

September 25, 2019

Commissioner Douglas A. Huebsch, Chair  
Otter Tail County  
520 West First Avenue  
Fergus Falls, MN 56537

RE: Otter Tail County Designation Ordinance

Dear Commissioner Douglas A. Huebsch:

The Minnesota Pollution Control Agency (MPCA) has approved the Findings of Fact, Conclusions of Law, and Order for approval of the Otter Tail County Designation Ordinance. The Findings of Fact, Conclusions of Law, and Order document finds and concludes that the County and the ordinance satisfied the requirements of Minn. Stat. § 115A.85 and Minn. Stat. § 115A.86. Approval of the ordinance completes the MPCA's review of Otter Tail County's process to direct waste to the Perham Resource Recovery Facility.

I want to express my appreciation to Otter Tail County's significant ongoing efforts to implement cost effective and sustainable waste management measures. Please feel free to call on me, or Sigurd Scheurle of my staff, to assist you as you move forward.

Sincerely,



David J. Berke  
Division Director  
Resource Management & Assistance Division

DJB/SS:vs

Enclosure



**STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY**

**IN THE MATTER OF APPROVAL OF THE  
OTTER TAIL COUNTY SOLID WASTE  
DESIGNATION ORDINANCE**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER**

Otter Tail County submitted a Solid Waste Designation Ordinance, together with negotiated contracts, to the Commissioner of the Minnesota Pollution Control Agency (MPCA) for review and approval or disapproval pursuant to Minn. Stat. § 115A.86, subd. 2. Having reviewed the Solid Waste Designation Ordinances and contracts, the MPCA makes the following Findings of Fact, Conclusions of Law, and Order.

**FINDINGS OF FACT**

**Authority**

1. Minn. Stat. §§ 115A.80 to 115A.893 authorize and establish a procedure for counties to require that all or any portion of the solid waste that is generated within its boundaries be delivered to a processing or disposal facility identified by the county.
2. Pursuant to Minn. Stat. § 115A.84, subd. 1 and subd. 3(a), before commencing the procedure to designate waste under Minn. Stat. § 115A.85, a county is required to adopt an MPCA approved comprehensive solid waste management plan and subsequently submit to the MPCA a designation plan for review and approval or disapproval.
3. Pursuant to Minn. Stat. § 115A.85, subd. 1, a county with an MPCA approved designation plan shall proceed under the procedure in Minn. Stat. § 115A.85 to designate facilities.
4. Minn. Stat. § 115A.85, subd. 2, requires the following:
  - (a) The district or county shall hold a public hearing to take testimony on the designation. Notice of the hearing must be:
    - (1) published in a newspaper of general circulation in the area for two successive weeks ending at least 15 days before the date of the hearing; and
    - (2) mailed to political subdivisions, processing and disposal facility operators, and licensed solid waste collectors who may be expected to use the facility.
  - (b) The notification must:

- (1) describe the area in which the designation will apply and the plans for the use of the solid waste;
  - (2) specify the point or points of delivery of the solid waste;
  - (3) estimate the types and quantities of solid waste subject to the designation; and
  - (4) estimate the fee to be charged for the use of the facilities and for any products of the facilities.
5. Pursuant to Minn. Stat. § 115A.85, subd. 3, during a period of 90 days following the hearing, the county shall negotiate with the persons entitled to written notice under subdivision 2 for the purpose of developing contractual agreements that will require use of the facilities proposed to be designated.
  6. Pursuant to Minn. Stat. § 115A.85, subd. 4, at the end of the 90-day contract negotiation period, the county may proceed to secure MPCA approval for and implement the designation as provided in section 115A.86.
  7. Pursuant to Minn. Stat. § 115A.86, subd. 1, the county shall prepare a designation ordinance to implement a designation. The designation ordinance must:
    - (1) define the geographic area and the types and quantities of solid waste subject to designation;
    - (2) specify the point or points of delivery of the solid waste;
    - (3) require that the designated solid waste be delivered to the specified point or points of delivery;
    - (4) require the designated facility to accept all designated solid waste delivered to the specified point or points of delivery, unless the facility has notified waste collectors in the designated area that the facility is inoperative;
    - (5) set out the procedures and principles to be followed by the county or district in establishing and amending any rates and charges at the designated facility; and
    - (6) state any additional regulations governing waste collectors or other matters necessary to implement the designation.

Additionally, the designation ordinance must provide an exception for:

- (1) materials that are exempt or excluded from the designation under section 115A.83 or 115A.84, subdivision 4; and
  - (2) materials otherwise subject to the designation for which negotiated contractual arrangements exist that will require and effect the delivery of the waste to the facility for the term of the contract.
8. Pursuant to Minn. Stat. § 115A.86, subd. 2, a county shall submit the designation ordinance, together with any negotiated contracts assuring the delivery of solid waste, to the commissioner for review and approval or disapproval. The commissioner shall complete the review and make a decision within 90 days following submission of the designation for

review. The commissioner shall approve the designation if the commissioner determines that the designation procedure specified in section 115A.85 was followed and that the designation is based on a plan approved under section 115A.84. The commissioner may attach conditions to the approval.

### **Background**

9. Otter Tail County with Becker, Clay, Todd and Wadena Counties entered into the Prairie Lakes Municipal Solid Waste Authority (“PLMSWA”) Joint Powers Agreement (JPA), effective September 9, 2014, pursuant to Minn. Stat. § 471.59. Under the terms of the JPA the PLMSWA agreed to coordinate with each other to prepare a Joint Waste Designation Plan pursuant to Minn. Stat. §§ 115A.80 to 115A.893. The PLMSWA is authorized to enter into contracts and initiate or administer joint solid waste management projects on behalf of Otter Tail, Becker, Clay, Todd, and Wadena Counties. Otter Tail County solid waste is processed at the Perham Resource Recovery Facility (Perham Facility) to recover recyclable materials and convert waste to energy.
10. Pursuant to Minn. Stat. § 115A.84, subd. 1 and subd. 3(a), Otter Tail County adopted a comprehensive solid waste management plan approved by the MPCA on August 15, 2013.
11. The PLMSWA submitted on behalf of Otter Tail County a joint solid waste designation plan under Minn. Stat. 115A.84 (“Designation Plan”) to the MPCA on June 5, 2015 for review and approval.
12. The Designation Plan proposed to designate solid waste generated within the boundaries of Otter Tail County to Perham Facility or county transfer stations that will ultimately deliver MMSW to the Perham Facility, which is owned and operated by the PLMSWA.
13. The Commissioner reviewed the Designation Plan and approved it in the Findings of Fact, Conclusions of Law and Order dated September 30, 2015.
14. Pursuant to Minn. Stat. § 115A.85, subd. 2(a), Otter Tail County held a public hearing to take testimony on the designation on November 24, 2015. Notice of the hearing was provided as follows:

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- (1) The Notice was published on October 30, 2015 and November 6, 2015 in the official newspaper of Otter Tail County, the Fergus Falls Daily Journal, which is a newspaper of general circulation in the Otter Tail County. The publication ended on November 6, 2015, which is at least 15 days before the date of the hearing.
- (2) The notification and copy of the notice of a public hearing was mailed to all political subdivisions and licensed solid waste haulers in the County who may be expected to use the facility. There are no processing or disposal facility operators in Otter Tail County

except for the Perham Facility and the Northeast Otter Tail County landfill.

15. Pursuant to Minn. Stat. § 115A.85, subd. 2(b), the notifications included the following:

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- (1) A description of the area in which the designation will apply and the plans for the use of the solid waste at Paragraph I and II;
- (2) Specified the point or points of delivery of the solid waste at Paragraph III;
- (3) An estimation of the types and quantities of solid waste subject to the designation at Paragraph IV; and
- (4) An estimated fee to be charged for the use of the facilities and for any products of the facilities at Paragraph V.

16. Pursuant to Minn. Stat. § 115A.85, subd. 3, during a period of 90 days, and subsequently over several years following the hearing, Otter Tail County, negotiated new contracts with the persons entitled to written notice for the purpose of developing contractual agreements that will require use of the facilities proposed to be designated. Otter Tail County entered into agreements between the County and Alex Rubbish and Recycling, Inc., Ballard Sanitation, City Dray, Inc., City of Fergus Falls, Fuchs Sanitation, G&T sanitation Inc. Lakes Area Sanitation, Toutges Sanitation, Steve's Sanitation, Inc., Waste Management, Inc., and West Central Roll-Off, which require delivery of all acceptable waste collected in Otter Tail County to the Perham Facility or a transfer station specified to transfer waste to the Perham Facility.

17. Pursuant to Minn. Stat. § 115A.86, subd. 1, Otter Tail County prepared a designation ordinance to implement the designation. The designation ordinance includes the following:

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- (1) defines the geographic area and the types and quantities of solid waste subject to designation at Section 4;
- (2) specifies the point or points of delivery of the solid waste at Section 5;
- (3) requires that the designated solid waste be delivered to the specified point or points of delivery at Section 5;
- (4) Section 12 requires the Center to accept all designated solid waste delivered to the specified point or points of delivery, unless the facility has notified waste collectors in the designated area that the facility is inoperative;
- (5) Section 9 sets out the procedures and principles to be followed by the county or district in establishing and amending any rates and charges at the designated facility; and
- (6) states any additional regulations governing waste collectors or other matters necessary to implement the designation at Sections 1-3, 6, 8, 10-11, and 13-15.

Additionally, the designation ordinance provides an exception for:

- (1) materials that are exempt or excluded from the designation under section 115A.83 or 115A.84, subdivision 4 at Section 7; and

- (2) materials otherwise subject to the designation for which negotiated contractual arrangements exist that will require and effect the delivery of the waste to the facility for the term of the contract at Section 7.
18. Pursuant to Minn. Stat. § 115A.85, subd. 4, on June 11, 2019, the Otter Tail County Board authorized submittal of the proposed solid waste designation ordinance to the MPCA Commissioner for review and approval.
  19. On July 3, 2019, Otter Tail County submitted the proposed Otter Tail County Solid Waste Designation Ordinance, together with negotiated contracts, to the MPCA Commissioner for approval as provided in Minn. Stat. § 115A.86. On September 9, 2019, the County submitted its Solid Waste Ordinance. On September 18, 2019, Otter Tail County submitted a revisions to its proposed Otter Tail County Designation Ordinance.
  20. The Commissioner reviewed the designation ordinance and the negotiated contracts, the PLMSWA and Otter Tail County followed the designation procedure specified in Minn. Stat. § 115A.85, and the designation is based on a plan approved under Minn. Stat. §115A.84.
  21. Per Minn. Stat. § 115A.86, subd. 3, the designation may not be placed into effect before 60 days after the approval of the MPCA Commissioner. The effective date of the designation must be specified at least 60 days in advance. If the designation is not placed into effect within two years of approval, the designation must be resubmitted to the MPCA Commissioner for approval or disapproval under Minn. Stat. § 115A.86, subd. 2, unless bonds have been issued to finance the facility to which the designation applies.
  22. Per Minn. Stat. § 115A.89, the MPCA Commissioner shall: (1) require regular reports on the implementation of each designation; (2) periodically evaluate whether each designation as implemented has accomplished its purposes and whether the designation is in the public interest and in furtherance of the state policies and purposes expressed in section 115A.02; and (3) report periodically to the legislature on the commissioner's conclusions and recommendations.

**CONCLUSIONS OF LAW**

1. Otter Tail County has prepared a designation ordinance that contains the requirements and exceptions under Minn. Stat. § 115A.86, subd. 1.
2. The MPCA has the authority under Minn. Stat. § 115A.86, subd. 2 to review and approve the Otter Tail County Solid Waste Designation Ordinance.
3. The PLMSWA and Otter Tail County followed the designation procedure specified in Minn. Stat. § 115A.85. The designation is based on a plan approved under Minn. Stat. § 115A.84.
4. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

**ORDER**

NOW, THEREFORE, IT IS ORDERED that pursuant to Minn. Stat. § 115A.86, subd. 2, the Otter Tail County Solid Waste Designation is approved.



David J. Benke, Division Director  
Resource Management & Assistance  
Minnesota Pollution Control Agency

9/25/2015

Date