

**STATE OF MINNESOTA  
BOARD OF ARCHITECTURE, ENGINEERING,  
LAND SURVEYING, LANDSCAPE ARCHITECTURE, GEOSCIENCE  
AND INTERIOR DESIGN**

**In the matter of Richard C. Larson  
PROFESSIONAL ENGINEER  
License Number 8803**

**STIPULATION AND ORDER**

**Board File Nos. 2014-0017,  
2014-0018, 2014-0020,  
and 2014-0021**

TO: Richard C. Larson  
4616 Hillsboro Avenue North  
New Hope, Minnesota 55428

The Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design ("Board") is authorized pursuant to Minnesota Statutes section 214.10 (2014) and Minnesota Statutes section 326.111 (2014) to review complaints against architects, professional engineers, land surveyors, landscape architects, geoscientists, and certified interior designers, and to take disciplinary action whenever appropriate.

The Board received information concerning Richard C. Larson ("Respondent"). The Board's Complaint Committee ("Committee") reviewed the information. The parties have agreed that these matters may now be resolved by this Stipulation and Order.

**STIPULATION**

IT IS HEREBY AGREED by and between Respondent and the Committee as follows:

1. Jurisdiction. Respondent was first issued a Professional Engineer license by the Board on August 8, 1968. Respondent is subject to the jurisdiction of the Board with respect to the matters referred to in this Stipulation.

2. Facts. This Stipulation is based upon the following facts:

a. Respondent was first licensed as a Professional Engineer in the State of Minnesota on August 8, 1968.

b. As of the date of this Stipulation and Order, Respondent's Minnesota Professional Engineer license is current with an expiration date of June 30, 2016.

c. Respondent was hired to prepare construction plans for the "Ogilvie Land Development Access Driveway, Harbor Road (County Road 12) & 153<sup>rd</sup> Avenue, Tire Enhanced Base Driveway Project" in Kanabec County, Minnesota, using waste light weight tire chips as fill in the two (2) private driveways.

d. Minnikka Properties LLC (Minnikka) is a corporation owned and managed by Monte Niemi. Monte Niemi also owns First State Tire Disposal (FSTD), a waste-tire processing facility that sells shredded tires for use in construction projects. The two (2) driveways in the construction plans prepared by Respondent, at FSTD's request, are located on Minnikka property.

e. Respondent prepared, signed and sealed the drawings for the "Ogilvie Land Development Access Driveway, Harbor Road (County Road 12) & 153<sup>rd</sup> Avenue, Tire Enhanced Base Driveway Project" on July 28, 2010, based on information in a July 27, 2010 email message from FSTD. A true and correct copy of the plans for the "Ogilvie Land Development Access Driveway, Harbor Road (County Road 12) & 153<sup>rd</sup> Avenue, Tire Enhanced Base Driveway Project," that was certified and signed by the Respondent on July 28, 2010, is attached as Exhibit A.

f. On October 29, 2012, the Minnesota Pollution Control Agency (MPCA) issued a Findings of Fact, Conclusion, and Order to Minnikka Properties when the

MPCA adopted the Findings of Fact, Conclusion and Recommendation by Administrative Law Judge (ALJ) M. Kevin Snell on August 1, 2012 (the "MPCA Order") that Minnikka Properties, LLC did utilize waste tire shreds/chips on its property at Harbor Road and 153<sup>rd</sup> Avenue, Kanabec County, Minnesota, in quantities that exceed accepted engineering standards in violation of Minnesota Rules 7035.02860, subpart 2. Minnikka appealed the MPCA Order to the Minnesota Court of Appeals, which affirmed the MPCA Order on July 29, 2013 (A12-2126). In its decision, the Court of Appeals stated: "Because Minnikka used waste tires in quantities that exceeded accepted engineering or commercial standards and failed to obtain a case-specific determination of beneficial use, the MPCA did not err by concluding that Minnikka violated Minn. R. 7035.2860 and Minn. Stat. § 115A.904." A true and correct copy of the Court of Appeals Opinion is attached as Exhibit B.

g. According to the Facts and Decision in the Court of Appeals Opinion, Exhibit B attached hereto, the "Ogilvie Land Development Access Driveway, Harbor Road (County Road 12) & 153<sup>rd</sup> Avenue, Tire Enhanced Base Driveway Project," for which Respondent prepared, signed and certified the plans, did not conform to the MPCA definition of the beneficial use of tire shreds. The Board concurs with these findings and conclusions.

h. Minnesota Rules 7035.2860 apply to both private and public driveways. A true and correct copy of Minnesota Rule 7035.2860, Beneficial Use of Solid Waste, is attached as Exhibit C.

i. Respondent was negligent in performing services as a Professional Engineer on the "Ogilvie Land Development Access Driveway, Harbor Road (County

Road 12) & 153<sup>rd</sup> Avenue, Tire Enhanced Base Driveway Project” plans he certified. Respondent knew or should have known that this was a unique project and that it would have been prudent professional practice to utilize a special MPCA process, applying for a “case-specific beneficial use determination” to obtain a site specific permit from the MPCA. Respondent never advised the client to apply for a “case-specific beneficial use determination.”

j. This Order is in the public interest.

3. Violations. Respondent admits that the facts specified above constitute a violation of Minnesota Statutes section 326.111, subdivision 4 (a) (3) (2014) and are sufficient grounds for the action specified below. Specifically, it is alleged that: Respondent was negligent in that he knew or should have known that the plans he certified for the “Ogilvie Land Development Access Driveway, Harbor Road (County Road 12) & 153<sup>rd</sup> Avenue, Tire Enhanced Base Driveway Project” needed to be in compliance with the MPCA regulations and Respondent should have advised his client to apply for and receive a “case-specific beneficial use determination.”

4. Enforcement Action. Respondent and the Committee agree that the Board should issue an Order in accordance with the following terms:

a. Reprimand. Respondent is reprimanded for the foregoing conduct.

b. Civil Penalty. Respondent shall pay to the Board a civil penalty of Five Thousand Dollars (\$5,000.00). Respondent shall submit a civil penalty of Five Thousand Dollars (\$5,000.00) by check or money order to the Board within sixty (60) days of the Board’s approval of this Stipulation and Order.

5. Waiver of Respondent’s Rights. For the purpose of this Stipulation,

Respondent waives all procedures and proceedings before the Board to which Respondent may be entitled under the Minnesota and United States constitutions, statutes, or the rules of the Board, including the right to dispute the allegations against Respondent, to dispute the appropriateness of discipline in a contested case proceeding pursuant to Minnesota Statutes Chapter 14 (2014), and to dispute the civil penalty imposed by this Agreement. Respondent agrees that upon the application of the Committee without notice to or an appearance by Respondent, the Board may issue an Order containing the enforcement action specified in paragraph 4 herein. Respondent waives the right to any judicial review of the Order by appeal, writ of certiorari, or otherwise.

6. Collection. In accordance with Minnesota Statutes section 16D.17 (2014), in the event this order becomes final and Respondent does not comply with the condition in paragraph 4(b) above, Respondent agrees that the Board may file and enforce the unpaid portion of the civil penalty as a judgment without further notice or additional proceedings.

7. Board Rejection of Stipulation and Order. In the event the Board in its discretion does not approve this Stipulation and Order or a lesser remedy than specified herein, this Stipulation and Order shall be null and void and shall not be used for any purpose by either party hereto. If this Stipulation is not approved and a contested case proceeding is initiated pursuant to Minnesota Statutes Chapter 14 (2014), Respondent agrees not to object to the Board's initiation of the proceedings and hearing the case on the basis that the Board has become disqualified due to its review and consideration of this Stipulation and the record.

8. Unrelated Violations. This settlement shall not in any way or manner limit or affect the authority of the Board to proceed against Respondent by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of Respondent justifying disciplinary action which occurred before or after the date of this Stipulation and Order and which is not directly related to the specific facts and circumstances set forth herein.

9. Record. The Stipulation, related investigative reports and other documents shall constitute the entire record of the proceedings herein upon which the Order is based. The investigative reports, other documents, or summaries thereof may be filed with the Board with this Stipulation.

10. Data Classification. Under the Minnesota Government Data Practices Act, this Stipulation and Order is classified as public data upon its issuance by the Board, Minnesota Statutes section 13.41, subdivision 5 (2014). All documents in the record shall maintain the data classification to which they are entitled under the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 (2014). They shall not, to the extent they are not already public documents, become public merely because they are referenced herein. A summary of this Order will appear in the Board's newsletter. A summary will also be sent to the national discipline data bank pertaining to the practice of professional engineering.

11. Entire Agreement. Respondent has read, understood, and agreed to this Stipulation and is freely and voluntarily signing it. The Stipulation contains the entire agreement between the parties hereto relating to the allegations referenced herein. Respondent is not relying on any other agreement or representations of any kind, verbal

or otherwise.

12. Counsel. Respondent is aware that he may choose to be represented by legal counsel in this matter. Respondent is represented by Mark Bloomquist, Esq.


13. Service. If approved by the Board, a copy of this Stipulation and Order shall be served personally or by first class mail on Respondent. The Order shall be effective and deemed issued when it is signed by the Chair of the Board.

**RESPONDENT**

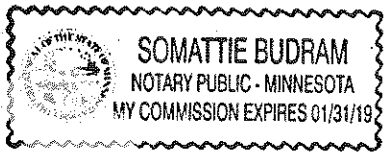
  
Richard C. Larson

Dated: 5-4-15, 2015

SUBSCRIBED and sworn to before me on this the 4 day of April ~~May~~, 2015.

  
\_\_\_\_\_  
(Notary Public)

My Commission Expires:  
01-31-2019



COMPLAINT COMMITTEE

David Krech, P.E. Dated: May 21, 2015  
David Krech, PE  
Committee Chair

ORDER

Upon consideration of the foregoing Stipulation and Order and based upon all the files, records, and proceedings herein, all terms of the Stipulation and Order are approved and adopted and hereby issued as an Order of this Board this the 21<sup>st</sup> day of May, 2015.

MINNESOTA BOARD OF  
ARCHITECTURE, ENGINEERING,  
LAND SURVEYING, LANDSCAPE  
ARCHITECTURE, GEOSCIENCE AND  
INTERIOR DESIGN

By: [Signature]  
Carl Peterson, CPA, Board Chair

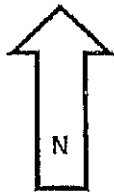
# OGILVIE LAND DEVELOPMENT ACCESS DRIVEWAY

HARBOR ROAD (COUNTY ROAD 12) & 153 RD AVE- TIRE ENHANCED BASE DRIVEWAY PROJECT

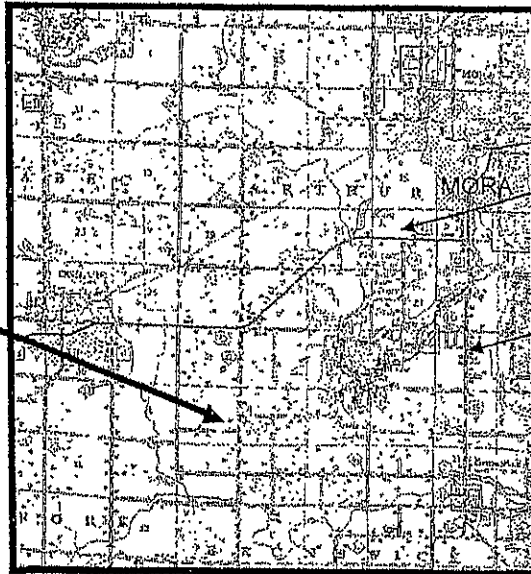
PROJECT SITE ACCESS DRIVEWAYS: A HARBOR ROAD TO 580 FEET WEST  
 B 153RD AVE TO 318 FEET NORTH

TOTAL LENGTH OF ACCESS TO HARBOR ROAD 580 FEET  
 TOTAL LENGTH OF ACCESS TO 153RD AVE 318 FEET

LOCATION: SECTION 6 T38N,R24W  
 LEGAL: NEAR THE NORTH LINE SECTION 12 - 1900 FEET SOUTH  
 LOCATOR: LAT 45deg, 48' 23.65"N 93deg, 22' 08.26"W  
 GENERAL LOCATION: WEST OF MORA ON TH 23 TO CSAH 12  
 THEN SOUTH 1.75 MILES TO 153RD AVE



PROJECT SITE  
 DRIVEWAY



TH 23  
 TH 65

DESIGN CONSIDERATIONS:  
 EXISTING LAND UNDEVELOPED  
 ASSUMED HCADT < 100  
 EST. FUTURE 2030 ADT < 100 HCADT 50%  
 SOIL FACTOR POOR CLAY UNKNOWN  
 CURVES AND HILLS NOT APPLICABLE  
 STATUTORY SPEED LOW SPEED DRIVEWAY  
 DESIGN WIDTH 20 FEET TOP SURFACE  
 LIMITED FUNDING DRIVEWAY  
 STANDARDS ESTABLISHED BY OWNER

NOTE: THIS PLAN IS BASED ON ESTIMATED ELEVATIONS  
 PLAN IS DEVELOPED FROM AERIAL PHOTOS  
 NO FIELD WORK PERFORMED. PLAN IS NOT TO SCALE

PLANS NOT TO SCALE

INDEX:  
 TITLE SHEET  
 ESTIMATED QUANTITIES  
 TYPICAL SECTIONS  
 EROSION CONTROL 1  
 EROSION CONTROL 2  
 PLAN & PROFILE

THIS PLAN CONTAINS FOUR SHEETS

EROSION PLAN  
 THIS PLAN REQUIRES THE CONTRACTOR  
 TO USE BEST MANAGEMENT  
 PRACTICES AND PREVENT ANY SOIL  
 EROSION FROM LEAVING THE PROJECT SITE  
 30 FEET ON EITHER SIDE OF DRIVEWAY

GOVERNING SPECIFICATION IS THE 2005 EDITION OF  
 THE MN, DEPT. OF TRANSPORTATION 'STANDARD  
 SPECIFICATIONS FOR CONSTRUCTION' SHALL GOVERN  
 AS MODIFIED BY THE STATE

I CERTIFY THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND I AM A LICENSED ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA SHEET # 1

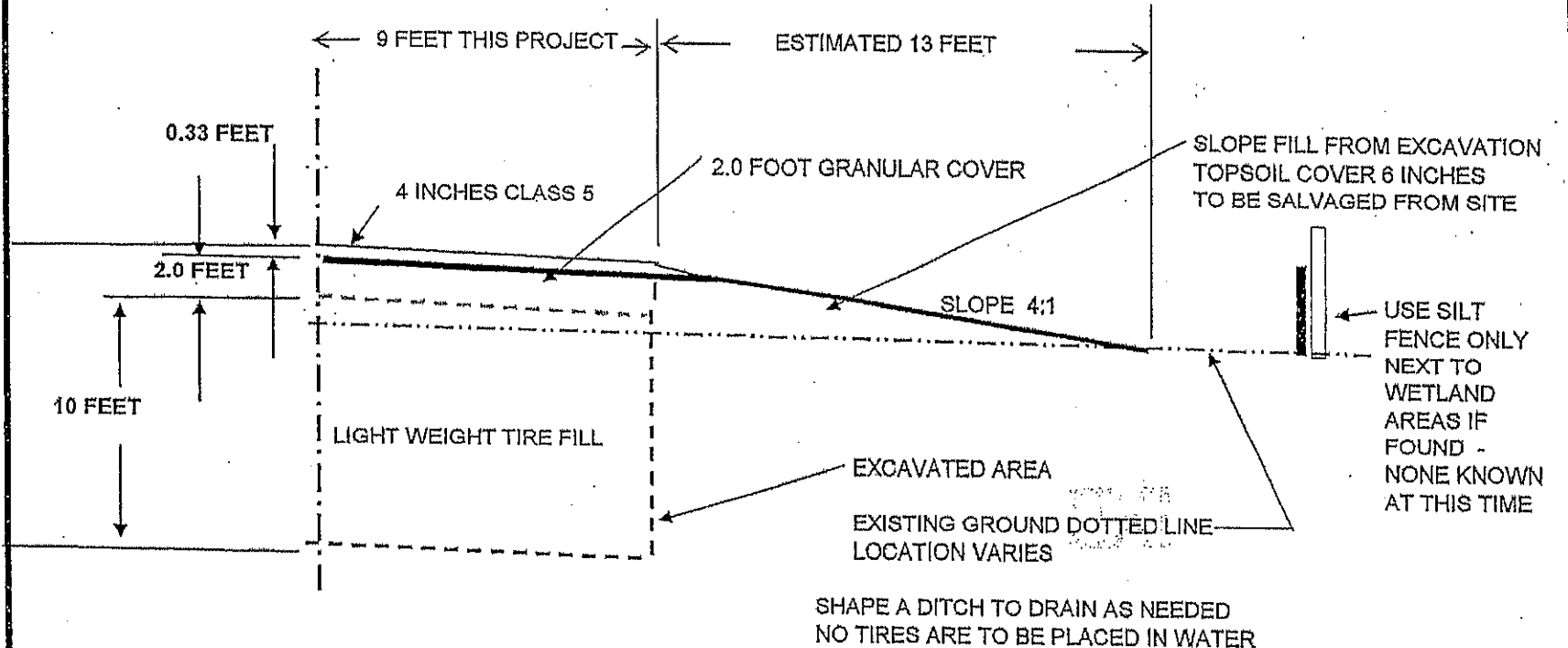
LIC. NO 8803 DATED July 28 2010

SIGNED

OGILVIE LAND DEVELOPMENT PROJECT

EXHIBIT A

# TYPICAL HALF SECTION



TIRE FILL PROVIDED BY FIRST STATE TIRE

THE UNIQUE PART OF THIS PROJECT IS THE USE OF A FABRIC TO PROVIDE FULL DEPTH FROST PROTECTION STABILITY FOR THE DRIVEWAY - (TRIAL SITE)

AFTER SLOPE STABILIZATION REMOVE SILT FENCE BY OWNER IF USED  
 THIS DESIGN AND PROJECT DOES NOT ACCEPT OR ALLOW ANY SEDIMENT TO ESCAPE FROM THE PROJECT SITE

scale 5 feet

I CERTIFY THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND I AM A LICENSED ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA SHEET #2

LIC. NO 8803 DATED July 28 2010

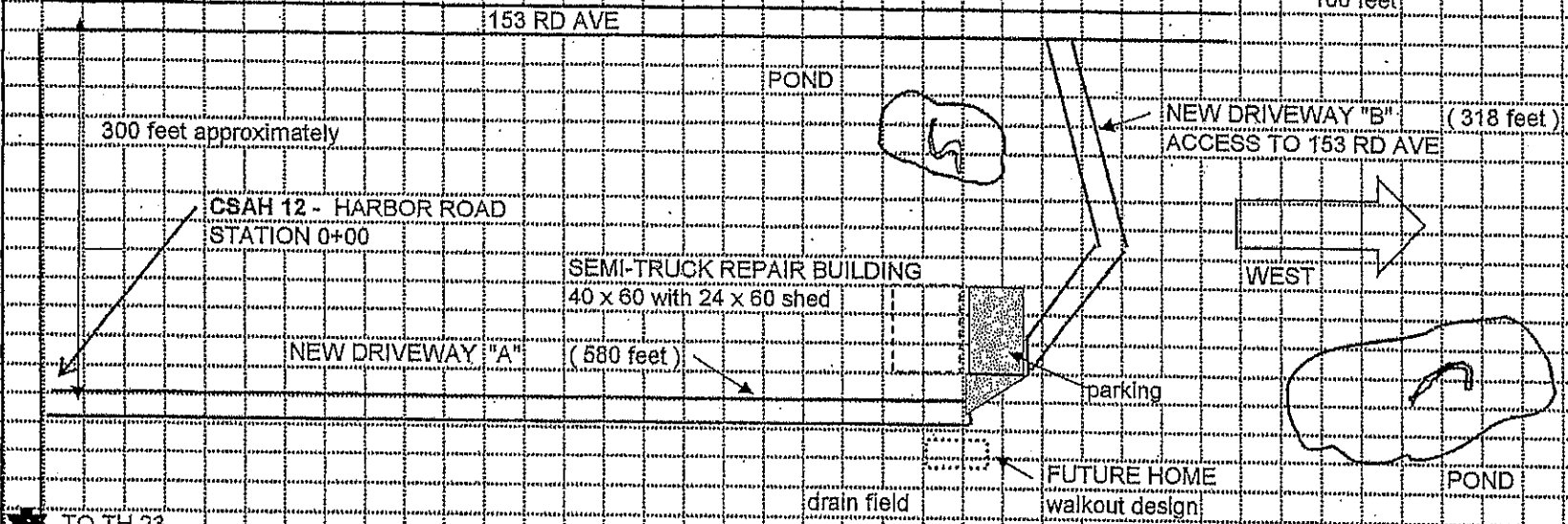
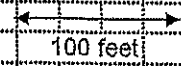
SIGNED

OGILVIE LAND DEVELOPMENT PROJECT

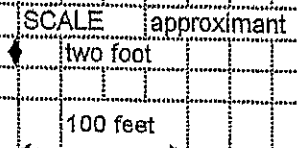
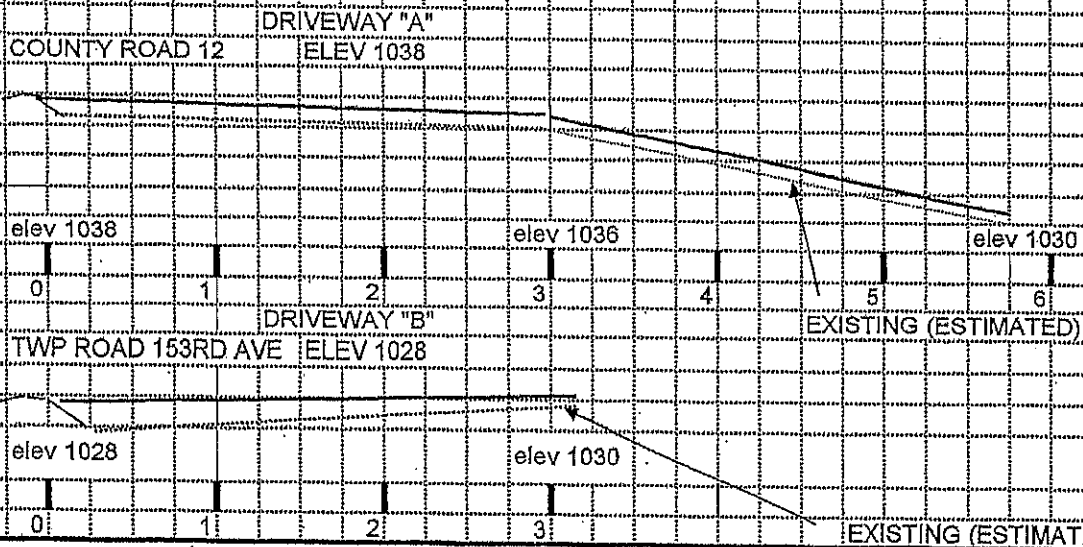
# OGILVIE LAND DEVELOPMENT ACCESS PLAN

CSAH 12

PLAN VIEW SCALE



NOTES  
 Elevations and locations are based on aerial photos and GPS and are considered approximat and should be field checked by interested parties  
 owner reports clay soils at site



CERTIFY THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND I AM A LICENSED ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA SHEET #3  
 IC. NO 8803 DATED July 28 2010 SIGNED Richard C Larson OGILVIE LAND DEVELOPMENT PROJECT

# OGILVIE LAND DEVELOPMENT ACCESS PLAN

## DRIVEWAY A

	FIXED COST	ESTAMATED QUANTITY	
MOBILIZATION	LUMP SUM	1	
ALL OTHER WORK NOT LISTED TO COMPLETE PROJECT	LUMP SUM	1	
TOP SOIL SALVAGE	LUMP SUM	515 CY	
SITE GRADE PREPARATION	LUMP SUM	0.639 AC	
AGGREGATE BASE CLASS 5 MODIFIED (LV)	LUMP SUM	823 CY	
SUBGRADE EXCAVATION	LUMP SUM	3866 CY	
SELECT GRANULAR FILL	LUMP SUM	10296 CY	
TOP SOIL PLACEMENT & SEED	LUMP SUM	387 CY	
TIRES INSTALLED	LUMP SUM	VARIABLE	BY FIRST STATE
SELECT GRANULAR FILL		1083	
CLASS 5 (4 INCH) SURFACING	LUMP SUM	179	
ALL EROSION CONTROL AND REPAIR SILT FENCE IF NEEDED	LUMP SUM	VARIABLE	
LUMP SUM FIXED PRICE CONTRACT	LUMP SUM	TOTAL	

ESTIMATE OF QUANTITIES REQUIRES FIELD SURVEY

**CALCULATIONS:**

CONTRACTOR TO FIELD CHECK AND APPROVE ALL QUANTITIES PRIOR TO START OF WORK

SILT FENCE - ONLY IF NEEDED

EXCAVATION - 10 X 18 X 580 = 3866 CUBIC YARDS

TOP SOIL SALVAGE =  $(18 + 30) \times 580 \times .5 / 27 = 515$  CUBIC YARDS

SITE PREPERATION = REMOVE BRUCH & STONES 580 X 48/43560 .639 ACRES

SUBGRADE EXCAVATION =  $580 \times 18 \times 10 / 27 = 3867$  CUBIC YARDS

TIRES 3866 CUBIC YARDS COMPACTED VOLUME - TO BE INSTALLED BY FIRST STATE TIRE DISPOSAL BETHEL MINN. 763-434-0578

SELECT GRANULAR FILL =  $580 \times 18 \times 2 \times 1.4 / 27 = 1083$  CUBIC YARDS

CLASS 5 -  $580 \times 18 \times .33 \times 1.4 / 27 = 179$  CUBIC YARDS

TOP SOIL PLACEMENT SEEDING  $18 \times 2 \times .5 \times 580 / 27 = 387$  CUBIC YARDS

**NOTES:**

CULVERTS TO BE PLACED ON GRANULAR BED MIN 1.5 FOOT DEEP AT LOCATION ALONG ROAD AS DIRECTED BY ROAD AUTHORITY  
CONTRACTOR TO PICK UP CULVERT AT COUNTY, TOWNSHIP OR OWNERS SHOP.

ALL WORK DESCRIBED TO BE PREFOMED BY CONTRACTOR AT THE PRICE AGREED TO PRIOR TO START OF WORK

ALL WORK TO BE TO STATE DOT STANDARDS

ALL TREES, BRUSH & ROCKS SHALL BE REMOVED FROM THE SITE AS NEEDED FOR THE COSTUCTION AT NO EXTRA COST

I CERTIFY THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND I AM A LICENSED ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA SHEET # 4

LIC. NO 8803 DATED July 28 2010

SIGNED



OGILVIE LAND DEVELOPMENT PROJECT

# OGILVIE LAND DEVELOPMENT ACCESS PLAN

## DRIVEWAY B

	FIXED COST	ESTAMATED QUANTITY	
MOBILIZATION	LUMP SUM	1	
ALL OTHER WORK NOT LISTED TO COMPLETE PROJECT	LUMP SUM	1	
TOP SOIL SALVAGE	LUMP SUM	282 CY	
SITE GRADE PREPARATION	LUMP SUM	0.35 AC	
AGGREGATE BASE CLASS 5 MODIFIED (LV)	LUMP SUM	451 CY	
SUBGRADE EXCAVATION	LUMP SUM	2119 CY	
TOP SOIL PLACEMENT & SEED AREA	LUMP SUM	212 CY	
TIRES INSTALLED	LUMP SUM	VARIABLE	BY FIRST STATE
SELECT GRANULAR FILL		593 CY	
EMBANKMENT	LUMP SUM	*	
CLASS 5 (4 INCH) SURFACING	LUMP SUM	98 CY	
ALL EROSION CONTROL AND REPAIR SILT FENCE IF NEEDED	LUMP SUM	VARIABLE	
LUMP SUM FIXED PRICE CONTRACT	LUMP SUM	TOTAL	

\* ESTIMATE OF QUANTITIES REQUIRES FIELD SURVEY

### CALCULATIONS:

CONTRACTOR TO FIELD CHECK AND APPROVE ALL QUANTITIES PRIOR TO START OF WORK

SILT FENCE - ONLY IF NEEDED

EXCAVATION -  $10 \times 18 \times 318 = 2120$  CUBIC YARDS

TOP SOIL SALVAGE =  $(18 + 30) \times 318 \times .5 / 27 = 282$  CUBIC YARDS

SITE PREPERATION = REMOVE BRUCH & STONES  $318 \times 48 / 43560 = .35$  ACRES

SUBGRADE EXCAVATION =  $318 \times 18 \times 10 / 27 = 2119$  CUBIC YARDS

TIRES 3866 CUBIC YARDS COMPACTED VOLUME - TO BE INSTALLED BY FIRST STATE TIRE DISPOSAL BETHEL MINN. 763-434-0578

SELECT GRANULAR FILL =  $318 \times 18 \times 2 \times 1.4 / 27 = 593$  CUBIC YARDS

CLASS 5 -  $318 \times 18 \times .33 \times 1.4 / 27 = 98$  CUBIC YARDS

TOP SOIL PLACEMENT SEEDING  $18 \times 2 \times .5 \times 318 / 27 = 212$  CUBIC YARDS

### NOTES:

CULVERTS TO BE PLACED ON GRANULAR BED MIN 1.5 FOOT DEEP AT LOCATION ALONG ROAD AS DIRECTED BY ROAD AUTHORITY

CONTRACTOR TO PICK UP CULVERT AT COUNTY, TOWNSHIP OR OWNERS SHOP.

ALL WORK DESCRIBED TO BE PREFOMED BY CONTRACTOR AT THE PRICE AGREED TO PRIOR TO START OF WORK

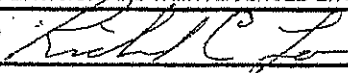
ALL WORK TO BE TO STATE DOT STANDARDS

ALL TREES, BRUSH & ROCKS SHALL BE REMOVED FROM THE SITE AS NEEDED FOR THE COSTUCTION AT NO EXTRA COST

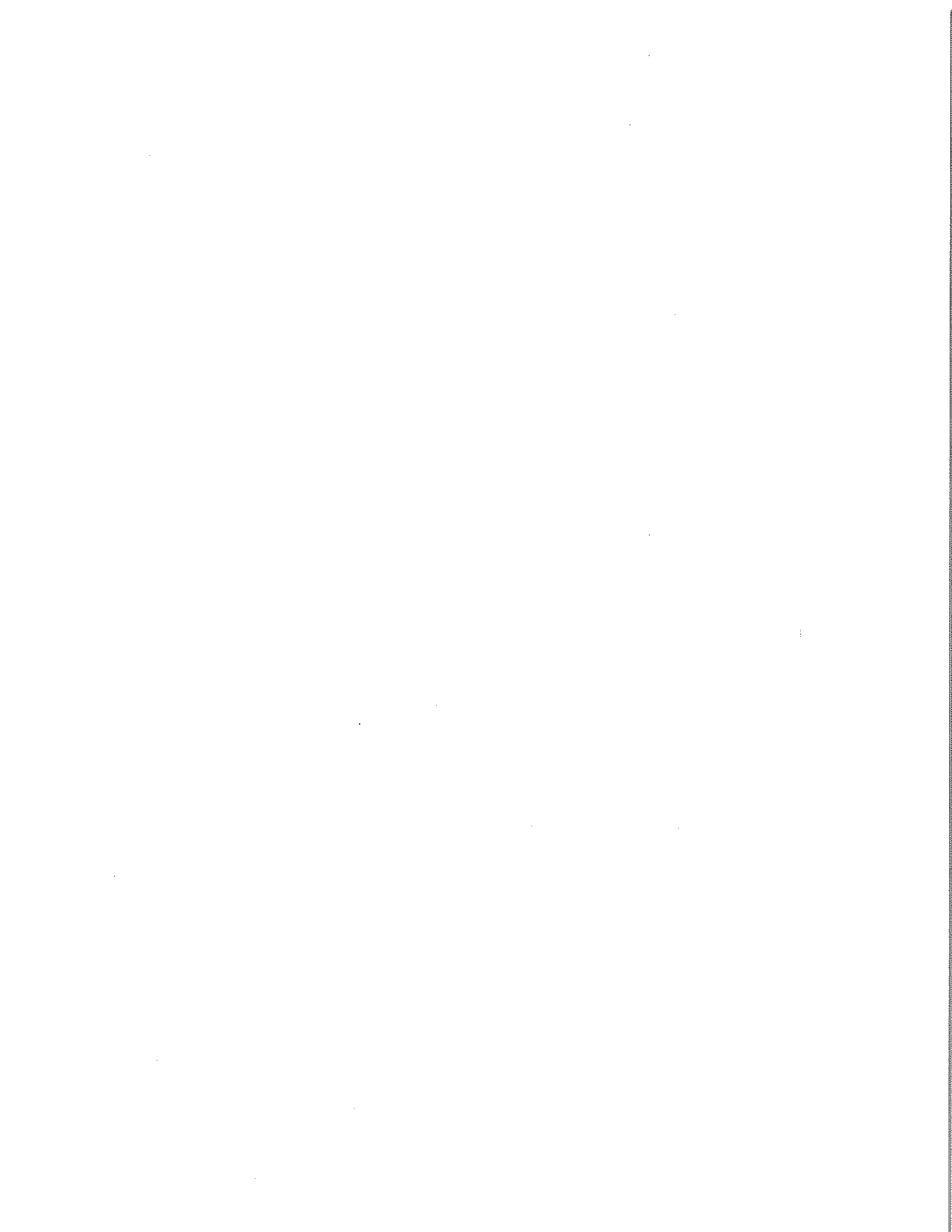
I CERTIFY THIS PLAN WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND I AM A LICENSED ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA SHEET #5

LIC. NO 8803 DATED July 28 2010

SIGNED



OGILVIE LAND DEVELOPMENT PROJECT



STATE OF MINNESOTA  
IN COURT OF APPEALS  
A12-2126

In the Matter of:  
Minnikka Properties, LLC

Filed July 29, 2013  
Affirmed  
Halbrooks, Judge

Minnesota Pollution Control Agency  
OAH Docket No. 61-22-00-225878-2

Gregory E. Korstad, Julie N. Nagorski, Larkin Hoffman Daly & Lindgren Ltd.,  
Minneapolis, Minnesota (for relator Minnikka Properties, LLC)

Lori Swanson, Attorney General, Ann E. Cohen, Assistant Attorney General, St. Paul,  
Minnesota (for respondent Minnesota Pollution Control Agency)

Considered and decided by Worke, Presiding Judge; Halbrooks, Judge; and  
Larkin, Judge.

**SYLLABUS**

The use of waste tires in quantities that exceed accepted engineering or  
commercial standards, absent a case-specific determination of beneficial use, violates  
Minn. R. 7035.2860 (2011) and Minn. Stat. § 115A.904 (2012).

**OPINION**

**HALBROOKS**, Judge

Relator Minnikka Properties, LLC challenges the Minnesota Pollution Control  
Agency's (the MPCA) final administrative order requiring Minnikka to remove waste-tire

**EXHIBIT B**

shreds from driveways that it constructed on its property. Minnikka argues that the MPCA (1) erred by concluding that its use of waste tires is not beneficial use under Minn. R. 7035.2860 and (2) denied Minnikka due process by providing insufficient notice of the alleged violation. Because the MPCA's final order is supported by substantial evidence and is unaffected by legal error and because Minnikka's due-process claim is without merit, we affirm.

### FACTS

Minnikka is a corporation owned and managed by Monte Niemi. Niemi also owns First State Tire Disposal (FSTD), a waste-tire processing facility that sells shredded tires for use in construction projects. In 2010, Minnikka purchased land in Brunswick near Harbor Road that Niemi planned to develop for his own residence. Niemi constructed two driveways on the property to create access to public roads. To build the driveways, Minnikka excavated an area 898 feet long, 18 feet wide, and up to 10 feet deep and filled the area with approximately 200 semi-truck loads of tire shreds supplied by FSTD.

Minn. R. 7035.2860, the beneficial-use rule, allows waste-tire use in land construction under two limited circumstances. Waste-tire parts can be used as lightweight fill in public-road construction if the tire parts are wrapped in fabric, pursuant to Minnesota Department of Transportation (MnDOT) specifications. Minn. R. 7035.2860, subp. 4(G). They can also be used as a one-to-one substitute for conventional construction aggregate. *Id.*, subp. 4(H). Under either circumstance, the waste tires cannot be used in quantities exceeding accepted engineering or commercial standards. *Id.*, subp. 2(E).

In July 2010, the MPCA began receiving complaints concerning Minnikka's Harbor Road project. One local resident complained that hundreds of loads of shredded tires were being used to fill a 20- to 25-foot trench on the property and that some were in standing water. Curtiss Hoffman, an inspector with the MPCA, scheduled a site visit with Niemi and asked Niemi to bring a copy of the project's plan to the site visit.<sup>1</sup>

Inspector Hoffman visited the project site three days later, but could not observe the waste-tire material because the trenches had been filled in and covered. During the inspection, Niemi provided Inspector Hoffman with a design plan that had been prepared the day before by Richard Larson, a retired engineer who works as a consultant to FSTD. The plan called for 8-10 feet of shredded waste tires as "light weight fill" that would be encapsulated by geotextile fabric.

Inspector Hoffman provided Larson's plan to MPCA engineer Daniel Vleck, who noticed that it was dated as having been prepared the day before the site visit, a detail that Inspector Hoffman had overlooked. Larson explained that Niemi had called him several weeks earlier about the project, but admitted that he prepared the driveway plan after the project was complete and without visiting the construction site. Larson relied on general information on the Internet in devising the plan.

Subsequent to the site visit, the MPCA received additional complaints from citizens who insisted that Larson's plan had not been followed, alleging that Minnikka

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<sup>1</sup> Inspector Hoffman presumed that Niemi would have a copy of that plan because, as a condition of its facility permit, FSTD is required to obtain a project plan or a signed statement from each of its customers showing that the waste-tire products purchased from FSTD would be used according to the beneficial-use rule and not as general construction fill.

had not used fabric to encapsulate the waste-tire shreds and that the excavation was deeper than 8-10 feet. Inspector Hoffman also received photographs taken by Brandon McGaw, a conservation officer with the Minnesota Department of Natural Resources, showing that the tire shreds that filled the excavated site were not encapsulated in fabric. The MPCA asked Minnikka to respond to these allegations. Niemi replied that Minnikka did not use fabric to isolate the tire shreds from the soil but had used just 8-10 feet of waste tires as provided in the project plan.

In December 2010, the MPCA issued a proposed administrative order, concluding that Minnikka's use of tire shreds in its Harbor Road driveways failed to constitute beneficial use and therefore required a case-specific beneficial-use determination. Minnikka refused to submit a case-specific application, asserting that its use of tire shreds in past projects justified its use here.

In November 2011, the MPCA issued a revised proposed administrative order, ordering the removal of the tire shreds from the driveways. The MPCA specifically concluded that the driveway project did not qualify as beneficial use under either subpart 4(G) of the beneficial-use rule, because Minnikka failed to use fabric to encapsulate the waste tires, or subpart 4(H), because the use of the tire shreds as an aggregate substitute "exceeds any reasonable use of aggregate and is more consistent with the use of waste tires for general fill purposes, or is in fact an effort to dispose of excess waste tire material."

Minnikka requested a contested hearing on the issue of whether its Harbor Road driveway project qualified under subpart 4(H) of the beneficial-use rule, asserting that it

used the tire shreds as frost-heave protection. An administrative-law judge (ALJ) held a three-day contested hearing in which 16 witnesses testified. The testimony and exhibits admitted at the hearing focused on the depth of the tire shreds in the Harbor Road driveways, whether the driveway soils are susceptible to frost heaves, and engineering standards for use of tire shreds as frost-heave protection.

Several local residents testified that they observed the driveway excavation and that it was deeper than 8-10 feet. Victoria Fore, who owns the adjacent property, testified that the excavated trench was more than ten feet deep and that a "semi" could have fit in there. Darryl McIalwain, a highway-construction worker, testified that the excavation was likely deeper than ten feet and that the soils on the site were "perfect road material," not at risk of frost heaves. Dennis McNally testified that the excavation was 12-15 feet deep and that the site's soils were "hardpan." Niemi testified that he used tire shreds at depths up to ten feet and had done so in past projects without raising MPCA's concern.

Daniel Vleck, an MPCA engineer who specializes in landfill and frost protection, testified that "there is no need to have a 10-foot layer of shreds in a driveway" for frost protection. He further testified that the standards of the American Society for Testing Materials (ASTM), a guide for engineers, provide that a layer of waste-tire material approximately 6 to 18 inches deep is sufficient to provide frost protection in a road. Blake Nelson, a geotechnical engineer with MnDOT who specializes in soil areas needing correction and who devised the MnDOT specifications for tire-shred use in road construction, also testified as an expert witness. Nelson testified that the MnDOT standard for frost protection is 6 to 18 inches with tire shreds and that, while two feet may

be used, ten feet is “definitely not” necessary. He stated that he had never heard of a single project in Minnesota or out-of-state requiring ten feet of fill for frost protection.

Minnikka called Anthony Francis, an engineer with Northern Technologies Inc. (NTI), to testify about a report that NTI completed after taking soil borings from the completed project site. Francis testified that areas of the soil on Minnikka’s property were moderately to highly frost susceptible, but conceded that NTI failed to perform any laboratory analysis of the soil borings it took. Minnikka also called Matthew Oman of Braun Intertec Corporation, who testified concerning a report that he prepared based on NTI’s report and other general information that he located on the Internet. Oman testified that the soils at the Harbor Road site were likely susceptible to frost but that ten feet of tire shreds exceeded the most conservative estimate of what is necessary for protection against frost. Richard Larson was not offered as an expert witness, but he testified that he planned for 8-10 feet of frost protection based on his experience and “[did] not care” what MnDOT or ASTM recommend.

The ALJ issued findings of fact, conclusions, and a recommendation that the MPCA affirm and implement the agency’s proposed administrative order. The ALJ found “[n]o relevant and reliable evidence in the record” supporting the use of ten feet of tire shreds as frost-heave protection. Accordingly, the ALJ concluded that Minnikka violated Minn. R. 7035.2860 and Minn. Stat. § 115A.904 by utilizing tire shreds in the Harbor Road driveways “in quantities that exceed accepted engineering standards” without a case-specific beneficial-use determination. The ALJ found that the MPCA’s witnesses were “credible in all material respects” and “highly qualified experts” who

each “testified to a reasonable degree of scientific certainty with regard to their professional examinations and opinions.”

The ALJ found that Larson’s testimony was “not credible or scientifically based.” The ALJ gave little weight to Francis’s testimony due to its lack of reliability and found that the Braun report actually supported the MPCA’s position because it recommended against excavating to the depths that Minnikka did. The ALJ gave no weight to evidence of projects that Minnikka performed prior to the adoption of the beneficial-use rule, explaining: “When a law or rule changes, what may have been permissible and legal before the change is no longer permissible after the change. Mr. Niemi’s ‘napkin’ projects between 1986 and 2004 are irrelevant to this proceeding.”

The MPCA adopted the ALJ’s findings and conclusions and issued a final order, directing Minnikka to remove the tire shreds from the Harbor Road property and to dispose of them properly. Minnikka filed a certiorari petition, seeking judicial review of the final agency decision.

### ISSUES

- I. Did the MPCA err by determining that Minnikka’s use of tire shreds was unlawful?
- II. Was Minnikka denied procedural due process?

### ANALYSIS

We may reverse or modify an administrative decision if the substantial rights of the petitioner may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are affected by an error of law, unsupported by substantial

evidence in view of the entire record, or arbitrary or capricious. Minn. Stat. § 14.69(d)-(f) (2012). “Upon review, our court must exercise judicial restraint, lest we substitute our judgment for that of the agency.” *In re Eller Media Co.’s Applications for Outdoor Adver. Device Permits in the City of Mounds View*, 664 N.W.2d 1, 7 (Minn. 2003). An administrative agency’s decision enjoys presumptive correctness, and we defer to the agency’s expertise and specialized knowledge in the field. *In re Annandale & Maple Lake NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 513 (Minn. 2007). “We will not disturb an agency’s decision as long as the agency’s determination has adequate support in the record as required by the substantial evidence test.” *Eller Media*, 664 N.W.2d at 7.

#### I.

The question this appeal presents is whether the MPCA erred by determining that Minnikka’s use of tire shreds in the construction of two private driveways failed to qualify as a beneficial use under Minn. R. 7035.2860, subp. 4(H). Minnesota law prohibits “disposal of waste tires in the land . . . except for beneficial uses of tire-derived products designated by the commissioner.” Minn. Stat. § 115A.904.<sup>2</sup> A waste tire is a tire “no longer suitable for its original intended purpose.” Minn. Stat. § 115A.90, subd. 11 (2012). Under its regulatory authority, the MPCA promulgated the beneficial-use rule which designates 17 uses of solid waste as “standing beneficial uses.” Minn. R. 7035.2860, subp. 4. Standing beneficial uses are permitted without any notice to the

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<sup>2</sup> Section 115A.904 was amended in 2012 to reflect the existence of the beneficial-use rule, Minn. R. 7035.2860, promulgated in 2004.

MPCA of that use. *Id.* All other solid-waste use is prohibited, absent a case-specific beneficial-use determination by the MPCA. *Id.*, subp. 5.

The rule designates two standing beneficial uses of waste-tire parts. Subpart 4(G) allows tire shreds to be used as lightweight fill in public roads if they are encapsulated by fabric in accordance with engineering practices developed for roadways by MnDOT. *Id.* (citing Minn. Stat. § 115A.912, subd. 4). Subpart 4(H) allows tire chips to be “used as a substitute for conventional aggregate in construction . . . when the ratio of [the] substitution is no greater than one to one by volume.” *Id.*, subp. 4(H). The beneficial-use designation under subpart 4(H) does not apply to the “use of tire chips as general construction fill or clean fill.” *Id.* The rule does not define tire shreds or tire chips. All other use of waste tires is prohibited by law and requires application for a case-specific beneficial-use determination from the MPCA. Minn. Stat. § 115A.904; Minn. R. 7035.2860, subp. 5.

In addition, to qualify as a beneficial use, “solid waste must not be used in quantities that exceed accepted engineering or commercial standards. Excess use of solid waste is not authorized by this part and is considered disposal.” Minn. R. 7035.2860, subp. 2(E). Disposal of solid waste is unlawful absent a permit. *See* Minn. R. 7001.3050 (2011).

Minnikka insists that the central question on appeal is whether the beneficial-use rule requires “an engineered design document in advance of the use of [waste tires]” under subpart H. We disagree. The dispositive issue before the ALJ concerned the quantity of waste tires that Minnikka used and whether that amount conformed to

accepted engineering standards. The record does not support Minnikka's assertion that the MPCA's decision turned on the existence of a project plan at the time of the excavation. We therefore address whether substantial evidence supports the ALJ's findings regarding the quantity of tire shreds that Minnikka used and the engineering standards for frost-heave protection.

**A. Substantial Evidence**

The ALJ's finding that Minnikka used tire shreds in depths up to ten feet in the driveway construction is supported by Niemi's testimony and that of several local residents. The ALJ also found that no relevant or reliable record evidence supports using ten feet of waste-tire material for frost-heave protection. We agree. Expert testimony from Vleck and Nelson, who were deemed "credible in all material respects" and who testified that less than two feet of tire fill is necessary for frost protection, provides ample support for this finding. And none of Minnikka's expert witnesses testified to the contrary. Larson, who was not offered as an expert witness, did not cite any scientific material in support of his recommendation of ten feet for frost protection, and, consequently, the ALJ deemed his testimony to be unreliable. On this record, we conclude that substantial evidence supports the ALJ's finding that Minnikka used more tire shreds than were necessary to protect its driveways from frost heaves.

Minnikka suggests that the ALJ's decision as to what testimony to credit is a legal issue requiring de novo review. But it is a well-settled principle that "[w]e defer to an agency decisionmaker's conclusions regarding conflicts in testimony, the weight given to expert testimony and the inferences to be drawn from testimony." *In re Excess Surplus*

*Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 278 (Minn. 2001). Minnikka has failed to cite any legal authority supporting de novo review of those determinations.

Minnikka also contends that the MPCA's decision was arbitrary and capricious because it rejected Larson's testimony and credited the testimony of government engineers. This argument lacks a basis in the law. An ALJ's decision is not arbitrary and capricious when it credits one opinion when there are differing opinions on a matter. *In re Review of 2005 Annual Automatic Adjustment of Charges for all Elec. & Gas Utils.*, 768 N.W.2d 112, 123 (Minn. 2009). Furthermore, because credibility determinations rest with the ALJ, not the appellate courts, we defer to the ALJ's decision to discredit Larson's lay testimony and to credit Vleck's and Nelson's expert testimony.

In sum, substantial evidence supports the ALJ's determination that Minnikka's use of tire shreds to a depth of ten feet does not qualify as beneficial use because that amount exceeds accepted engineering standards for frost-heave protection, in violation of Minn. R. 7035.2860, subp. 2. The MPCA did not err by concluding that Minnikka disposed of waste tires in violation of Minn. Stat. § 115A.904.

#### **B. Errors of law**

Minnikka asserts that the MPCA imposed requirements on Minnikka that are not in the rules by (1) requiring an engineering plan, (2) imposing a size requirement on its waste-tire parts, (3) revising the rules during this enforcement action, and (4) acting inconsistently by approving ten feet of tire shreds in its past projects. These arguments mischaracterize the record and the agency's decision.

## **1. An engineered plan**

Minnikka asserts that the MPCA required Minnikka to have an engineered plan in advance of its waste-tire use. To support this assertion, Minnikka points to the testimony of Heidi Croenig, MPCA's compliance and enforcement supervisor. Croenig confirmed several times throughout her testimony that there is no requirement in the rules for an engineered plan. She clarified, as a general matter, that when she investigates a project that has several hundred feet of tire fill that is otherwise unexplained, she would like to see a plan showing the purpose for the tires. This does not establish that the MPCA interprets subpart 4(H) as requiring an engineered plan or that it required Minnikka to have one. The MPCA asked to see the engineered plan that FSTD was required, as a condition of its permit, to obtain from Minnikka in advance of supplying waste-tire materials to it. But the absence of that plan during excavation did not establish the basis for Minnikka's violation. Rather, the MPCA's order was based on Minnikka's failure to sufficiently rebut the ample evidence that it had used tire shreds in amounts that violated the beneficial-use rule.

## **2. Size of shreds**

Minnikka argues that the MPCA found Minnikka to be in violation of the beneficial-use rule because it used tire shreds instead of tire chips. In its proposed administrative order, the MPCA found

that the use of waste tire material for the road project does not meet [subpart 4(H) standing use] because the material consists largely of tire shreds, not chips, and because while waste tires shreds/chips might substitute for aggregate in certain drainage applications, the volume of the waste tires

shreds/chips used for this project exceeds any reasonable use of aggregate.

This proposed finding reveals that, regardless of whether Minnikka used chips, shreds, or a combination of the two, it used that material in excess of what was permissible under the beneficial-use standards. The MPCA's final order reflects that Minnikka's violation was under subpart 2 for using waste-tire materials in excess of what was required for frost protection and did not turn on any distinction between chips and shreds.

### **3. Rule revision**

Minnikka accuses the MPCA of revising the beneficial-use rule outside of the rulemaking process and applying a new rule to Minnikka. To support its allegation, Minnikka points to a single draft document prepared by Vleck, outlining his "thoughts" on "appropriate uses of tire shreds and chips and appropriate quantities." It contemplates the potential use of geotextile fabric in landscaping, the appropriate depth of lightweight fill, and a definition of "tire chip," among other matters. The document is marked "draft," contains neither a header, title, nor addressee, includes hand-written notes in the margins, and does not appear to have been distributed to anyone. This document does not constitute a rule revision. There is no evidence whatsoever indicating that the MPCA either revised the beneficial-use rule outside the rulemaking process or imposed requirements on Minnikka that are not included in the rule.

### **4. Past projects**

The ALJ concluded that the evidence concerning projects that FSTD and Niemi completed prior to the adoption of the beneficial-use rule was irrelevant to this

enforcement action. We agree. On appeal, Minnikka again points to its projects that pre-date the beneficial-use rule as evidence that the MPCA's application of the rule here was the result of an "unpublished" and "sudden" change to the rule. But evidence of what projects occurred before the beneficial-use rule existed does not demonstrate that the MPCA's application of the beneficial-use rule here was inconsistent with other applications of the rule. The MPCA's decision is supported by substantial evidence, is neither arbitrary nor capricious, and is unaffected by any error of law.

## II.

Minnikka argues that the MPCA provided insufficient notice of the alleged violation of the beneficial-use rule. We review de novo the procedural due process afforded a party. *Zellman ex rel. M.Z. v. Indep. Sch. Dist. No. 2758*, 594 N.W.2d 216, 220 (Minn. App. 1999), *review denied* (Minn. July 28, 1999). Both the United States Constitution and the Minnesota Constitution provide that no person shall be deprived of property without due process of law. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7. Due process requires notice and the opportunity for a hearing. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S. Ct. 1487, 1493 (1985).

The record belies Minnikka's assertion that it was not properly informed of its violation prior to the administrative hearing. It was the MPCA's proposed administrative orders that put Minnikka on notice of the violation of Minn. Stat. § 115A.904, for failing to qualify as beneficial use under Minn. R. 7035.2860. And it was that notice that prompted Minnikka to request a contested hearing on the application of subpart 4(H) to

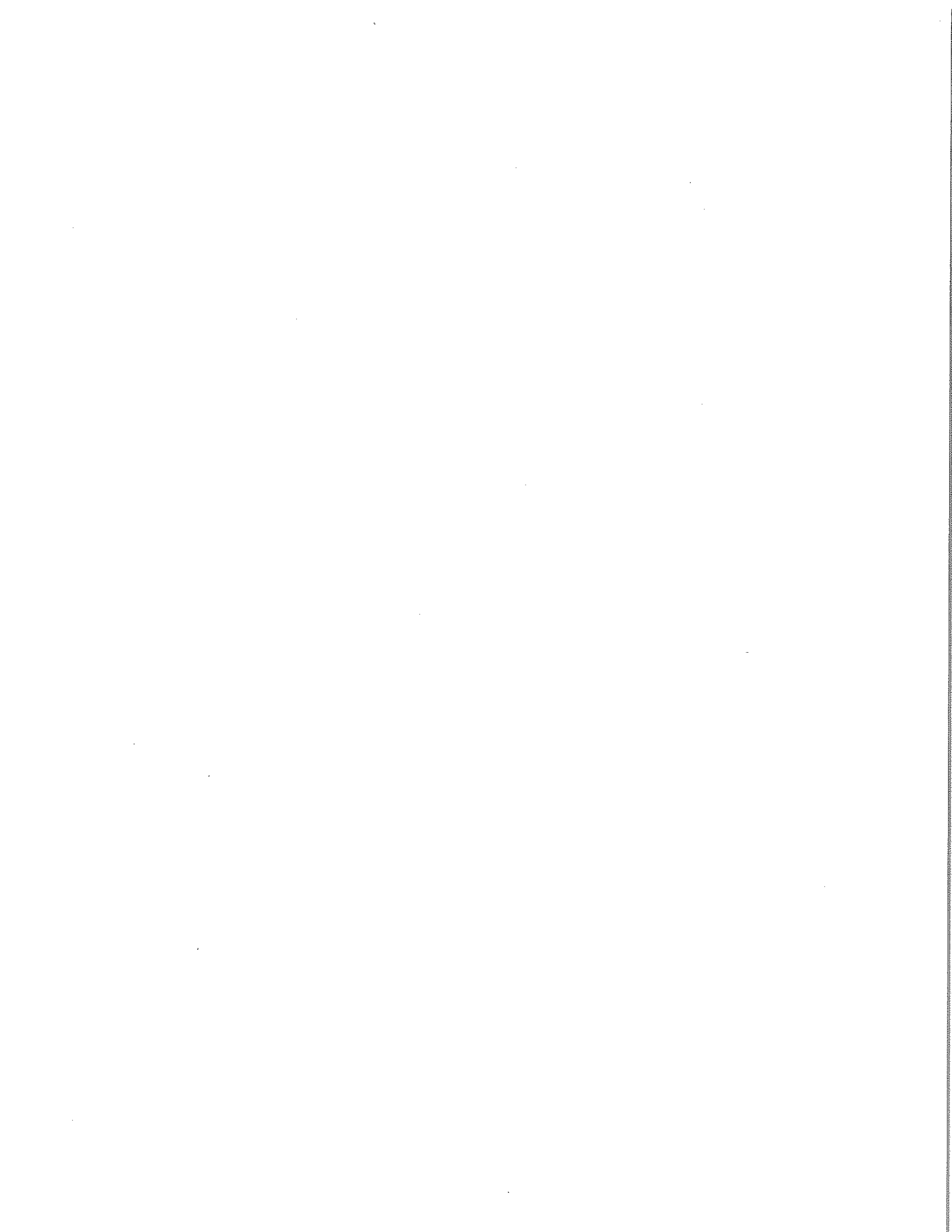
its driveway project. This met the due-process requirements of notice and an opportunity to be heard.

Minnikka contends, however, that it was denied due process because the MPCA “changed its position” on Minnikka’s compliance between July and December 2010. But the fact that the MPCA initially determined in July that Minnikka had complied with the beneficial-use rule, only to conclude that it had not complied following further investigation, does not undermine Minnikka’s rights. And Minnikka’s argument that the MPCA “changed its allegation at trial”—no longer alleging that Minnikka violated subpart 4(G) but that its project failed to qualify under subpart 4(H)—is also flawed. The MPCA’s proposed administrative order discussed each of the beneficial-use designations that might apply to the driveways. It was Minnikka that requested a hearing only on whether it qualified under subpart 4(H). It is understandable, then, why the MPCA only addressed the application of subpart 4(H) at the hearing. Our careful review of the record yields nothing to persuade us that Minnikka received a constitutionally deficient hearing.

### DECISION

Because Minnikka used waste tires in quantities that exceeded accepted engineering or commercial standards and failed to obtain a case-specific determination of beneficial use, the MPCA did not err by concluding that Minnikka violated Minn. R. 7035.2860 and Minn. Stat. § 115A.904.

**Affirmed.**



**7035.2860 BENEFICIAL USE OF SOLID WASTE.**

Subpart 1. **Applicability.** This part establishes a procedure for determining when use of a material classified as a solid waste is a beneficial use. The uses listed in subpart 4 as standing beneficial use determinations have been reviewed and determined to be beneficial uses of solid waste by the agency. All other proposed uses of solid wastes must obtain case-specific beneficial use determinations in accordance with the procedures in subpart 5. The following exemptions are provided:

A. Beneficial uses authorized to occur by an agency permit or legally binding document issued prior to March 15, 2004; are exempt from this part. Upon expiration of the authorization, the procedure for obtaining a case-specific beneficial use determination in subpart 5 must be followed.

B. Recyclable materials recycled in accordance with part 7035.2845 and Minnesota Statutes, section 115A.03, subdivision 25, are exempt from this part.

C. Recyclable materials that are not exempt under item B are exempt from the requirement to obtain a case-specific beneficial use determination under subpart 5 when they are incorporated into a manufactured product as defined by part 7035.0300, subpart 62a.

D. Composts that are used in accordance with the standards contained in part 7035.2836 are exempt from this part.

Subp. 2. **Beneficial use standards.** To constitute a beneficial use under this part, the following standards must be met:

A. the solid waste must not be stored in anticipation of speculative future markets;

B. the solid waste must be adequately characterized in accordance with part 7035.2861;

C. the solid waste must be an effective substitute for an analogous material or a necessary ingredient in a new product;

D. the use of the solid waste does not adversely impact human health or the environment; and

E. the solid waste must not be used in quantities that exceed accepted engineering or commercial standards. Excess use of solid waste is not authorized by this part and is considered disposal.

Subp. 3. **Regulatory exemption.** Unless specified otherwise by the agency in a beneficial use determination or permit, a material remains a solid waste until it is incorporated into a manufactured product or utilized in accordance with a standing or a case-specific beneficial use determination. Until the time this regulatory exemption occurs,

the material must be stored in compliance with part 7035.2855 and managed as a solid waste in accordance with this chapter.

Subp. 4. **Standing beneficial use determinations.** A standing beneficial use determination means that the generator or end user of a material can do so in accordance with this subpart without contacting the agency. Only those specific solid wastes and the uses designated in items A to Q have been given standing beneficial use determinations. Any other uses of the solid waste are not authorized and must follow the procedure outlined in subpart 5.

A. Unadulterated wood, wood chips, bark, or sawdust when these materials are used as mulch, landscaping, animal bedding, erosion control, wood fuel production, a bulking agent at a compost facility operated in compliance with part 7035.2836, or as a substitute for wood.

B. Unadulterated newspaper and newsprint when used as animal bedding, insulation, or as a substitute for paper products.

C. Uncontaminated glass when used as a sandblast agent.

D. Unusable latex paints, characterized as high solid content, off-specification colors, sour, frozen, or poor quality, when used to produce processed latex pigment for use as an additive for the production of ASTM-specified specialty cement.

E. Reclaimed glass and porcelain fixtures when used as a substitute for conventional aggregate or subgrade applications in accordance with Minnesota Department of Transportation Standard Specifications for Construction 2000 Edition, 3138.2 A2.

F. Crumb rubber when used in asphalt paving or applications where it is used as a substitute for rubber or similar elastic material.

G. Tire shreds when used as lightweight fill in the construction of public roads in accordance with Minnesota Statutes, section 115A.912, subdivision 4.

H. Tire chips when used as a substitute for conventional aggregate in construction applications when the ratio of this substitution is no greater than one to one by volume. This does not include use of tire chips as general construction fill or clean fill.

I. Uncontaminated recognizable concrete, recycled concrete and concrete products, and brick when used for service as a substitute for conventional aggregate.

J. Salvaged bituminous when used as a substitute for conventional aggregate in accordance with Minnesota Department of Transportation Standard Specifications for Construction 2000 Edition, 3138.2 A2.

K. Coal combustion slag when used as a component in manufactured products such as roofing shingles, ceiling tiles, or asphalt products.

- L. Coal combustion slag when used as a sand blast abrasive.
- M. Coal combustion fly ash as defined by ASTM C 618 when used as a pozzolan or cement replacement in the formation of high-strength concrete.
- N. Coal combustion fly ash or coal combustion gas scrubbing by-products when used as an ingredient for production of aggregate that will be used in concrete or concrete products. This does not include use in flowable fill.
- O. Foundry sand when used as a feed material for the manufacture of Portland cement.

P. Uncontaminated by-product limes when used as agricultural liming materials and distributed in accordance with chapter 1508 and Minnesota Statutes, sections 18C.531 to 18C.575. Application rates for by-product limes must be based on the lime recommendations of the University of Minnesota Extension Service and cannot cause the soil pH to exceed 7.1 after application. Site-specific application rates for by-product lime must be determined by an individual that has a background and understanding of crop nutrient management such as a crop consultant or University of Minnesota Extension Specialist. Recommended rates for lime can be obtained from the University of Minnesota Extension Service publication "Fertilizer Recommendations for Agronomic Crops in Minnesota" BU-06240-S, and the Minnesota Department of Agriculture publication "Ag-Lime Recommendations in Pounds ENP per acre" available on their Web site at <http://www.mda.state.mn.us/lime>.

Q. Manufactured shingle scrap and ground tear-off shingle scrap when used in asphalt pavement or road subbases.

Subp. 5. **Case-specific beneficial use determinations.** For uses of a solid waste not identified in subpart 4, the agency shall make a case-by-case determination on whether the proposed management option for the specific solid waste is a beneficial use. This determination must be based on information submitted in accordance with this subpart. In cases where the information required by this subpart is not available, a demonstration/research project designed to provide the missing information may be proposed in accordance with part 7035.0450. Unless otherwise directed by the agency, proposals must include the following information at a minimum:

- A. a description of the solid waste, manner in which it is generated, quantity generated, quantity to be utilized, and its proposed end use;
- B. results of chemical and physical characterization of the solid waste done in accordance with part 7035.2861;
- C. an evaluation of the human health and environmental impacts the proposed use may have and a comparison of these impacts with those from other management alternatives for the solid waste;

D. verification that the end product complies with industry standards and specifications for its intended use and a comparison of the chemical and physical characteristics of the solid waste proposed for use with the material it will replace;

E. a description of the routine sampling and analysis that will be conducted of the solid waste to ensure that the information submitted for review is representative and the solid waste has consistent characteristics. The description must include the procedure and frequency of sampling and analysis, parameters to be analyzed, analysis methods, and laboratory reporting limits to be used;

F. a copy of a contract to purchase or use the proposed product or other documentation proving that a market for the proposed product or use exists;

G. a detailed description of how and where the product will be distributed. This should also include a detailed description of how the solid waste will be managed from the time it is generated until the time it will be utilized and the management practices that will be in place to ensure that human health and the environment are protected;

H. the following information related to the management of solid waste stored prior to its use:

(1) a complete description of the types of storage to be used prior to beneficial use; and

(2) a description of how the solid waste will be managed to meet the requirements in part 7035.2855;

I. a description of any wastes that will need to be managed as a result of beneficially using the solid waste;

J. verification that local units of government with authority to regulate the proposed process or use of the solid waste have received a copy of this application and have been provided information on who to contact at the agency to provide comments on the proposed beneficial use activity; and

K. a proposal for notification of interested or affected parties. The agency shall review this proposal and make a determination on the appropriate notification procedures.

Subp. 6. **Agency actions.** Upon completing review of the information submitted under subpart 5, the commissioner will take one of the following actions:

A. request additional information for evaluation of the proposal;

B. notify the proposer in writing, that a beneficial use determination has been made and the commissioner agrees the proposed use of the solid waste is beneficial. If the determination is conditional, the notification must include the conditions; or

C. deny the request for a case-specific beneficial use determination.

If the request is denied, the proposer must obtain a permit or variance before the solid waste can be managed in the manner proposed. If a permit is required, the type of permit issued may be a state disposal system or a solid waste management facility permit depending on the type of environmental concerns that need to be addressed by the permit.

Subp. 7. **Reporting requirements.** Proposers that have applied for and received case-specific beneficial use determinations according to subpart 5 must submit a report to the county in which the solid waste is generated annually by January 31. The report must contain a description of the type and quantity of solid waste beneficially used during the time period from January 1 to December 31 of the previous year. The Minnesota Pollution Control Agency will provide a format for submitting this report.

Subp. 8. **Modification of a beneficial use determination.** The commissioner may modify conditions attached to any beneficial use determination made under subpart 5 if the commissioner finds, on the basis of new information, that new conditions are necessary to protect human health and the environment.

Subp. 9. **Revocation of a beneficial use determination.** The commissioner may revoke any beneficial use determination made under subpart 5 if the commissioner finds, on the basis of new information, the standards in subpart 2 are not being met. If the commissioner revokes a beneficial use determination, use of the solid waste can only continue if authorized by a permit and/or a variance is obtained. The commissioner shall provide a reasonable amount of time for the proposer to apply for a permit or variance or to terminate the regulated activity.

Subp. 10. **Public information.** The agency shall post all case-specific beneficial use determinations made by the agency on its Web site.

**Statutory Authority:** *MS s 116.07*

**History:** *28 SR 1086; L 2005 1Sp1 art 2 s 161*

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