



MEMORANDUM

To: MCWD Board of Managers

From: James Wisker

Date: November 16, 2017

Re: DRAFT framework for evaluating MCWD role in contaminants of concern

Purpose:

To provide the Board of Managers a draft framework to evaluate the Minnehaha Creek Watershed District's (MCWD or District) role in [potential] contaminants of concern.

Background:

At the April 27, 2017 meeting of the MCWD Board of Managers, a resident of South Minneapolis expressed concern with the potential hazardous qualities arising from the various uses of waste tires, including children's exposure via air pathways from use of the material in playgrounds. In response to the concern, the Board of Managers directed staff to develop a recommendation on the appropriate response for the District regarding this issue.

Framework for MCWD Involvement in Contaminants of Concern:

Occasionally, as a natural resource agency with regulatory powers, the MCWD is requested to formulate a position on, or otherwise engage in, contaminants of concern within the environment. In these instances, it is not always clear what role (if any) the District should assume. Often contributing to the lack of clarity is a level of uncertainty regarding the current level of research on an issue, and the current regulatory paradigm at a national or state level.

Accordingly, to facilitate MCWD Board decisions on such matters on a case-by-case basis, staff recommends that the District adopt a general guiding framework to inform future policy analysis and decision making.

Below is a preliminary draft framework for discussion. Once a guiding framework for analysis and decision making is established, staff will provide a final recommendation regarding the specific issue of waste tire products (WTP):

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Research/risk assessment:

- What is the state of the research? Is the issue characterized and risks understood, or not yet?
- What is the salience of the concern to the District (e.g., type and extent of uses within the District)?
- Is the needed research/assessment at a District-scale (i.e., oriented toward particular District uses or setting) or of a broader and more general nature?
- If the research/assessment is local, will it have value at a larger scale?
- How expensive/extensive is the needed research?
- At what level, then, is the research/assessment best performed?

Regulatory:

- Does the District yet know enough to regulate (that there is a water quality concern, how that concern can be reduced)?
- What are the uses to be regulated (e.g., use in fill/road base, in landscaping and play areas), how would they be regulated, and is that a feasible regulatory format within the District's ordinary sphere (e.g., regulating replaceable playground surfacing; regulating or prohibiting existing uses)?
- How are these uses now regulated by other agencies, and are there gaps in the regulation?
- Is there federal or state preemption of District regulatory authority?
- Are there other agencies more suited to regulate (e.g., LGUs as land use authorities and general police power/nuisance authorities)?
- Is it more effective to seek collaboration and voluntary action (e.g., road authorities, LGUs)?
- Are there incentives operating on property owners that make regulation less necessary?
- If the District is pondering expanding its regulatory scope to new areas, is this an area of suitable priority?

Project policy:

- Can the use of WTP constitute an element of any District project, or project in which the District is a partner?
- Does the District have sufficient information to form a policy on WTP use in projects (see above)?

Cost share/technical support:

- Does the District have sufficient information to form a policy on WTP use (see above)?
- Are WTP incorporated in projects for which the District provides cost-share funds or other value, or could the District provide value to support elimination of existing WTP usage?

Planning:

- Does the District have sufficient information to form a policy on WTP use (see above)?
- Do the District's LGUs use, or are they in a position to regulate others' use of, WTP?
- Does the District wish to encourage LGUs informally, or revise its plan to require them formally, to institute and follow certain policies or regulatory approaches concerning WTP use?

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Next Steps:

Following introduction and discussion at the November 16, 2017, Planning and Policy Committee, staff will refine the framework and provide a final policy recommendation to the Board of Managers, regarding the District's role in the use of waste tire products in December 2017.

If there are questions in advance of the meeting, please contact: James Wisker at Jwisker@minnehahacreek.org or 952-641-4509

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