

**BEFORE THE  
MINNESOTA POLLUTION CONTROL AGENCY  
STATE OF MINNESOTA**

**Draft Air Emission Permit issued to  
Midtown Eco Energy, LLC**

**Air Emission Permit No. 05301187-001**

---

**PETITION FOR A CONTESTED CASE**

**PETITION TO PLACE MATTER ON BOARD AGENDA**

---

Neighbors Against the Burner (hereinafter "NAB") hereby submit this Petition for a Contested Case, as provided by Minn. R. 7000.1800, and request that the Board of the Minnesota Pollution Control Agency order a Contested Case in the above-entitled matter. Neighbors Against the Burner further Petition, as provided by Minn. R. 7000.0650, Subp. 3, to place this matter on the Board Agenda at the Board's earliest convenience. This Petition is submitted by Nancy Hone, Coordinator, Neighbors Against the Burner.

**I. STATEMENT OF REASONS AND PROPOSED FINDINGS SUPPORTING DECISION FOR CONTESTED CASE**

**A. Statement of interest and standing**

Under the rules, "any person" may file a Petition for a contested case, and therefore Neighbors Against the Burner have standing to file this Petition. NAB is a community advocacy organization directly in the plume of emissions of the proposed Kandiyohi burner. Whether and how this project receives an Air Permit has a direct impact on members of NAB.

**II. STATEMENT OF ISSUES AND SPECIFIC RELIEF REQUESTED**

Neighbors Against the Burner raise issues regarding specific sections of the Draft Air Permit, the Federal Clean Air Act, and also raise issues of compliance with Minn. Ch. 116D, the Minnesota Environmental Policy Act.

**A. Draft Air Permit is deficient**

**i. Notice, application, permit and analysis misrepresent fuel and impacts**

The public meeting announcement and the formal Notice both misrepresent the fuel to be used and the character of the facility proposed. Minn. R. 7000.0300 requires candor on the part of agency employees and agents, and this rule has not been met in this proceeding. For example, the announcement of the public meeting states:

Fuel for the main boiler will be wood residue, such as wood chips and tree trimmings, which would otherwise go to a landfill.

There is no such restriction in the permit, and there is a provision for trial usage of other "alternative biomass" unspecified fuel. Under the statute, any solid fuel boiler can burn up to 30% refuse derived fuel. Minn. Stat. 116.90 Subd. 2 (2006). If there is a limitation on RDF, that must be stated expressly. Further, there is no showing that the fuels above would otherwise go to a landfill -- rather, they are in demand.

**ii. Readily available pollution control measures are not proposed**

The applicants have repeatedly claimed this is the cleanest possible facility, yet on p. D-18, they state, in the "Cost estimate for gas absorber -Main Boiler SO<sub>2</sub> emissions," the application shows that SO<sub>2</sub> emissions could be reduced from 39.3 tons per year to 3.9 tons per year, and the annual cost of this would be \$647,217. However, this was rejected by Kandiyohi as "not cost effective." The MPCA agreed.

**iii. Permit allows manipulation of emissions results when they're unfavorable**

Another material fact at issue is found in the "Total Limited Potential to Emit" when compared with the "Potential for Significant Deterioration" and all "Potential" emissions are above PSD levels -- a clear admission that "Potential for Significant Deterioration" exists. The Applicants follow this chart with manipulation of other scenarios through modeling to reduce appearance of emissions, but which do not explain what methods the Applicants could or would be used to reduce these numbers.

Another material issue of fact is found in the Application, Table 8-1, and accepted by the MPCA, where in the initial application, February 20, 2007, and in the following MPCA required

addendum of May 8, 2007, the risk increased by a factor of 10, or in some cases more than 10, it is not clear whether additional analysis would reveal increased risk levels, and perhaps risk levels higher than the Department of Health's guidelines. See Application, p. 8-11.

**iv. Farmer scenario shows excessive risks, and intermediate scenarios must be addressed**

Another material fact issue is found in the "Farmer Scenario" where the applicant and the agency dismiss concern about the risk of the project on "farmers," 9 times higher than Health Department guidelines. The risk is high to "farmers," who are those parties who grow substantial produce and consume it, a common and "cultivated" activity in Phillips and the surrounding neighborhoods:

Most risks are projected to be well below health guidelines with the exception of the "farmer cancer" scenario. This scenario assesses the risk to an individual growing their own produce and raising livestock as their primary food source. This situation is not known to be present in the area and is not likely occur. Therefore, the risk is not realistic for individuals in this area.

The Air Emissions Risk Analysis is flawed in minimization of the risk, using only the "farmer" risk and dismissing it out of hand because there are no "farmers" in the area -- no assessment or modeling is available showing scenarios between the "non-farmer" and "farmer," other intermediate scenarios that show increased risk are not addressed.

Even if reviewed from a "farmer" perspective, the risk posed by the project is indeed realistic, as the "farmer cancer" risk is deemed "9," when compared with "1" and though no assessment or modeling is available showing scenarios between the "non-farmer" and "farmer," there are scenarios present in the community that fall in that range. The application states:

Therefore completion of the homegrown beef, homegrown cow and homegrown pork pathways will not occur for this project. There is potential for completion of the homegrown chickens pathway and eggs from homegrown chickens pathway, as well as the potential for a higher level of produce consumption compared to the residential pathway.

Application, § 8.2.2.4, p. 8-9. However, this is not analyzed in terms of risk posed by the project.

Further, only "some" pollutants are factored into the farmer scenario, which yields a risk factor of nine times the "acceptable" level. An analysis with ALL pollutants would show a higher level of risk.

Community Gardens:

Korean Peace Gardens Southwest corner, Cedar Avenue & Interstate Highway 94	The Peaceful Patch 2444 11th Ave S	Wilburne Gardens 2122 16th Ave S
Neighborhood Safe Art Spot 1200 E Lake Street	Kaleidoscope Gardens Messiah Lutheran Church 2504 Columbus Ave S	GLUE Garden 2937 14th Ave S
The 12th & 13th Avenue Block Club Community Garden 2727 12th Ave S	Ground Zero Community Garden 2309 15th Ave S	5th Avenue Garden 2309 5th Ave S
The Portland Avenue Garden 2749 Portland Ave	Waite House Community Garden 1300 E 26th St	14th & 27th Garden 1402 E 27th St
	2800 Garden 2819 15th Ave S	17th & 27th Garden 1622 E 27th St

These are Community Gardens, according to a Community Garden site -- one third of the Community Gardens in Minneapolis are in the Phillips Neighborhood.<sup>1</sup>

The risk to local residents must be considered in light of the intermediate scenario generated by the promotion and existence of many individual and community gardens in the area, such as the Green Institute Community Garden program, GardenWorks,<sup>2</sup> the Dowling Community Garden at 46<sup>th</sup> Ave. and 39<sup>th</sup> St., Minneapolis,<sup>3</sup> or the garden next to the Seward Café at 2129 E. Franklin in Minneapolis, where produce is grown and then served to the community.

According to a Community Garden site, one third of the Community Gardens in Minneapolis are in the Phillips Neighborhood.<sup>4</sup> Many of these gardens above are in the Phillips Community, and all are near the proposed site of the Kandiyohi burner.

Community Gardens in St. Paul are found at:

<sup>1</sup> Community Garden information available at: [www.thegreenguide.org/article/community/gardens](http://www.thegreenguide.org/article/community/gardens)

<sup>2</sup> GardenWorks: [www.greeninstitute.org/greenspace/](http://www.greeninstitute.org/greenspace/)

<sup>3</sup> Dowling Community Garden: [www.dowlingcommunitygarden.org/](http://www.dowlingcommunitygarden.org/)

<sup>4</sup> Community Garden information available at: [www.thegreenguide.org/article/community/gardens](http://www.thegreenguide.org/article/community/gardens)

St. Anthony Park Community Garden  
2200 block of Robbins Street, off Raymond  
Avenue just south of Energy Park Drive

S.A.G.E. (Selby Avenue Garden Enthusiasts)  
230-232 North Victoria Street at Marshall Avenue

Farm in the City, Dunning Field Site  
1221 Marshall at Griggs

McDonough Homes Community Garden  
Jackson Street, Lot A at Timberlake Road

Farm in the City, Jimmy Lee Rec Center Site  
Lexington Parkway at Concordia Avenue,  
southeast side of intersection

Dayton's Bluff Children's Garden  
308/310 Maria Street at East 3rd Street

J.J. Hill Neighborhood Garden  
988 Selby at Oxford behind J.J. Hill Elementary  
School

Swede Hollow Cafe Children's Kitchen Garden  
721 East 7th Street at Bates Avenue

#### **B. Draft Air Permit insufficient under Federal Clean Air Act**

The Draft Air Permit is not in compliance with the Federal Clean Air Act. PM 2.5 is regulated under the Clean Air Act as a "criteria air pollutant," with a National Ambient Air Quality Standard. However, the Draft Air Permit does not address PM 2.5 in any way and/or set limits for PM 2.5.

#### **C. Draft Air Permit deficient under vacatur of EPA regulations**

A recent decision in the U.S. Court of Appeals, District of Columbia Circuit, has left the permitting scheme of the Minnesota Pollution Control Agency, as agent of the Environmental Protection Agency, in flux. See *NRDC v. EPA*, No. 04-1385, July 27, 2007, U.S. Court of Appeals (District of Columbia)<sup>5</sup>. As it was, the state of Minnesota Rules regarding Waste Combustors were not in compliance with federal rules.<sup>6</sup> In this decision, the court concluded:

[T]he EPA's definition of "commercial or industrial waste," as incorporated in the definition of "commercial and industrial solid waste incineration unit" (CISWI unit), is inconsistent with the plain language of section 129 and that the CISWI Definitions Rule must therefore be vacated. We further conclude that, because the Boilers Rule must be substantially revised as a consequence of our vacatur and remand of the CISWI Definitions Rule, the Boilers Rule as well must be vacated.

*Id.* p. 2. Because the state of Minnesota has a similar incorporation and conflation of the definitions and rules, the Minnesota rules are in limbo and must be revisited.

#### **D. MEPA**

<sup>5</sup> Available online at [www.deq.louisiana.gov/portal/Portals/0/permits/air/04-1385a.pdf](http://www.deq.louisiana.gov/portal/Portals/0/permits/air/04-1385a.pdf)

<sup>6</sup> See informally proposed rules: [www.pca.state.mn.us/publications/rd3276.pdf](http://www.pca.state.mn.us/publications/rd3276.pdf)

Under MEPA, the MPCA must act diligently to preserve the environment through careful analysis and issuance of Air Permits:

***116D.02, Subd. 2***

- (1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;*
- (2) assure for all people of the state safe, healthful, productive, and aesthetically and culturally pleasing surroundings;*
- (3) discourage ecologically unsound aspects of population, economic and technological growth, and develop and implement a policy such that growth occurs only in an environmentally acceptable manner;*
- (6) develop and implement land use and environmental policies, plans, and standards for the state as a whole and for major regions thereof through a coordinated program of planning and land use control;*
- (8) establish and maintain statewide environmental information systems sufficient to gauge environmental conditions;*
- (9) practice thrift in the use of energy and maximize the use of energy efficient systems for the utilization of energy, and minimize the environmental impact from energy production and use;*
- (11) reduce wasteful practices which generate solid wastes;*
- (13) conserve natural resources and minimize environmental impact by encouraging extension of product lifetime, by reducing the number of unnecessary and wasteful materials practices, and by recycling materials to conserve both materials and energy;*
- (14) improve management of renewable resources in a manner compatible with environmental protection;*
- (16) reduce the deleterious impact on air and water quality from all sources...*
- (19) encourage advanced waste treatment in abating water pollution.*

***116D.03, Subd. 2***

- (8) undertake, contract for or fund such research as is needed in order to determine and clarify effects by known or suspected pollutants which may be detrimental to human health or to the environment, as well as to evaluate the feasibility, safety and environmental effects of various methods of dealing with pollutants.*

The Draft Air Permit, based on the issues raised above, does not meet the requirements of MEPA.

**III. PRELIMINARY STATEMENT OF PETITIONER'S CASE IN CHIEF**

As required by Minn. R. 7000.1800, Subp. 2(b), Petitioner NAB offers this preliminary statement of its case in chief:

1. Proposed list of prospective witnesses and description of testimony

Neighbors present this list of prospective witnesses, with the caveat that the list and description of testimony is preliminary and not complete nor all-inclusive:

- a. Dr. Ed Anderson, physician and Co-Chair Citizens Against the Mesaba Project.<sup>7</sup> Anderson's testimony would focus on health impacts of pollution of the type emitted by the proposed burner.
- b. Dr. Christine Ziebold, co-author, *The Price of Pollution*.<sup>8</sup> Ziebold's testimony would focus on the health impacts of pollution of the type emitted by the proposed burner and the economic cost of the detrimental impacts of pollution.
- c. Ron Rich, Pres., Atmosphere Recovery, Inc.<sup>9</sup> Rich's testimony would focus on pollutants emitted by this project and their dispersion in the neighboring community.
- d. Alan Muller, Green Delaware.<sup>10</sup> Muller's testimony would focus on incinerator emissions, fuel mix, and analysis of the Kandiyohi proposal and PCA analysis.

2. Proposed list of publications, references or studies

Kandiyohi Application and supporting documents; MPCA analysis and supporting documents. Additional documents, specifics to be determined.

3. Estimate of time required

Neighbors Against the Burner estimate that two days would be needed to present this case, unless the pre-filed testimony and exhibits are admitted and the matter proceeds on the written record, with no evidentiary hearing.

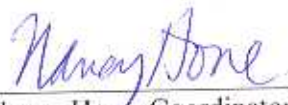
#### IV. PETITION THAT THIS MATTER BE PUT ON BOARD AGENDA

Neighbors Against the Burner Petition, as provided by Minn. R. 7000.0650, Subp. 3, to place this matter on the Board Agenda at the Board's earliest convenience.

#### V. CONCLUSION

Neighbors Against the Burner respectfully request that the Draft Permit be held in abeyance and that a Contested Case be granted to address the above material issues of fact and issues of law as raised above.

Dated: August 27, 2007

  
\_\_\_\_\_  
Nancy Hope, Coordinator  
Neighbors Against the Burner  
2098 Carroll Avenue  
St. Paul, Minnesota 55104  
(651) 647-9908  
phonehome@igc.org

<sup>7</sup> Dr. Anderson was an expert witness in the Mesaba docket: [www.mncoalgasplant.com/puc/megpandersonrebuttal.pdf](http://www.mncoalgasplant.com/puc/megpandersonrebuttal.pdf)

<sup>8</sup> The Price of Pollution, online at: [www.schn.org/tccpdf/childhood%20illness,%20cost%20of%20preventable%20MN%20report.pdf](http://www.schn.org/tccpdf/childhood%20illness,%20cost%20of%20preventable%20MN%20report.pdf)

<sup>9</sup> Atmosphere Recovery: [www.atmrcv.com](http://www.atmrcv.com)

<sup>10</sup> Green Delaware: [www.greenidel.org](http://www.greenidel.org)