

CITY OF MINNEAPOLIS
PLANNING COMMISSION AND
CITY COUNCIL

In Re: Application of Covanta Energy for an amendment to Minneapolis conditional use permit #61061, to allow increased burning of garbage at the “Hennepin Energy Recovery Center” (garbage incinerator)

NOTICE OF INTERVENTION OF NEIGHBORS AGAINST THE BURNER, AND MINNEAPOLIS NEIGHBORS FOR CLEAN, AIR UNDER THE MINNESOTA ENVIRONMENTAL RIGHTS ACT

TO: City of Minneapolis, Minnesota, Planning Commission and City Council including all committees, c/o Susan L. Segal, Esq., City Attorney for Minneapolis, City Hall, Room 210, 350 S. 5th St., Minneapolis, MN 55415

PLEASE TAKE NOTICE that, pursuant to the Minnesota Environmental Rights Act, Minnesota Statute 116B.09, Subdivision 1, Neighbors Against the Burner, and Minneapolis Neighbors for Clean Air, the undersigned, intervene in the above-entitled proceedings before the Minneapolis Planning Commission, the Minneapolis City Council, and any of its committees.

BACKGROUND AND FACTUAL BASIS FOR INTERVENTION

1. *“... in any administrative, licensing, or other similar proceeding, and in any action for judicial review thereof which is made available by law, any natural person residing within the state, the attorney general, any political subdivision of the state, any instrumentality or agency of the state or of a political subdivision thereof, or any partnership, corporation, association, organization or other legal entity having shareholders, members, partners, or employees residing within the state shall be permitted to intervene as a party upon the filing of a verified pleading asserting that the proceeding or action for judicial review involves conduct that has caused or is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state.”* (Minnesota Statute [116B.10](#) , Subdivision 1, Environmental Rights Act.)

2. Neighbors Against the Burner (NAB) (<http://www.neighborsagainsttheburner.org/>) is an unincorporated association with headquarters at 2098 Carroll Ave., St. Paul, MN 55104. The Mission Statement of NAB is:

“Neighbors Against the Burner speaks with a community voice to protect the people and natural resources of Minnesota by supporting sustainable,

safe, and clean energy production and rejecting unsafe, polluting, and outdated technologies such as incineration.

3. NAB has members residing in Minneapolis, St. Paul, and other “Metro” communities, whose health and quality of life are potentially harmed by the “HERC” garbage incinerator.
4. Minneapolis Neighbors for Clean Air (MNCA) (<http://minneapolisneighborsforcleanair.com/>) is an unincorporated association with headquarters at 2615 38th Avenue South, Minneapolis, MN, 55406, made up of persons *“linked by our concern to improve air quality and overall public health in the City of Minneapolis.”*
5. MNCA’s members reside in Minneapolis, St. Paul, and other “Metro” communities, such that their health and quality of life are potentially harmed by the “HERC” garbage incinerator.
6. The “HERC” is a garbage incinerator located at 505 Sixth Avenue North, in Minneapolis, MN. It is owned by Hennepin County and operated by Covanta Energy.
7. Since startup in the 1980s, the “HERC” has been limited to a garbage burning rate of 365,000 tons per year, equivalent to 1000 tons per day. The purpose of the requested conditional use permit amendment is to increase the allowable burning rate to 1212 tons per day, a 21 percent increase, potentially amounting to over 77,000 tons per year of additional garbage burnt.
8. In the course of burning garbage, the “HERC” emits health-damaging air pollutants including oxides of nitrogen, carbon monoxide, hydrochloric acid, sulfur dioxide, mercury, lead, arsenic, fine particles including “nanoparticles,” and dioxins. These pollutants are known to cause or contribute to death and disease, including asthma, bronchitis, strokes, heart attacks, and lung cancer.
9. It has been shown that levels of fine particles in ambient air, even below regulatory limits, contribute to increased mortality rates. See Exhibit A, *“Statement of Evidence, Particulate Emissions and Health....”*
10. Over the past fifteen years, the “HERC” has reported annual average air emissions of about one million pounds per year to the MPCA and US Environmental Protection Agency. See Exhibit B, NAB PowerPoint presentation *“Should the HERC burn more garbage?”*
11. The present “air permit,” for the “HERC” expired on May 14, 2003. It would theoretically allow annual emissions of about 2.9 million pounds per year and does not contain emission limits conforming to present EPA requirements for

garbage incinerators. Thus, it is clear that the existing regulatory processes are insufficient to protect the health of Minneapolis residents.

12. The proposed increase in garbage burning could reasonably be expected to cause at least a proportionate increase in health-damaging emissions. This could mean about 200 thousand pounds per year of additional health-damaging air pollutants added to the air breathed by residents of Minneapolis, St. Paul, and surrounding communities. Other negative impacts would include increased truck traffic in the area and increased production of harmful incinerator ash.
13. Increased garbage burning at the “HERC” could also increase emissions of climate-changing gases by approximately 70 million pounds per year, contributing to the many threats to public health and safety posed by climate change. (Exhibit B.)
14. Incineration of garbage is unnecessary as well as harmful, because better alternatives exist including producer responsibility, source reduction, expanded recycling, composting, anaerobic digestion, and others. These are often described under the umbrella term “zero waste.”
15. The Planning Commission of the City of Minneapolis rejected the proposed amendment to the conditional use permit, finding that

Increasing the capacity of the garbage burner, in all probability, could be detrimental to public health, safety, comfort or general welfare.

Increasing the capacity of the garbage burner, in all probability, could be injurious to the use and enjoyment of other property in the vicinity and, in all probability, could impede the normal or orderly development and improvement of surrounding property for uses permitted in the district.

This use is not consistent with some policies of the Comprehensive Plan, including the following: 7.1, 7.8, 7.11, and 7.12.”

This decision has been appealed to the Minneapolis City Council.

16. The proposed conditional use permit, if granted, “...is likely to cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state.” (Minnesota Statute [116B.10](#) , Subdivision 1, also cited in paragraph 1)
17. Multiple jurisdictions are involved in this matter, including Hennepin County, the City of Minneapolis, the Environmental Quality Board, and the Minnesota Pollution Control Agency (MPCA).

18. The MPCA has been designated as the “Responsible Governmental Unit” for purposes of environmental review. However, the MPCA has stated policies of increasing the use of garbage incineration and appears to be actively promoting incineration through means including grants and loans, and a biased “stakeholder process.” This raises concerns regarding the objectivity of the MPCA in carrying out environmental review of the proposed burning increase.
19. The proponents of increased burning at the “HERC” appear to be relying primarily on procedural maneuvers and behind-the-scenes activities rather than by responding to the substance of the health and land use concerns presented to the Minneapolis Planning Commissions.
20. Under these various circumstances, openness and transparency are essential to a responsible outcome.
21. NAB and MNCA desire to fully participate in the matter on behalf of the interests of their members and the general public. Some obstacles to such full participation have been encountered. While documents have been provided in response to Data Practices Act requests, these documents have not been volunteered, requiring continual, repeated requests. Uncertainty has existed regarding the scheduling of events and the taking of testimony from the public. Thus, it is necessary that NAB intervene as a full party to obtain improved access and cooperation.
22. NAB's and MNCA's expectations as parties include but are not limited to (1) being automatically provided all documents and correspondence, formal and informal, regarding the proposed “HERC” burning increase; (2) being invited to all meetings, formal or informal, and to participate in all telephone calls, formal or informal, regarding this matter, and (3) to be consulted in advance regarding the scheduling and agenda of all meetings, formal or informal.
23. NAB and MNCA meet all the requirements for intervention under the cited Environmental Rights Act. Intervention is a matter of right. Thus, this is a notice, not a petition or motion.

VERIFICATION

STATE OF MINNESOTA)
)ss.
COUNTY OF HENNEPIN)

Nancy Hone, being first duly sworn on oath, states that she is the Coordinator of Neighbors Against the Burner, the Intervener above-named, that she has read the foregoing Notice of Intervention, and that the same is true of her own knowledge, except as to those things stated on information and belief and as to such she verily believes it to be true.

Dated: _____

Nancy Hone, Coordinator, Neighbors
Against the Burner

Dated: _____

Carol Greenwood, Representative,
Minneapolis Neighbors for Clean Air

Signed and sworn to before me this
___ day of November, 2009

Notary Public