

Reimbursement Plan Under the Closed Landfill Cleanup Program

Minnesota Pollution Control Agency, September 29, 1995

I. Reimbursement Process

A. Background

In 1994, the Legislature enacted a new law to clean up and maintain Minnesota's closed mixed municipal solid waste landfills which were permitted by the Minnesota Pollution Control Agency (MPCA). The Landfill Cleanup Act ("the Act," Minn. Stat. § 115B.39-46) went into effect June 1, 1994, (new appropriations became available on July 1, 1995). The Act was the culmination of three years of effort by legislators, interested parties and the MPCA to provide a cost-effective and efficient system to clean up and maintain closed landfills and avoid litigation to recover clean-up costs, especially litigation between large waste contributors and small businesses that disposed of minimal amounts of waste.

Under a key provision of the Act, the MPCA will provide reimbursement to owners/operators of qualified landfills and to other parties who incurred eligible environmental response costs at qualified landfills. The Act requires the MPCA to prepare a Reimbursement Plan ("Plan") that describes the scheduling and priority for reimbursement in accordance with the provisions of the Act. The Plan must be submitted to the Legislative Commission on Waste Management, the chairs of the Senate Finance Committee and Environmental and Natural Resources Finance Division and the Committees on Ways and Means and Environment and Natural Resources Finance of the House of Representatives, and owners and operators of and persons subject to a clean-up order at qualified landfills. The Plan is due by October 1, 1995.

Minn. Stat. § 115B.43 authorizes payment of reimbursement and sets out certain requirements and limitations that apply to the reimbursement process. These provisions must be taken into account in the Plan.

- Reimbursement payments shall not exceed \$7,000,000 per fiscal year, and may not begin before October 15, 1995, (Minn. Stat. § 115B.43, subds. 5 and 6).
- The MPCA's Plan must give first priority in its payments to claimants who are not owners or operators of qualified landfills (Minn. Stat. § 115B.43, subd. 4).
- October 15, 1996, is the final date on which persons may submit their expenses to the MPCA for reimbursement (Minn. Stat. § 115B.43, subd. 5).

- The MPCA is to approve or deny all reimbursement requests by October 15, 1997, (Minn. Stat. § 115B.43, subd. 5).
- There shall be no reimbursement for owners/operators for costs attributable to normal operations required under the facility permit and applicable solid waste rules (Minn. Stat. § 115B.43, subd. 3).
- The MPCA shall fully reimburse all eligible persons for an individual qualified landfill within six years of the date that the MPCA issues that landfill its Notice of Compliance (NOC) (Minn. Stat. § 115B.43, subd. 5).
- Private owner/operators are subject to a deductible amount of \$750,000 each; political subdivision owner/operators are subject to a deductible amount of \$250,000 each, up to a maximum of \$750,000 total deductible amount where three or more units of government are involved at one landfill under a valid joint powers agreement (Minn. Stat. § 115B.43, subd. 3)
- There will be no reimbursement for persons who illegally disposed of hazardous wastes (Minn. Stat. § 115B.402)
- There will be no reimbursement for legal and administrative costs paid by the claimant unless paid to the Environmental Protection Agency (EPA) under CERCLA (Minn. Stat. § 115B.39, subd. 2)

This Plan does not reflect reimbursement to the EPA for their past costs associated with closed Minnesota landfills. This is because the MPCA entered into a separate agreement with the EPA on August 29, 1995, that included provisions to remove federal involvement at all 106 qualified landfills and to reimburse the EPA separately for a portion of their past costs at 11 of those landfills.

B. MPCA Reimbursement Activities to Date

On December 7, 1994, the MPCA sent letters by certified mail to all owners and operators at the 106 landfills qualified or potentially qualified under the Act, as well as to responsible parties at those landfills. The letters briefly explained the reimbursement provisions of the Act and the process to come.

On January 11, 1995, the MPCA sent an information packet to each of the parties who indicated they would be seeking reimbursement. The packet contained a copy of the Landfill Cleanup Act, an Initial Reimbursement Worksheet (Worksheet) for the potential claimants to complete, and a fact sheet to assist the parties in determining the eligibility of expenses for reimbursement. The goal of the packet was twofold: (1) to provide interested persons with a format for organizing their reimbursement data and supporting documentation; and (2) to provide MPCA staff with preliminary reimbursement data. The letter requested that claimants submit their Worksheet with supporting data by March 3, 1995. To date the MPCA has received 25 Worksheets for 22

landfills. These Worksheets represent 28 claimants. Some claimants represent groups of persons who contributed to environmental response costs at their landfills. The total amount of costs shown on the Worksheets was more than \$61 million (see Appendix A). This total included costs of questionable eligibility under the Act for a variety of reasons including lack of adequate documentation, failure to apply statutory deductibles, and inclusion of legal and administrative costs.

On May 10, 1995, the MPCA issued a Reimbursement Discussion Paper that provided the MPCA's conceptual framework for the reimbursement process and solicited public comment on the framework. The paper also suggested deadlines and a method by which the MPCA proposed to give payment priority to non-owner/operators, as required by the Act. The MPCA received comments on the schedule, the adequacy of funding, the payment ratio, and questions as to how the payment ratio would work under various scenarios.

Since mid-May, MPCA staff has undertaken reviews of the Worksheets and the accompanying documentation to determine eligibility of expenses, accuracy of totals and adequacy of documentation submitted. In some cases the MPCA asked for further documentation and detail. MPCA staff held numerous meetings with representatives of these groups from May through September. MPCA staff informed four claimants (Waseca County, Becker County, Advance Transformer, and Alex Rubbish) that based upon provisions of the Act as to eligibility of expenses, deductible amounts, and circumstances at their respective landfills, nothing will be payable to them in reimbursement although discussions are still continuing with Advance Transformer and Waseca County. Also, Hubbard County withdrew its reimbursement request at the Pickett Landfill as part of that facility's Binding Agreement.

As this refinement process was proceeding, MPCA and the Attorney General's Office drafted reimbursement agreements, with continuous input from responsible party groups. At the time of this Plan's completion, the MPCA was finalizing Reimbursement Agreements and Reimbursement Application forms for claimants who had made significant progress toward reimbursement eligibility. Significant progress included imminent signing of a Binding Agreement for the landfill where reimbursement was requested, agreement on reimbursable costs and anticipated issuance of a NOC by October 30, 1995.

C. Contingencies

While it is the MPCA's goal to pay reimbursement at the statutory maximum of \$7 million yearly, and is fully confident that it can provide the maximum amount for Fiscal Years 1996 and 1997, it cannot guarantee that the maximum figure will be achieved in all years. Reimbursement funds come from the Landfill Cleanup Account, which must also pay for construction, remedial actions, maintenance and contingency action at qualified landfills, as well as the MPCA's solid-waste program administration costs. The MPCA must meet its responsibility to safeguard the public health and the environment at qualified landfills that have been issued a NOC. In addition, general obligation bond proceeds available to the program may not be used to pay reimbursements, and may only be used for capital costs involving public lands or public improvements. Thus, MPCA must use non-bond revenues to pay reimbursements and a large share of other program costs.

Therefore, the ability of the MPCA to pay the maximum amount (\$7 million) each fiscal year for reimbursement depends on the adequacy of the non-bond revenues to the fund.

Alternatively, the MPCA may find in the coming years that significantly more money is available to it than currently anticipated, either through fee revenues, unanticipated amounts of financial-assurance transfers, or through a settlement with the insurance industry. In either event, the MPCA will bring the issue to the Legislature's attention and seek appropriate legislative action or direction.

Claimants can submit expense statements for reimbursement as late as October 15, 1996. The MPCA expects a second set of reimbursement applications in the spring and summer of 1996. These will wind up ongoing expenses that were not final and documented as of the claimants' main reimbursement application. The MPCA has not included these close-out costs in its estimates in this Plan (see Appendix A). Firm figures will be developed in processing the second applications.

II. Reimbursement Plan for FY 1996

This Plan lists the estimated eligible reimbursable costs incurred to date for landfills where groups or individuals have requested reimbursement, and lays out a schedule that the MPCA intends to follow in making the first payments of reimbursement to eligible claimants. The estimate takes into account MPCA staff review of the Worksheet to identify undocumented and ineligible costs. This Plan also describes the MPCA's intentions regarding how to give non-owner/operators first priority for payment of reimbursement claims as required by the Act.

The MPCA is dividing reimbursement claimants into two classes for the purposes of defining priority for payment:

- Persons other than owner/operators who carried out response actions, typically under a federal or state directive (Class I); and
- Landfill owner/operators (Class II)

While the Act specifies that persons other than owner/operators are to have "first priority" over owner/operators in reimbursement payments, the Act does not specifically set out the method by which this is to be done. To meet the priority requirement, the MPCA will allocate payments at a 6:1 ratio, with Class I receiving six dollars out of every seven dollars paid; and Class II receiving one dollar out of every seven paid. At an annual maximum figure of \$7 million total reimbursement per year, this would direct \$6 million per year to Class I and \$1 million per year to Class II. This apportionment will continue until the eligible claims of Class I have been fully paid, at which point Class II will receive 100 percent of the annual figure.

The MPCA reserves the right to shift the allocation of money from Class II to Class I to compensate for a possible situation during the early payment events, in which the pool in Class II might be so small compared to the pool in Class I that owner/operators would be reimbursed a larger proportion of their claims than non-owner/operators. This is to comply with the statutory requirement that non-owner/operators are to have a priority over owner/operators in reimbursement.

For each payment event, the MPCA intends to pay each member of a class its pro rata share of the amount for all members of that classification. That is, each claimant will be paid in the same proportion that its reimbursable costs relate to the total reimbursable costs for the entire classification for that payment event.

Appendix A shows dollar figures from Worksheet requests submitted by claimants, and MPCA staff estimates of the amounts that appear to be eligible for reimbursement under the Act. Because of delays in receiving documentation, the MPCA has not been able to review all reimbursement submissions for accuracy, substantiation, or eligibility, and therefore makes no representations that the estimated figures at any given landfill represent final, approved figures for reimbursement. MPCA staff has indicated "pending" rather than provide a reimbursement

estimate of some worksheets because of insufficient documentation and/or additional discussions necessary with the claimants.

The claimants' Worksheets reflect the claimant's estimates of both past and future costs at that time (spring 1995); the MPCA estimates reflect the MPCA's evaluation as of September 1995 as to costs already spent that are eligible for reimbursement under the Act. The MPCA estimates do not include dollars that may be spent by owner/operators and responsible parties before the MPCA takes over responsibility for the landfills.

At eleven of these qualified landfills, the MPCA staff and claimants have reached some degree of common understanding as to the reimbursability of expenses submitted to date. At the remaining landfills, the MPCA remains in discussion as to dollar figures; is awaiting necessary documentation; or is awaiting movement of the landfill toward completing the conditions necessary for a NOC.

MPCA staff believes at this stage, that based on MPCA staff review of expenses from 13 claimants at 11 landfills, approximately \$31.7 million in expenses already incurred appears to be reimbursable. Of this, Class I claimants represent \$28.2 million, and Class II claimants represent \$3.5 million.

At six landfills (Anoka Municipal/WMMI-Ramsey, Washington County, CAP, Flying Cloud, Hopkins and Northwoods) another \$19.1 million in expenses being sought by claimants are under discussion and at various stages of resolution. The \$19.1 million figure represents nearly all Class II claimants.

As was discussed in the introductory section, additional expenses will come before the MPCA as second applications, filled out by a claimant following its NOC to cover costs that were not invoiced at the time of the first application. The amount of these second applications is not included in the Plan because no firm figures are known. Under the Act, claimants must submit all expense statements by October 16, 1996, for those expenses to be reimbursable by the MPCA. By including the \$35.2 million in probable currently eligible reimbursement expensed plus second reimbursement applications and unresolved Class II claims, the MPCA estimates roughly \$46-52 million in total costs will be reimbursed.

The MPCA has notified claimants of the following important deadlines that must be met in order to receive reimbursement payment shortly after November 1, 1995:

- October 6: Complete all necessary signatures on Binding Agreement for landfill and deliver to the MPCA by this date.
- October 16: All persons required to provide a waiver of claims for that landfill must sign and deliver the waiver document to the MPCA.

October 16, 1995, through October 30, 1995: MPCA will issue NOCs to landfills where all required waivers have been submitted by October 16, 1995, and parties are in compliance with the terms of the Binding Agreement.

- By November 1: For all landfills that have been issued a NOC, all persons seeking reimbursement must sign and submit their Reimbursement Agreement(s) and Reimbursement Application to the MPCA by this date.
- As soon as possible after November 1: MPCA issues payment checks to allocate \$3.5 million among claimants at landfills that have met the requirements for payment in the first payment event.

Claimants have been made aware by MPCA staff that if reimbursement documents are submitted to the MPCA after November 1 the applicant will not receive any reimbursement at the first payment event. This deadline is necessary to make it possible for MPCA to review all documents and authorize the first payment in November, 1995.

The MPCA will make a second payment in May 1996. Each payment event will be half of the amount set aside by the MPCA for reimbursement in Fiscal Year 1996, or \$3.5 million per payment event. Following Fiscal Year 1996, the MPCA intends to shift to a single payment each year of up to \$7 million, to be made on or about December 1 of each subsequent fiscal year.

Before the first reimbursement payment, claimants must enter into a Reimbursement Agreement that includes a waiver of cost recovery claims for environmental response costs at all qualified landfills, as required by Minn. Stat. § 115B.43, subd. 2. For any given claimant, this waiver becomes effective upon payment of the first reimbursement amount.

The Reimbursement Agreement specifies that to the extent an applicant's clean-up expenses were offset by insurance-recovery payments or similar indemnification agreements, those claimants are obligated to reduce their requests for reimbursement. To do otherwise would permit double recovery, meaning that the same expenses would be repaid twice. However, to the extent that insurance settlement or other indemnification payments went toward defraying expenses that the MPCA does not reimburse, such as legal and administrative costs, the claimants are not required to reduce their reimbursement payment. The Agreement also includes the waiver of cost recovery claims for all facilities as required by the Act, and other provisions requested by claimants intended to protect waiving parties from lawsuits by non-waiving parties at qualified landfills. Both the waivers and additional provisions are intended to achieve the goal of minimizing future cost recovery litigation related to qualified landfills.

Appendix A

Landfill and Claimant Names	Initial Reimbursement Worksheet (Spring 95)	MPCA Estimate of Reimbursable Current Costs* (Fall 95)
CLASS I (NON-OWNER/OPERATORS)		
East Bethel (PRP Group)	\$4,384,393	\$4,300,000
Hansen (Blue Earth County)	\$759,497	\$759,000
Ironwood (Advance Transformer) **	\$3,652,826	\$0
Kluver (Pope-Douglas SWM)	\$570,000	\$563,000
Kummer (Core Craft)	\$2,059	\$2,000
Kummer (Good Faith Parties)	\$3,319,146	\$3,100,000
Oak Grove (Settling Parties)	\$10,099,138	\$7,000,000
St. Augusta (St. Augusta Landfill Trust)	\$542,263	\$500,000
Washington County (3M and Anderson Corp)	\$139,622	pending****
WDE (WDE Group)	\$13,826,899	\$12,000,000
Subtotal	\$37,295,843	\$28,224,000
CLASS II (OWNER/OPERATORS)		
Anoka Municipal, aka WM-Ramsey (WMX)	\$7,911,581	pending
Becker County (Becker County) **	\$151,048	\$0
Crosby-American Properties (CAP and Amdura)	\$2,839,460	pending
Chisago-Isanti (Isanti-Chisago LF Comm)	\$304,703	\$283,000
Flying Cloud (BFI)	\$2,755,361	pending
Hopkins (Hopkins)	\$1,106,902	pending
Houston Co. (Houston County)	\$257,957	\$105,000
Kluver (Alex Rubbish)	\$494,265	\$0
Oak Grove (Egan Family)	\$1,195,170	\$550,000
Olmsted-Oronoco (Olmsted County)	\$2,404,925	\$2,280,000
Pickett (Hubbard County) ***	\$186,172	\$0
Sauk Centre (Sauk Centre)	\$478,170	\$250,000
Sunprairie/Reak (WMX)	\$0	\$0
Waseca County (Waseca County) **	\$60,166	\$0
Washington County (Washington & Ramsey Co)	\$3,999,069	pending
Subtotal	\$24,144,949	\$3,468,000
Northwoods (US Forest Service)	\$359,700	pending
Total	\$61,800,492	\$31,692,000
<p style="text-align: center;">Note:</p> <p>* Column represents MPCA estimates of reimbursements based on allowable costs to date, as known in September 1995. Does not include future expenses, meaning those that will be incurred up to the Notice of Compliance but that were not invoiced at the time of the first application. The MPCA expects a second application in these instances.</p> <p>** MPCA estimate reflects the fact that MPCA staff have notified applicants that their expenses are not eligible for reimbursement under the statute. Advance Transformer and Waseca Co. are still in discussion regarding MPCA determination.</p> <p>*** Reimbursement claim was withdrawn as part of Binding Agreement.</p> <p>**** Pending indicates insufficient documentation available and/or additional discussions necessary to estimate eligible reimbursement amount.</p>		