30 and 3-31. The emissions are there; they're in grams per second. You look at the pollutant, the averaging period because there are different standards for different times, the primary and secondary standards and then there's the emissions in grams per second. Those emissions in table 5-30 are for what the plant actually puts out or what the MPCA said to use for emissions. For example, in PM 2.5, which has been of concern, the MPCA said to use a certain level of emissions and our actual emissions are one half to one third lower than what was used in table 5-30 based on source tests.

President Motzenbecker: What page are you referring to? We have table 3.33.

Jeffrey Hahn: The document in our June 15<sup>th</sup> letter, page five. The grams per second were put together from the details of all the concentrations and the stack gas flows for the actual emissions. In fact, the expert consulted, to be conservative, used 1995 data which had lower temperature and lower plume rise so it'd be even more conservative. Then you take a look at emissions and the dispersion in the column that says "impact", it says "what would the plant do with its actual emissions for each of those hours?" and again, they use up to five years of hourly met data and they look at the worst hour in five years to take a look at the impacts at the worst impact point based on the modeling. To answer another question, the background takes into account exactly what is measured in Minneapolis by the MPCA. Those are real numbers and those are the numbers that you compare against the health based standards, the National Ambient Air Quality

Standards are health based standards that you compare. You have a background and you see the numbers there, pick any one that you look at, and you see the background for say particulate. The 24 hour is 105. Our contribution is so small that the background plus our contribution at the point of maximum impact is still 105 and it's well below the standard. That's how you look at it. What's in the community right now is actually in this table. It's listed as the background and that's what's measured. For all of these at the actual operation of 212, in any one hour, three hour, 24 hour and annual, that's what's used. The consultants in the county wanted to go one step further, they wanted to make sure that...what if we operated, not at the chart that I gave you last time, but what if they operated at the permit level? That's what table 5-31 is. It puts the concentrations of the pollutants at the permit level times the actual flow, do the dispersion modeling, find the point of maximum impact with current models and you'll see if you look there that the background stays the same, the contribution is still very small even at the permit levels and we're still below every standard of national air quality impact. It's all there. The numbers that you're looking for are actually in the appendices. If you wanted to find out how they got every equation, the whole EIS yields all the numbers from the dispersion modeling to the emission to the flows; everything's in the appendices of this document. They're fairly thick. I work with them every day. I could explain them to you but it would take a lot longer than my five minutes.

President Motzenbecker: Can you speak a little bit to the couple of questions I had related to the air dispersion data set that was like 20 years old and why there aren't new ones.

Jeffrey Hahn: The EIS used ambient air quality data that's current and they used met data that was current for the EIS that was current for the ballpark. When we submitted our Title 5 application in 1995, the MPCA wanted us to do dispersion modeling. We used five years of data; they went back from 1988 to 1993. If you go into the EIS, they use current meteorological data for input into the model. This was done a couple years ago so they probably used 1999 to 2004 because this was probably prepared around 2005, but that's current. Some of the air has improved. When we were asked to do that modeling in 1995, the background level for NO<sub>2</sub>, if you look at the column there where it's 23 right now on an annual average, we were asked to look at 51 in 1995 and add our contribution to 51. We are still below the limit of 100 and that took into account not just the ballpark, but all the receptors, the worse case receptors, in the plant area that would have been modeling. This has been covered in the original EIS, in the application for title five and now in the ballpark. For the ballpark it was specific for what receptors were in the ballpark area for them to look at the pathways and the risk assessment. When you do a health risk assessment, they look at all the potential pathways. How could someone...not just inhaling the emissions, but also landing on food...my only other testimony today, there was a question about whether we supplied the city of Minneapolis with enough documentation. I have transmittal letters here to Bill Anderson from the city who got a copy of the quarterly report for 2009. He got a copy of the 2008 stack test and he got a copy of the annual ash test report. The city has been appraised of all of our reports. You did receive a letter from us today. We have letters of support from the 2010 partners and from our local union, the operators of our plant IBW Local 160. I've also included a chart that shows the net green house gas reductions for HERC on a per ton basis. You can see that by burning these extra tons we're actually reducing greenhouse gases. There was a question before on the incompatibility of recycling and energy from waste. This is a national study showing that communities that have recycling efforts and energy from waste have a higher recycling rate. You've got all that information and hopefully it answers some of your questions from last time.

President Motzenbecker: Can you speak a little bit to when, as far as, I'm specifically focusing on the particulate matter 2.5 which seems to be of concern, greater concern these days, and that was one that wasn't measured at all for some time, at least from what I saw in the reports we got, and then as MPCA was kind of creating levels for that as you alluded to.

Jeffrey Hahn: That's not entirely true.

President Motzenbecker: Let me just finish my question. I wanted to know when the MPCA and/or yourself looks to the EPA or when does the EPA set new standards that then filter down to the states regarding those types of things with such data possibly on the other side of the coin coming out with that. When do you update your standards?

Jeffrey Hahn: There are two types of standards that we updated, but first let me say that the MPCA requires us to measure total particulate. That means all the contributors 2P and 2.5. We do that testing every year so we have the data. For the facility we get our standards under the clean air acts of 1990, the maximum available control technology or MACT standards. EPA looks at those every five years, sets the limits and then they go ahead and do a health based analysis to see if those limits are health protected. They've done that and we've done the MACT upgrades and we have to look at meeting those MACT standards. Those are plant specific, they change every five years. EPA is now reviewing MACT and most likely will including something PM10 and PM2.5. That's what we have coming out of the stack.

President Motzenbecker: Within the next...

Jeffrey Hahn: They're doing it now.

President Motzenbecker: So we should expect data when?

Jeffrey Hahn: Soon. When they publish their results.

President Motzenbecker: Soon means when?

Jeffrey Hahn: They're doing the medical waste incinerator right now and once they get finished with that they're going to turn to ours so it should be soon. Soon for EPA could be a year. That's for our stack. We already have very low emissions and we feel confident that we'll meet whatever comes out in the MACT with this facility in the bag house that the facility has. The other set of standards would be on the charts that you looked at 5-30 and 5-31 where it says "primary and secondary standards." Those would be the standards that EPA could reduce for PM and PM2.5 from their existing levels that are in there right now. The PM10 for the 24 is 150 and 50 for the annual, 35 for the PM2.5 for 24 hours and the annual is 15. That's where you would see a reduction on a health basis on the ambient air level. Then, you'd have what's in the background right now, our contribution and you'd have a standard to compare; two different standards, the first one on MACT, what's in the stack, the second one is what's in the ambient air and what do we contribute to that.

Commissioner Norkus-Crampton: Is dioxin or mercury listed on this table?

Jeffrey Hahn: You're talking tables 5-30 and 5-31?

Commissioner Norkus-Crampton: Whatever it is on page five.

Jeffrey Hahn: No, they are listed in the health risk assessment parts of the EIS where you look at specific cancer and noncancerous effects. You do the same mechanism of the emissions in grams per second, the dispersion, but then you take the uptake of mercury in whatever media such as air, soil or whatever and then you compare it to a hazard index. For dioxin, we compared it to the states dioxin cancer potency, not the federal, which is ten times more strict than the federal. That's how it's done. It's done in a separate section because there's no ambient air quality standard nationally for dioxin or mercury now.

Commissioner Norkus-Crampton: I just wanted to make sure I understood what all these pollutants are. I see the sulfur. What does TSP stand for?

Jeffrey Hahn: Total suspended particulate. That's the total mass of particulate matter no matter what size and then you take a cut of that because of the concern with finer particles, you cut it at ten microns or smaller, that's what PM10...sorry for all the jargon. PM2.5 are all the particles under 2.5 microns and what EPA includes in that are both solid and those particles that come out as a gas in our stack and would condense in the ambient air because the stack gas is hot and when it cools you can have some particles. When I say we test the front and back of a sampling tray and filter, we test for both of those and report those to the MPCA.

Commissioner Norkus-Crampton: These samples are taken...I see the map of the dispersion map and at least part of it's noted here, the whole city isn't laid out in the particular drawing that I'm looking at. How far from the stack are the samples taken? Is it a grid thing where it's collected in a variety of places or where are we getting these numbers? How far from the stack? Is this exactly what's coming out of the stack at the point?

Jeffrey Hahn: The numbers in grams per second are exactly what's measured coming out of the stack. The maximum impact, where it says "impact", is a computer model that EPA approves and the MPCA approves to show where, based on hourly wind data for five years, where the point of maximum impact is for the worst hour in that period of time and then they average the worst annual so every hour in that year. The maximum impact on a day that's calm would be different for the whole year. That's why when there were some questions about why we do one hour, it's because we're looking for the worst one hour compared to a one hour acute standard say for HCL. We do the annual for those things that are not acute that are chronic or carcinogens because they're based on annual standards. The point of maximum impact, the isopleths you see, as they move out in meters or kilometers from the stack, gets smaller and smaller. The effect of the plant disappears as you go out a fair distance and that's why, under EPA rules that you stop the receptors. You stop locating them after so many kilometers because it basically goes to zero as you go out 10, 20, 30 kilometers you don't see the effect.

Commissioner Norkus-Crampton: My understanding is that this facility has been basically a garbage burner, just normal garbage, whatever people put in there. Is it your practice or is there anything preventing you from processing or burning medical waste?

Jeffrey Hahn: We don't have a permit for it, no.

Commissioner Norkus-Crampton: How about any computer, high-tech things along those lines?

Jeffrey Hahn: They have an e-waste program so we don't intentionally except it. Hopefully the residents of the city dispose of their e-waste in the program for the city.

Commissioner Luepke-Pier: [tape ended]

Jeffrey Hahn: Typically it's taken from monitoring stations run by the MPCA in the area. They set up, by federal requirement to have a state air program you have monitor ambient air quality and these are the things that they have to monitor. You pick a representative background station and then compare to it.

Commissioner Luepke-Pier: I have a few questions about that because I notice that it really has only shown an impact in three of these categories. I have a question about lead. How does the total go down if you add the two together? I can't imagine adding lead to the air actually decreases the amount of lead in the air.

Jeffrey Hahn: It's 2.65 times 10 to the minus five so you've got to put five zeros on the left side of the two. It looks like it's almost a rounding error for the background, they have 032 and then for the total they have 03. That's just rounding. The number is so small, it just falls off if you add them together.

Commissioner Luepke-Pier: Does the background number include what's currently being incinerated or is that all just encompassing the impact?

Jeffrey Hahn: That's what's out there every day and what's measured. It would be all the emissions in the city including HERC, power plants, cars, and people. They specify how many feet above the ground where they can be located. If you're measuring carbon monoxide you don't want to be near a heavy intersection or you'll just pick up a very high load from all the cars.

Commissioner Luepke-Pier: We can read the impact column to be just strictly what you guys are adding with this increase...

Jeffrey Hahn: At the maximum impact. They pick the maximum impact. For the one hour you have a different maximum impact location to actually get it. It's different locations, but it's only one point but it's the maximum impact that we would have.

Commissioner Schiff: You touched briefly on the statement you made that there will be less greenhouse gas emissions as a result of this change at the facility, can you explain the technology that's going to be installed and how those greenhouse gasses are going to be controlled?

Jeffrey Hahn: It's from the process. If you look at the chart that we gave out, our letter today. When we combust post recycled municipal solid waste on the right hand side, about one third of the MSW is made from fossil material.

President Motzenbecker: MSW being?

Jeffrey Hahn: Municipal solid waste. When we burn municipal solid waste after it's been recycled, it does have a variety of materials that have been made from fossil based processes. It's about one third of our CO<sub>2</sub> going up the stack. Two thirds of it is based on biogenic or the natural carbon cycle, CO<sub>2</sub>. That comes from the paper and food and whatever that is not

composted in recycling that we burn. We have a certain greenhouse gas that you can see on the right per ton. In burning that waste, we generate so many megawatt hours that is sold to the local utility. If the local utility would have to burn coal to generate that same amount of megawatt hours that we sell to them, they would generate the little box that's shown there. They generate almost 2200 pounds of CO<sub>2</sub> per megawatt hour burning coal. We're around 1300-1400 so we're less than the local utility and that's why there's an offset. We're not as efficient as coal but we do reduce by selling them the megawatt hours, the fossil portion of their emissions.

Commissioner Schiff: Just to be clear, so you'll actually be polluting more but by generating more energy causing others to pollute less.

Jeffrey Hahn: Yes. Two important others. If we didn't burn this municipal solid waste it would go to a distant land fill whether it's in Minnesota or Wisconsin, it would be buried. At that landfill they would have certain controls for the landfill gas, which anaerobic digestion produces methane, which is 20 to 25 times more potent than CO<sub>2</sub>. You have a situation where they can capture some of the methane and whether they burn it into electricity...

Commissioner Schiff: Thankfully we're not regulating landfills today so we don't need all that data.

Jeffrey Hahn: That's the other component is the fugitive emission...

Commissioner Schiff: The second part of my question if you could...what other technology will be installed on this plant that is not present today that will help reduce the emissions or help affect the quality of air surrounding the plant?

Jeffrey Hahn: You talking greenhouse gasses or in general?

Commissioner Schiff: Particulate matter, greenhouse gasses, everything.

Jeffrey Hahn: We will have to install new technology in combination with current technology to reduce nitrogen oxides in order to get a permit from the MPCA. If you look at the chart, we're 76% of our permit limit for NO<sub>x</sub>, that's the highest one on the chart I gave you before. That's the one that has to come down. That one will come down or we won't get major modification of our permit from the MPCA. That's the one we can employ technology on and that we can actually do a good job with the county and get that NO<sub>x</sub> number well down there.

Commissioner Schiff: Can you explain the technology a little bit?

Jeffrey Hahn: It's a change of the way we put air into the combustors so we generate less NO<sub>x</sub> and then we're going to put a reagent in the right locations in the furnace to reduce that NO<sub>x</sub> to nitrogen and water after we reduce it by staging our combustion.

Commissioner Schiff: How much will you spend installing this technology?

Jeffrey Hahn: A million and a half on the reagent system and we've already put in the boiler changes.

Commissioner Schiff: On the other major emittents, you don't believe you'll be required to install technology to reduce those.

Jeffrey Hahn: We have the best available control technology on them now. The bag houses, for example, for the metals, for the particulate matter; those are big reverse air bag houses and have very low emissions. We couldn't put anything better on for them.

President Motzenbecker: How long ago were those changed or updated?

Jeffrey Hahn: The bags are changed periodically when they need to be changed to keep them in superior performance that's why we test every year. The concept of the bag house, for example, in the new facilities that we're permitting in other locations, that's what EPA mandates, is the dry scrubber bag house that we have here. HERC should be commended. We've had this early on, plus in 1994 when MPCA put the mercury regulation, this is one of the first plants in the nation to put powdered activated carbon in to reduce mercury. So we've been reducing mercury by what's best available control technology now since 1994.

Commissioner Schiff: To your knowledge, no other technology exists to reduce any of the other sources of pollution that are emitted from the project?

Jeffrey Hahn: That would fit appropriately at this site, no.

Commissioner Schiff: What do you mean by "fit appropriately"?

Jeffrey Hahn: In Europe they put on technologies costing hundreds of millions of dollars and got minimal return for it. Would we put a big wet scrubber on the back of our bag house? No. They tried it and it didn't work and they've gone back to the technology we have here at HERC today.

Commissioner Schiff: So there is other technology available but you're saying it's not cost effective.

Jeffrey Hahn: It's certainly not cost effective to do that for the small...our emissions are so low now in terms of particulate matter, putting something like that on for a little extra won't work as a cost effective.

Commissioner Schiff: But it does exist out there.

Jeffrey Hahn: To a degree, yes, but it's been tried and given up in Europe.

Commissioner Bates: I'm a little confused about all these comparisons to potential landfills in Wisconsin and all this and because we're also, for this conditional use permit, supposed to be really focused in on Minneapolis, right, and the area around the burner. I would like to know, just yes or no, will burning more garbage increase the amount of particulates, dioxins and other wastes in the air?

Jeffrey Hahn: Yes, it will increase it in a very small amount because we will burn 212 tons more per day for so many days. It's not the 20 percent you say because the 1212...

Commissioner Bates: I understand, I just was curious of yes or no. So, yes, it will increase the pollutants in the air. Thank you. Has there been a study of the soil or the river or any other possible sinks that have measured any sort of appreciable accumulation of pollutants in the area that may be related to the burner?

Jeffrey Hahn: Not that I'm aware of, but that's what the EIS in its pathways, creates with computer modeling when they talk about deposition onto the soil. They look at wet and dry deposition and accumulation in the soil.

Commissioner Bates: But it's only been modeled, it hasn't been actually studied. Is that correct?

Jeffrey Hahn: That's correct. In an urban area where you have so many other sources of emissions and pollutants, you could study that but it would not necessarily have anything to do with...

Commissioner Bates: But it hasn't been studied yet.

Jeffrey Hahn: Not to my knowledge. The PCA may have, I don't know.

Commissioner Norkus-Crampton: The end product of this burning process...we have ash and you have scrubbers that are removing toxins from the smoke coming out of the facility so that gets captured, then where does that go?

Jeffrey Hahn: After it's tested to make sure that it's not a hazardous waste it's delivered to a landfill; 85 percent to Rosemont and the other 15 percent to Wisconsin. We have to test it each year to make sure that it doesn't have the characteristics of hazardous waste. We send the city a report. That's one of the reports I mentioned that we send each year that we have to do a characterization to make sure under RCRA Subtitle C that we know that we don't have hazardous waste and therefore it can go to a regular landfill as nonhazardous waste. We also have to do it for the landfill as we are a generator for waste that they receive.

Commissioner Norkus-Crampton: So the particular things that we're measuring here like the mercury, cadmium, lead, dioxins and things like that, if those are present in the ash then those go somewhere else or is it something else you're looking for in terms of what would be considered toxic enough to handle it separately?

Jeffrey Hahn: What we're looking for, we capture those pollutants like lead, cadmium and mercury, but the EPA test is an extraction test and if they don't leach out to certain levels then they're ok to go to that landfill and that's the test we do every year is to make sure they stay captured in the ash and when the ash is buried they're not going to go into that landfill and will stay in the body of the ash buried in the landfill.

Commissioner Norkus-Crampton: So there's some way that someone can measure whether or not these particular elements are inert or stable within that mass as opposed to something that could leach out?

Jeffrey Hahn: Absolutely. There are federal regulations and test procedures, the TCLP, that we have to do that mimic a mis-run landfill that they dump essentially acid waste in to see what will leach out. We're using acid solutions in this test, the TCLP, to see what will leach out of our ash

and if it doesn't leach out under those conditions then it's certainly not going to leach out in a well-run landfill and that's the whole premise.

Karen Clark (State Representative) [not on sign-in sheet]: I'm represent three inner city neighborhoods in south Minneapolis. I'm here with one of my constituents who would like to address an issue that deals with a law that we passed last year that deals with the issue that Commissioner Bates was getting at in the little bit I heard about what are some of the emissions and what are some of the impacts. I think Council Member Schiff might have mentioned this too. I brought a copy of a map that shows the GIS mapping of several toxic exposure sites and consequences in the Phillips neighborhood and I wanted to just report to you on that law and how I think and would question how the burner affects this particular neighborhood, the Phillips neighborhood, but also you'll see that the Near Northside is almost exactly the same position near where the burner would be located. My colleague has raised the issue about why burn things that we should be recycling and composting, but what I wanted to do is talk about the health effects. We did pass a law in 2008 that said a facility that's going to pollute the Phillips neighborhood has to go through something called a cumulative health impact analysis by the Minnesota Pollution Control Agency. The reason for it is that we know that there's an environmental justice issue involved whenever there are pollutants in neighborhoods like the Phillips neighborhood or the Near Northside. What we're talking about here is that there is a disproportionate existing situation of people with environmentally induced health problems that are due to toxic exposures of some of the kind of elements that would be coming out of the HERC. There will be an increase. I don't know you if you have analyzed exactly where the plume is going to be coming down, but I remember in the 80s when the HERC was first proposed, I saw the mapping. Having lived in the Phillips neighborhood at that time, I saw that the plume did come down and hit our neighborhood as well as go to other parts of the city. I think this is a relevant discussion. The bill that we passed basically said that when the majority of the population are low income people of color and American Indians and have a disproportionate number of children that have childhood lead poisoning, asthma or other environmentally related health problems and if it's located in a city that's experienced air quality alerts, which certainly our city has...in this law we were talking about 2007 and 2008 and it's located where there's a lot of traffic. What I want to show you is something very visual and hopefully it speaks louder than some of the words of the law. What we're showing here is the percentage of minority in the Phillips neighborhood. You'll see that the north side has a very similar color configuration based on percentage of minority. This is based on 2000 census. This would be darker even today. In the Phillips neighborhood we know that there is arsenic contaminating the ground. Then we mapped children with elevated blood lead levels. There may be a small increase coming from the burner; every lit bit is a concern to the children in our community. Look at the incredible distribution of childhood lead poisoning. This is at a level that's actually causing irreparable neurological damage. We looked at one other issue, asthma. Asthma is related to a lot of air pollutant, toxic exposures. I'm not going to go through all that, but there is lots of evidence. We have a huge burden of environmental toxic exposures and it especially affects our children, pregnant women, elders and others who are vulnerable. I just wanted to show that to you because it's a kind of data that isn't talked about very much. The EPA is very interested in our state law. I think other states and communities ought to maybe consider this kind of law so we aren't talking about each individual little impact of mercury and others. When you put them all together in a community that's already disproportionately impacted it's a concern.

Commissioner Schiff: I appreciate all the work you've done. The law that you handed out, Chapter 357, section 34, does that apply to this proposal in front of us today?

Karen Clark: Interesting question. The first part of the law says the facility is located within a half mile of the federal EPA superfund site. That's the only part of it that I think raises a bit of a question. The rest of it absolutely applies. I think that question could be raised. The plume that comes down is coming down within the designated area that's requiring protection under this law.

Commissioner Schiff: There's a section in the law that was pre-existing that says the Pollution Control Agency may revoke or modify a permit issued whenever necessary in the opinion of the agency to prevent or abate pollution. With increased affects of pollution always adding up, have you ever known the MPCA to take action to look back at something that is such an obvious point source for so many toxins and to revoke, modify or review their application again?

Karen Clark: What I can tell you is that going forward from this law we've had three facilities denied permits. One was a hot asphalt plant. This law said no and that the additional impact on our lungs in this community, we can't have more contaminants. The Metropolitan Council wanted to locate a paint facility in the neighborhood and the same kind of discussion came up and folks said no they don't want to have more contaminants and do we need to invoke this law. The PCA came to all of these meetings with the neighborhood people to talk about it. The very first one was the one that had to do with the proposed burner that was being proposed earlier in 2008. In terms of going backwards, I'm not sure that they have. I guess I would encourage good research on that, but I do know that going forward that there have been three, and potentially four, different instances where applying this law has made sense to the Pollution Control Agency and the Department of Health who are the ones who enforce it.

President Motzenbecker: How does that relate to the previous statute that was passed in the 2000 legislative session for this particular facility that allowed them to burn to their full maximum capacity? I'm just interested in how those two play against each other. Could you explain that a little bit?

Karen Clark: I'm not an attorney but I will tell you that when you have a new law...I believe it could be litigated. Our Attorney General would be in charge of making sure that our state agency follows the law with this and that the permit would address that issue. The law's on the books and I'm hoping that we would have all the force of the Attorney General's office behind that.

Frank Hornstein (State Representative) [not on sign-in sheet]: I represent District 60B in southwest Minneapolis. I want to confine my comments to the environmental review piece of this issue. It's my understanding that you're looking at environmental review based on simply the ballpark, impacts of the incinerator on the ballpark and much older data that was presented in an earlier environmental review. I simply think that's inadequate and I wanted to state that I strongly oppose this burner expansion. I believe that the inadequacy of this environmental review is a key issue because you simply are not being given information to make a decision. An adequate environmental review would look at alternatives very closely, particularly recycling and composting which consists of a strong percentage of what's going to be burned. What are the impacts of the ash? I'm glad Commissioner Norkus-Crampton asked questions about that. Both transportation of the ash through Minneapolis as well as some of its impacts down the line. While many will talk about other alternatives and other issues, I simply want to make the case that the environmental review is inadequate and you should vote this down and we ought to all be demanding a much more thorough environmental review on this proposal.

Mary Delaittre (4949 Woodlawn Blvd): My business is ground work and I consult to 2010 Partners. 2010 partners is a consortium of stakeholders located in and around the ballpark who are interested in coordinating the development activities of that area so we can actually build a neighborhood around there. You have received three bits of information from us; one is a letter of endorsement for the HERC expansion which is signed by Chuck Leer and the committee members. The second is a report called Opening Day and Beyond and the third is called Creating an Energy District. I'm going to talk about city building and the role that HERC plays as a community amenity.

President Motzenbecker: We'd like to hear about emissions. If you can relate them somehow to our findings that'd be more appropriate for us.

Mary Delaittre: This is showing you a slightly bigger picture and making some connections between HERC and what it produces and how critical it is to creating a neighborhood.

President Motzenbecker: It's not really related to the findings at hand. I will allow a very brief statement because we do have the information.

Mary Delaittre: 2010 Partners brought in Bill Morrish who is considered one of the foremost thinkers on urbanism in the United States. We ran a two day workshop about how to build a great neighborhood in this area which is going to probably be unlike any other neighborhood, primarily because it's a great convergence of entertainment, transportation and energy. This is the report you're going to see right here. This is a work plan. We have short term and long term elements in this work plan. What I think will be of interest to you is one of the long term items on the work plan which is called Creating An Energy District, connecting existing assets and creating a new development model. What this drawing shows you is the fact that there are a number of existing assets in this neighborhood which can go into creating a new energy district which in a time of change that we're going through, including global warming, economic change, demographic change, is something to seriously think about. To walk you through it, this neighborhood has multiple institutions for which HERC is really the lynchpin for this area in terms of not only acting as a waste facility but also as an energy facility creating enough electricity right now for 25,000 homes in Minneapolis and also the possibility of creating heating and cooling for the entire neighborhood. There's a great convergence of other assets in this neighborhood including all the transportation. There are green businesses and entertainment, there is a lightened workforce that can be educated through the surrounding facilities to teach people and create jobs around new green businesses and there is a one story building type that exists there that can be converted to support green businesses and can also be connected into the electricity that's being provided by HERC as well as possibly heating and cooling. We wanted to talk about the fact that there is this possibility to create an energy district and that HERC is really quite the lynchpin and gives the energy district and identity.

President Motzenbecker: I think it's a fantastic idea. I think we should consider it and look at it in a little more detail, just not at this particular one but I'm guessing whether or not they get an additional 212 tons a day that your plan could probably move forward to some degree I'm guessing.

Mary Delaittre: It could still move forward but I think the added capacity would only enhance the situation.

John Schatz (535 Glendale St, St. Paul): I work in downtown Minneapolis. I will address points of data, research and science today that I hope will answer some questions. I'd like to point out that the ballpark EIS is irrelevant. A previous speaker said that the effect of a plant disappears as you go farther on, that is absolutely false and we have supporting documentation for that. Also, the greenhouse gas...that was dancing with data beyond belief. If we're going to start comparing this to coal we should have a lot of other conversations about solar and wind and stuff. The commission has been charged with evaluating this proposal based on several criteria, the first one being criteria number one, will not be detrimental to or endanger the public health, safety, comfort or general welfare. We, today, are submitting numerous pieces of literature as well I have some points from that literature to share with you. An excerpt from Incinerators Trash Health from the Global Alliance for Incinerator Alternatives: "incinerator companies claim that emissions from today's incinerators are safe and clean, these assertions however are based on three false assumptions. The first is that safe emission levels exist for the pollutants released by incinerators. The truth is that incinerator emission standards as regulated by the EPA are not based on what is scientifically safe for public health. The EPA itself has written, since the EPA could not clearly define a safe level exposure to these cancer causing pollutants, it became almost impossible to issue regulations. Instead, EPA standards were created solely to require emitters to use the best controlled technologies already demonstrated by industry sources. As a result these standards allow for the release of acceptable levels of harmful contaminants such as dioxins, mercury and lead. Additionally, these faulty standards also only regulate a handful of the thousands of known toxins that do not take into account the countless harmful ways that toxins interact to form more dangerous compounds. The second false assumption is that incinerator air emissions are accurately measured. In reality, the most dangerous known pollutants such as dioxin and mercury are rarely monitored on a continuous or accurate basis. Instead of continuous monitoring, incinerators are typically subject to one or two dioxin stack tests per year, each consisting of a six hour sample. These tests rarely, if ever, test during the peak period of dioxin release when the majority of dioxins are produced. In fact, studies show that stack tests can drastically underestimate emissions of dioxins recording as little as two percent of the actual total. They also get warnings as to when the tests are going to be occurring so they can kind of watch what they're putting in. The EPA does not effectively regulate toxins in ash and liquids discharged from incinerators. The third false assumption is that air emission limits, even as currently measured, are actually met by the incinerator industry. In 2007, a federal judge ruled that the EPA had been unlawfully reclassifying certain incinerators under less stringent boiler emission limits. The EPA had done this to avoid enforcing more stringent incinerator emission limits on mercury, lead, arsenic, dioxins, and the list goes on. In light of this track record, communities should question whether they trust the EPA to protect their health and properly enforce emission limits in their community. Emission limits are often scientifically arbitrary and because emissions are inaccurately measured, and because even poor regulations that do not exist can be ignored is simply fraudulent to claim as incinerator companies do that incinerators are safe and clean. Secondly, from the Health Effects of Waste Incinerators from the British Society of Ecological Medicine, regarding synergistic effects: "Various studies have shown that a combination of substances can cause toxicity even when the individual chemicals are at a level normally considered safe." The report *Man's Impact on the Global Environment* by the MIT stated "synergistic effects among chemical pollutants are more often present than not. The population living around an incinerator is being exposed to multiple chemical carcinogens and to find particulates, to carcinogenic heavy metals and in some cases to radioactive particles all known to increase lung cancer." Also, Mr. President, earlier you asked about ultrafines and particulate matter PM25. One of the deadliest forms of particulate air pollution - ultrafines - are neither regulated or measured under current regulations. Such particulates are incredibly tiny

with a diameter of 1/1000<sup>th</sup> to 1/1000, 000<sup>th</sup>, less than a human hair, and they are put out in vast quantities by incinerators. Such particles have a very large surface area relative to their volume, and airborne toxins attach to this large surface. Such ultrafines then get lodged in our lungs, or enter our blood stream creating various types of health problems. All of this is well documented in the research we are submitting. To make matters worse, more and more ultrafine particles will be emitted from incinerators in the future, because more and more products based upon nanotechnology are entering the waste stream that contain engineered ultrafine sized materials. Commenting upon this threat less than two months ago, a former EPA official called for a New Environmental & Consumer Protection agency. I quote from their press release: *“Existing health and safety agencies are unable to cope with the risk assessment, standard setting and oversight challenges of advancing nanotechnology. In a landmark report, Oversight of Next Generation Nanotechnology, J. Clarence Davies highlights the need for a new agency to address current forms of pollution and to deal with the health and environmental impacts of the technically complex products comprised by rapid 21<sup>st</sup> century scientific advances.”* Those materials, along with the other ones we are submitting today, speak to the following points also: Residents of Minneapolis are already experiencing negative health and quality of life impacts. Apparent compliance with Federal and Minnesota air quality standards does not prevent these negative impacts, which would inevitably increase with increased pollutant discharges caused by increased burning at the HERC. There is generally a "dose response" relationship between air pollution and morbidity and mortality. This means that any increased levels of air pollutants would be harmful, especially to residents of Minneapolis and surrounding areas. All regulated air pollutants have serious health consequences. Therefore, no individual pollutant emissions should be allowed to increase. Contrary to what others are claiming, we are not asking you to be emissions experts or to overrule the MPCA. As I have discussed, whether a facility has permits or not, is not an accurate measure of its true danger to public health. Those arguing for the approval of this proposal are saying that because all of the necessary permit paperwork is filed, that there is no reason this commission can deny this request. The argument is that there is no allowable basis to deny this proposal because they are in compliance with conditions #3 and #4 of the recommended motion. That logic blurs the lines separating the criteria that this commission is to first judge this proposal by, and then with the conditions of the motion with which the proposer must comply with if all the criteria are met and the motion is approved. So, to be clear, there is a criteria that is public health and then we can deal with the permits later. At the previous hearing we talked about circular logic and where it is that stops and who is responsible. We believe this planning commission does have responsibility and is doing a great job today asking important questions. We've talked about allowable limits. The EPA has said it can't clearly define a safe level of emissions. We keep hearing about EPA and MPCA and stuff, but I think we've heard enough to know there is a good amount of reasonable doubt there. This is not about some dust, some smell, some noise, about making the facility look nice with some landscaping, this is about the air that our families and our communities breathe and the dangers of burning more garbage at this facility. This facility is running on 1986 permits, we're also judging this CUP based on an EIS for a ballpark. We've come a long way since 1986 and our understanding of the public health dangers posed by burning trash. It is within this commission's purview to hold as a reasonable conclusion that there is a possibility that an increase in burning trash at this facility is a danger to public health. This is not overruling the MPCA. This is not saying that

you are emissions experts. It is saying that based on the burden presented to you in criteria #1 that there is reasonable information to lead you to believe that this proposal as it stands, is potentially a danger to public health and we ask you to deny this proposal. In conclusion, we did have a little difficulty getting some of the information we requested by Data Privacy Act, but were provided it today. One of those items was a letter from the City Attorney. I will just briefly mention that. We have a prepared statement from a lawyer here, which says. The letter you have from the City Attorney says you have to pass this thing pretty much. Local units of government may set emission regulations with respect to stationary sources which are more stringent than those set by the Pollution Control Agency. I'll end there.

Commissioner Cohen: You don't like the garbage burner. What would you do? Would you close the thing down?

John Schatz: I believe that, I don't want to get off topic here.

President Motzenbecker: That's not the topic.

Commissioner Cohen: Let me ask another question. What would you do with the extra capacity that's being asked for? How would you deal with it?

John Schatz: I believe the City Council is looking at a proposal to put solar panels on top of the Convention Center. I believe there is anaerobic digestion being done in St. Paul. There is a lot of options here. I, myself, at home, I buy wind power and I pay extra from Xcel.

Commissioner Cohen: Could you discuss how much they would cost and how long it would take to do them and whether there are better alternatives in expansion here and why they are better?

John Schatz: I would defer to the Minneapolis Federal Reserve Board who, in their 2005 opinion in the Federal Gazette, said that that incinerators are a legacy technology and a burden on municipalities and they cost way too much for what they do.

Commissioner Cohen: I know you think the incinerator is bad, but I want to know what you got in mind that would work as a substitute for it. You say wind power and solar panels, is that it kind of?

John Schatz: There is an incredible amount of options, one of them would also be reducing consumption. There are a lot of things we can do as a society.

President Motzenbecker: Commissioner Cohen, I mean no disrespect, but this is part of what I had asked the audience not to get into because it's not germane to this particular discussion. What we are discussing is the public health benefit, not different technologies that could be used in replacement of this at this point. I think we need to focus on the information that we have and I don't think we have experts in the room that could give us that detailed information. I would want much more detailed information on that if I was going to decide on that.

Commissioner Norkus-Crampton: When you talked about the lack of EPA standards on certain types of these elements, are you saying it's because the research just hasn't been done or that there is no safe level?

John Schatz: Both. The only safe level is zero. Anything above that does increase the chance of asthma, heart disease, lung disease, anything. The only way to say there is no risk is to have none of it. There is incredible difficulty in measuring these things. We talk about synergistic effects. If you were to take 1000 different compounds that go into the garbage. You would never be able to do enough experiments to say what's happening when you combine those things. Best example, a kid at home with a chemistry set mixing different things to see what happens. Something different always happens. That's what happens when you incinerate garbage. You never know what you're getting. We don't even know half the things that are coming out of the incinerator.

Commissioner Schiff: As you know, the very first finding we have to make today is that there will be no detrimental public healthy affects of increased burning at this site. Can you discuss, from your knowledge, what public health concerns someone might have with these types of emissions?

John Schatz: There is a wide variety of health concerns. We could only scratch the surface of it. The one that's very clear to most people is asthma. When we look at the air we breathe and we look at those maps that Representative Clark had, there is clearly a problem with health affects as people are closer to industrial sources of pollution and this is an industrial source of pollution. Also heart disease, lung disease, cancer, all of these things are dramatically affected. Some people might say they don't have all the studies, but there are enough studies and we have them here for you today, but we would argue that there is an abundance of evidence that says this is probably happening and/or this has happened and we have to do something about it. The more increase pollution from HERC, the more people will die. We won't be able to say that this person was killed by HERC, but it's happening more and more and all we have to do is look at the numbers of morbidity around industrial sources of pollution like incinerators.

President Motzenbecker: Just to follow up on that, the references and citations that you have, you'll be submitting those and those can be seen as expert testimony.

Muller [not on sign in sheet]: My name is Muller.

President Motzenbecker: I will let you know that I'm not going to allow a 15 minute presentation. I have asked you to limit your testimony to about 5-7 a piece. I have given everybody a little bit of that. I know you requested in one of your emails a 15 minute presentation and that's just not going to happen. If you can keep your testimony to the requested five-ish minutes I will allow that as the final piece.

Muller: I'm very uncomfortable because not however much you want to hear from me is up to you, but there are other people here wanting to speak, some of who have been involved in dealing with the issue of this burner for decades. My request to you would be that you not cut off testimony until people have had an opportunity to have their say.

President Motzenbecker: I have explained my reasoning at the outset and you have your five minutes or you can choose someone else. It is at my discretion to limit testimony.

Muller: Very well. I have a flyer here that comes from the Pollution Control Agency and it says if you're burning garbage you're making poison. Some of you may have seen this, but I'd like to hand it out. There is a curiosity of this that the context of this flyer is a campaign by the Pollution Control Agency against burn barrels, but there is no fundamental difference between a burn barrel and a large industrial garbage incinerator. If you look at this, they say among other things that today's garbage contains a hazardous mixture of carcinogens and other toxins. From my perspective as a newcomer to Minnesota, one of the curiosities of this issue is we see inconsistent positions being taken here. Air permitting is complicated. I don't think I need to tell you that. This thing I have in my hand is the air permit for the HERC and if anyone would like to look at it I'd be glad to pass it around. It's extremely difficult to penetrate the style and terminology and figure out what it means. It's sufficiently complicated that you could spend a week here hearing from people on both sides throwing out facts that might sound convincing and be left with some uncertainty regarding who to believe. Let me just point out to you that as Mr. Schatz and other people have indicated, there's a relationship between pollutants and disease. The burner contributes to morbidity and mortality in Minneapolis and St. Paul and the surrounding area and if you allow it to burn more there will be more morbidity and mortality from it and one would urge you not to do that. I believe I sent in a document that contains dispersion maps. Did anybody get those?

President Motzenbecker: Was that received today? Ok, that was in our packet, Commissioners.

Muller: The only thing I will take time to point out here is that the maximum concentration s are not at the ballpark. If you look at the first one, the point of maximum concentration is the green dot, which is across the river and about 1.1 miles away from the incinerator. If you look at a study what was done with the state purpose of establishing that the garbage incinerator wouldn't be a healthy hazard to people attending ballgames at the new stadium...

President Motzenbecker: We're having a hard time finding it. Could you place it on the overhead?

Muller: The incinerator is here, the stadium is here and the point of maximum concentration is here. What these tell you isn't all that much overall, but it certainly does tell you that an argument that there isn't a health hazard to people attending ball games a few hours a week doesn't really tell you anything about what the affect would be in the communities and upon people who live in their homes most of the time more often than they go to a ballpark. If you look at the five hour, the average concentration you see...

President Motzenbecker: The five year, you mean.

Muller: Yes. It's outside of the ballpark. The work that's been done doesn't speak to the question of whether the incinerator will cause harm in the communities if you let it burn more.

President Motzenbecker: For those of you looking it's in the ENSR, pages 2-6 and 2-78.

Muller: I bring your attention to the CPED Planning Division report which is the staff report. On page two, item one, says "The resource recovery facility shall not exceed a size and capacity necessary to reclaim, burn, use, process or dispose of more than 1,000 tons per day." This is verbiage from the original conditional use permit that was issued by the city and it doesn't say that the burner shall not burn more than 1000 tons a day, it says it shall not have the ability to do so. Arguably, this means to me that the facility was built in violation of its original conditional use permit from the city of Minneapolis. If we go further into the staff report, we see it stated repeatedly that the facility already has the capacity to burn the 1212 tons per day. Without wanting to be quarrelsome, I feel that the city staff has by no means done any sort of due diligence. Not only has it not made an informed investigation into the question of whether there is a health hazard here, but it doesn't appear to have even looked closely at the basic wording of the documents. I think this is enough. I think I will end my comments, but I would urge you to hear from some other people. Leslie Davis is here, he's been working on this issue since long before I ever came before Minnesota. I think, with all due respect, he's entitled to be heard. Thank you very much.

Leslie Davis (622 Lowry Ave N): We fought this fight 23 years ago when they wanted to build two garbage burners around the twin cities with 1000 tons each. There were health risk assessments and we went through this whole drill and decided we would have this one burner and it would burn 1000 tons of garbage a day up to a maximum of 365,000 tons a year. That was a deal that was made by people sitting in your positions, the county board, City Council people; everybody agreed that that was the number. Now suddenly the number is going to change 20 years after the fact. I didn't even know that in the year 2000 they had changed the law to allow them to go from the 365,000 tons. They're saying they're going to go 20 percent more, but if you multiply 212 tons per day by 365 days, you'll get 442,000 tons, that's almost 70 tons more. They're saying they're going to burn 40 tons more. Was it 40 or 70? Did they burn 365,000 tons last year, an average of 1000 a day? If you're down for 20 or 30 days, how do you burn 1000 tons a day? They must be burning more. They're saying they're going to average 1212 tons a day, that means they're going to have to burn 1300 or 1400 tons on some days when they're down in order to meet those numbers. It's confusing because they say they want to burn 40 tons more yet they're also saying they want to burn 20 tons more, 40 percent, 20 percent; the numbers are confusing. When you do an Environmental Impact Statement, the first thing you do is you have scoping meetings to determine what the scope of the EIS should be. To Mr. Hornstein's remark, the alternatives weren't considered because the garbage burner wasn't the issue. The ballpark was the issue of the EIS. We weren't going to do an alternative to the ballpark, that was the ballpark. It's their place, a private facility so they picked the spot. No alternative to the ballpark was picked. No alternative for the extra garbage was picked because who knew they wanted to burn extra garbage. You have in front of you the air quality alert information from the Minnesota Pollution Control Agency. Why do you think they do these air quality alerts? For ozone. I direct you to the fourth page of that attachment which talks specifically about 2.5 particles

which can really only be seen by an electronic microscope. It's not something you can see, it's not something that you feel, but they go deep into your lungs, they're respirable, you don't know how many parts go into your lungs. It's your responsibility as the planning commission to protect the health of the people. To allow an increase in these pollutants, whether it's ozone or fine particles or PM10 particles, would really be irresponsible. You couldn't possibly allow an increase of particulate to go out over the city of Minneapolis right at the ballpark. I would argue that the ballpark, from what I understand, is the second highest point of emissions from the burner. It spreads all over, but if you picked the highest places that would be the second highest point is directly into the ballpark. The argument about waste, heat and global warming gasses, that's all a smokescreen. They produce more steam, or have been producing steam over the last 20 years that's just been wasted. They've been venting it out where they could have been heating and chilling buildings for the last 20 years. To consider them an environmentally protected entity is not right. I need you to look at this information about the air alert warning. I alerted you the last time I was here and I was surprised I didn't get a call from anybody. I pointed out to you that the cumulative effects of all these pollutants wasn't looked at in the environmental impact statement. How come nobody addressed that issue of the cumulative effects that was required in the Environmental Impact Statement? I need you to address that. I need you to talk about allowing 2.5 size particles to be emitted into the air. That's all I have. I gave you the information about the cumulative effects of the Environmental Impact Statement.

Commissioner Schiff: Are you familiar with technology that is used to reduce the impact of emissions at burning facilities?

Leslie Davis: Yes.

Commissioner Schiff: Does technology exist to reduce emissions on this site from what is proposed?

Leslie Davis: You could pile more stuff on but you're not going to be able to do that because they're with their regulations. They're within their emission limits in their permit. They have the best available control technology. You can only pile so much stuff on. You could put more wet scrubbers on but you're not going to be able to require them to do that. They've already told you that they're going to increase the emissions from that burner and that should be enough for you to know based on what these emissions are that that shouldn't be allowed in Minneapolis. A deal's a deal. They got a 1000 ton a day burner upwind of downtown Minneapolis. All the people that were in your position made that deal years ago and that deal shouldn't be changed.

Commissioner Schiff: Why do you believe the planning commission doesn't have the authority to require additional wet scrubbers and additional equipment to reduce the impact of emissions?

Leslie Davis: There's no basis for it. They're in compliance with their permit. The Pollution Control Agency, they'll give you a big, long dance on that subject. As you said, when they had a mercury problem years back, they put on mercury control.

Commissioner Schiff: Are you familiar with state statute 116.07, *local units of government may set emission regulations with respect to stationary sources that are more stringent than those set by the Pollution Control Agency*. I read that and I understand that I do have the authority to set higher standards.

Leslie Davis: Well then I would use it if I were you.

President Motzenbecker closed the public hearing.

Commissioner Tucker: I will move the staff recommendation and the four conditions they include expecting that some of my fellow commissioners may want to add conditions making more stringent emission standards apply to this site. I'd like to separate that just so we know exactly what we're talking about because we'll have the discussion if we think we have the authority and desire to impose these more stringent emission standards. My motion is staff recommendation (Gorecki seconded). I think staff laid it out very well about the authority that we have here and the likely effect of the additional emissions on the nearby neighborhood. I think that's what our main concern is is how this affects the adjacent properties. We haven't heard anything negative from them in particular. We also have in the staff report and in the condition that all necessary permits will be complied with and continuing compliance will be part of the conditions.

Commissioner Norkus-Crampton: I am speaking against this motion. I'm a nurse so I really like quantifiable data, especially along the lines of public health. In reading the state statute that was passed saying that the existing facility may use its capacity, which I'm understanding to mean its full capacity in this case, that the facility must continue to comply with all federal and state environmental laws and regulations and must obtain a conditional use permit for the municipality where the facility is located. That reinforces our authority in this matter if the statute means what it says. The first finding says "will not be detrimental to or endanger the public health, safety, comfort or general welfare." I understand that there's probably a very good faith effort here within the given technology that's come, up with what the EPA could actually measure, with what seemed reasonable as far as standards go to expect industries such as this to comply with, but I've just been doing a lot of research and digging to just find the question of standards versus safe levels, versus safety. The Massachusetts Medical Society supports a zero mercury emission strategy, saying that even a little bit is recognized as a hazardous pollutant that is extremely persistent in the environment once it's introduced and becomes more concentrated at higher levels in the food chain, affects children. That's just one of the emissions from this plant. I understand that we're trying to figure out a way to make this work and we're trying to put trust in technology that there must be some way to do this, to measure this, to make this better and maybe we can make it better but more is more. More toxins is more potential harm to public health and I don't think that we can say that

as we're allowing people to put more into the environment that it will not have a detrimental affect. I can't say that. To me it's a very black and white issue. We'd like to figure out conditions that can work. This is big. The affects, not only in the surrounding neighborhood...in many cases it's not even the surrounding neighborhood that's affected, it's the people across the river, it's the people down the street, it's the people depending on which way the wind's blowing...there are just so many variables here that despite a lot of good faith efforts, we cannot control and responsibly I cannot support this proposal.

Commissioner Bates: I too am very strongly opposed to this proposal. I'm here as a representative from the school board and the number of children in our school district who bring their inhalers to school with them every day is profound. I find that I need to voice my frustration with the staff report that I think was a cynical response to something that is a very big question confronting our country today. I'm disappointed that the county in proposing this thought that a ballpark study and a 20 year old environmental impact study was sufficient to measure up to the implications of this and so I strongly am against this proposal. As I mentioned, I believe that we're well within our authority to just say no. Thank you.

Commissioner Huynh: I'm also going to speak against staff recommendation of this item here. During the last hearing we requested adequate information in order to base our information on and the information that we received didn't really inform the issues that we had raised in terms of the applicant's conditions with being able to document and show the affects on the neighborhood and how the emissions level would play with that. I think it's still unclear on how and where those metrics play. Also, just looking at strategies that you can implement with emissions. Some of the information that I was able to tap into was just look at research online in terms of alternative forms of energy and how this can be resolved other ways and also just consulting with some of the engineers that I work with in terms of what would actually happen if you increase emissions level and waste burner. Depending on where you get information, both concluded with the EPA and also with the engineers that I work with is that increasing the amount of waste that you generate would actually increase the level of emissions. Regardless of the scrubbers or new technologies that you put on, and it didn't seem like the applicant was fully committed to doing those additional applications, regardless, we would still have an increase in emissions levels. Not having the commitment and just having information that the emissions would increase regardless, I think is just reason to not approve this application. It just seems like it's going against a lot of the policies with the city of Minneapolis, with the sustainable plan for Minneapolis growth, with architecture 2030, with all these new building code standards and your emission levels are now being regulated with refrigerants. It just seems to go in the opposite direction that we should go in. I'm not going to support the recommendation.

Commissioner Schiff: I think the staff report has really misinterpreted how we should measure the environmental impact study of the ballpark. This EIS really only looks at the effect of the ballpark on the air dispersion model of the plant. It doesn't look at the effect of the pollutants on the surrounding area. This site is part of a neighborhood; it's not just

a site that's going to affect ballpark users and ballpark employees. There's residential nearby, there's office workers. When you look at the data in the EIS, you look at what happens when you expose somebody who watches a game for a couple hours or even a season ticket holder for 81 games a year. When you try to look at who is getting affected by people who live in the area, people who work in the area for multiple years, you see that data's not there. After reviewing the EIS, the staff report concludes that there are no adverse affects anticipated and I don't see that anywhere in the actual EIS, it doesn't say that. It says that the affects are within the measurable allowable permits that have been granted, which is a whole different question than what we're being asked to find. We're being asked to find. We're being asked to determine today that there will be no endangerment of public health, safety, comfort or general welfare. Looking at the particulate matter, looking at the other emittents in this report, I don't know what science you'd have to rely on to make that statement, but it can't be science based on fact as we know it because we know otherwise. I'm also going to vote no and ask Hennepin County to reconsider this ill thought out plan.

Commissioner Luepke-Pier: I also will not be supporting this motion. We're charged with finding that these are in compliance with the six findings and findings two through six I think are. Finding number one, I just can't get over. That is a responsibility we're charged with. I haven't been convinced that it will not endanger the public health, safety and welfare. In fact, I've been concerned what effect it's currently having much less increasing it. I was also concerned with the staff report that there seemed to be more space devoted to the odor coming from the site than the dangers of the particles in the air. I think if it was just affected the smell more, I think I'd say "too bad, you live next to a garbage burner." That just seemed to be surprising to me.

President Motzenbecker: After reading through this in detail, I had some similar questions. I didn't know until today about the environmental quality board and how their decision kind of guides the staff decision on whether to request an additional EIS but I found it interesting that in this EIS with these dispersion levels that the highest levels were outside of this area and that didn't raise any flags with them. I find that interesting and maybe that might just be my naïveté in not understanding all the details in which they decided, but that seemed interesting that that wasn't considered. So with that, I support what a lot of my fellow commissioners have said today. I think there needs to be more study done on this should it continue. The motion on the floor is to approve the CUP to amend the processing to 1212 tons of waste per day. All those in favor? Opposed?

The motion failed 3-5.

Commissioner Tucker: I thought my fellow commissioners might have a fifth condition imposing some emission standards, but evidently I was incorrect in that so I think we move on to the next obvious motion which is to deny the CUP (Huynh seconded).

President Motzenbecker: All those in favor? Opposed?

The motion carried 6-2.

Commissioner Bates: I have a writing here regarding questioning the scoping document of the ballpark EIS in response to this, is that not a finding?

President Motzenbecker: No, we have to with the findings that are in the staff report for a CUP; something that specifically states that it will not be detrimental to or endanger public health, etc.

Commissioner Tucker: We need to establish our authority and we will refer to state statute which we understand to give us the authority with this stationary source to control it.

Commissioner Bates: Maybe I wasn't clear enough, but what I was trying to say in terms of the findings, is that I don't think there was sufficient information provided that would suggest that the extra burning will not impact the health and, in fact, the proposers themselves said that there will be more pollutants in the air because of the extra burning. I think that's a finding that would say it was detrimental to the health.

President Motzenbecker: Maybe I can help out. You're saying that in finding number one, that it possibly will be detrimental.

Commissioner Bates: Yes, it possibly will be detrimental.

President Motzenbecker: Plus some other things as Commissioner Tucker has outlined that relate to the state statues, etc. If you want to go through those findings and maybe have statements for those I'd be willing to hear those and Jason can take those down.

Commissioner Norkus-Crampton: I was going to reiterate that point. Given the evidence that we've heard today, we cannot definitively say that increasing the capacity of the garbage burner will not be detrimental to or endanger the public health. That is the main finding I would say is that it may be detrimental to or endanger the public health, safety, comfort or general welfare. Because we can't make that definitive statement, that has to be our main finding.

President Motzenbecker: I think that finding would also apply to finding number two as well.

Commissioner Norkus-Crampton: So if we can say "it may", I think that would pretty much cover it. We would like more robust research, more robust information to make a determination and with the information we have in front of us today I think some doubts have been raised in what affect this could have on the public health, safety, etc.

Commissioner Bates: I personally think that "in all probability" could be offered instead of "may" just because of the signs we heard today.

Commissioner Norkus-Crampton: Sure.

President Motzenbecker: I would also add that there were several things mentioned by Commissioner Huynh that this use probably isn't consistent with some policies of the Comprehensive Plan which is finding five. It may be with some, but it may not be with some. In her opinion it was not.

Commissioner Norkus-Crampton: If I can add something to that. I know the policy as a city. Commissioner Huynh and I have worked very hard to beef up the green standards of the Comprehensive Plan and reducing, reusing, recycling, composting, these are all things that should be front and center of any sustainable city. What I found particularly disturbing when we first talked about this that if there was an interruption in the waste stream that we could make a significant dent in the garbage that we're actually producing to be burned. Because of this contract we'd have to import garbage from somewhere else and so we wouldn't even see a benefit in our own city. I think that's counterproductive because it wouldn't...at least with a landfill, you get less landfills if you burn less garbage. In this case, because of the contract, we would continue to burn the same amount of garbage regardless of how much we actually produced as a city. I think that's an important aspect of that.

Commissioner Schiff: I wanted to point out in the Comprehensive Plan policy 7.1, "Minneapolis will manage the use of the city's environmental resources, including air, water and land, in order to meet present needs while considering future concerns." I also want to point out policy 7.11, "Minneapolis will operate waste management programs that focus on reducing solid waste, reusing and recycling materials." And policy 7.12, "Minneapolis will play a leadership role in setting up examples in pilot projects." You could also site 7.8, "Minneapolis will continue to support pollution prevention programs as an important first step in maintaining a healthy physical environment."