

DEPARTMENT _____

Office Memorandum

TO : Paul Smith
Metropolitan Council

DATE: 6/17/80

FROM : Robert F. Benner, Executive Director
Environmental Quality Board

PHONE: 296-9027

SUBJECT: Draft EIS prepared by Met Council staff on Proposed Expansions
of the Freeway, Pine Bend, and Burnsville Sanitary Landfills

I have directed staff to review the draft EIS and wish to provide you with the following comments:

✓ Daily Cover Compliance History -- Daily cover is a key requirement of MPCA's solid waste rules, and one which MPCA defended rigorously during our Solid and Hazardous Waste Study effort. Given this emphasis, the EISs pay insufficient attention to the compliance histories of the various sites with respect to daily cover.

The EIS Appendices indicate that Freeway and Burnsville landfills have been cited by MPCA numerous times for violation of this requirement, while Pine Bend has been relative citation-free. But apart from a few sentences acknowledging citations (e.g., Freeway EIS, pp. 12, 41), and a few comments relating the lack of daily cover to odor and litter there is no discussion of the implications of these violations for granting expansion permits. In particular, I believe it would be useful to incorporate discussions of the following issues:

- frequency of cited violations, the likelihood of violation between inspections, and the operator's explanation for the lack of daily cover.
- the position of the county and state regulatory agencies regarding the history of violations, their analysis of the impact of the violations on the environment and the nearby residents, and their expectations for future compliance.
- the relative merits of granting the respective permits on the basis of the different compliance records of the different facilities.

The daily cover issue is an example of a more general issue, namely the weight to give a permit applicant's prior performance in evaluating and granting a permit. Pete Ashbrook tells me this question comes up in feedlot permit hearings, where citizens question whether the permit conditions will be met by the permittee or enforced by the regulatory agency.

We can either assume that enforcement will be adequate to ensure future compliance, or assume that regulatory resources will be inadequate to ensure compliance where the permittee has not shown a predisposition in that direction. I believe the latter assumption is sounder and I think most citizens would agree. But I do not know the legal of denying a permit ("prior restraint") on grounds of past performance.

✓ Leachate Problems - The EISs do not address the implications of the upcoming Resource Conservation and Recovery Act's "Open Dump Inventory." All facilities in the state will be expected to be in compliance with EPA "criteria for classification of solid waste

disposal facilities." (Title 40, Code of Federal Regulations, Part 257.) In particular, a discussion would be useful of leachate from the landfills in light of Part 257.3-3(a): "A facility or practice shall not cause a discharge of pollutants into waters of the U.S. that is in violation of the requirements of the National Pollutant Discharges Elimination System ..."

If any of these landfills is in violation of this or other "open dump" criteria, it may be cited as an open dump during RCRA-required open dump inventory.

✓ Expected Revenues from Landfills - The EISs note that the 1980 Waste Management Act made landfills taxable by local governments (e.g., Freeway EIS, p. 141). It would be interesting to show exactly how much property tax these facilities might be expected to pay, to see how much compensation the local governments may expect for the problems the facility may cause.

✓ Comparative Analysis Between Applications, and the "New Facility" Alternative - I believe it would be useful to rank the applications on the basis of various factors, including environmental and social impacts, and compliance histories. Similarly, these alternatives should be ranked against siting new sanitary landfills. Each EIS discusses the need for landfill capacity in the Metro area, but that is not to say that all applications must be approved, or that new facilities might not be environmentally preferable, even if they are hard to site, more expensive, and more disruptive to the individual hauler (Freeway EIS, p. 145-- some say haulers should be using transfer stations anyway, to save time and gasoline).

At some time during this decade the Metro area will need new landfills and resource recovery facilities. They will likely be more expensive than today's facilities, if they are to meet current environmental and social requirements. But this should be seen as a challenge to the Area, not as a threat. The pending decisions should be how much capacity does the Area need before more acceptable and suitable facilities are available and which of these expansions are necessary to provide that capacity in the most environmental and economically sound fashion. That is the question that must be addressed in the EISs.

cc Don Kredit
Met Council