REQUEST FOR CITY COUNCIL ACTION

DATE: 11/29/2010
ITEM NO:

Department Approval

Agenda Section

Item Description: Consider request by Bituminous Roadways for **CONDITIONAL USE** approval to allow the outdoor storage of aggregate materials at 2280 Walnut Street **(PF09-010).**

1.0 REQUESTED ACTION

Bituminous Roadways seeks approval of outdoor storage of aggregate materials as a CONDITIONAL USE in support of the operation of an asphalt plant at 2280 Walnut Street.

Project Review History

- Application submitted: March 6, 2009; Determined complete: March 9, 2009
- Sixty-day review deadline: May 5, 2009; Extended by applicant until July 2, 2009
- City Review Suspended Pending Completion of EAW: June 15, 2009
- Draft EAW Completed: July 9, 2010
- Draft EAW Comments Deadline: September 10, 2010
- Notice of EAE Review Suspension by Minnesota Pollution Control Agency: October 29, 2010
- Sixty-day review deadline (restarted): December 28, 2010
- Anticipated City Council action: November 29, 2010

2.0 SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the City Council adopt a resolution to **DENY** the proposed **CONDITIONAL USE**; see Attachment M of this report.

3.0 SUMMARY OF SUGGESTED ACTION

By motion, adopt a resolution to **DENY** the proposed **CONDITIONAL USE**, pursuant to §1007 (Industrial Districts) and §1013 (Conditional Uses) of the City Code**.**

4.0 BACKGROUND

The property at 2280 Walnut Street has a Comprehensive Plan designation of Industrial (I) and a zoning classification of General Industrial District (I-2). Part of this property is currently being used for semi trailer parking, and the remainder of the site remains vacant.

The application for the CONDITIONAL USE was originally submitted on March 6, 2009. The request was have to have outdoor storage of several piles comprising of rubble, asphalt millings, asphalt shingles, concrete rubble, and aggregate material that will be utilized as part of Bituminous Roadway's proposed asphalt plant at 2280 Walnut Street. At that time, it was presumed that the actual manufacturing of asphalt was a permitted use in the I-2 Zoning District. Staff, along with the Roseville Planning Commission and the Roseville Public Works, Environment, and Transportation Committee originally recommended approval of the conditional use request subject to several conditions regarding the storage piles.

A citizen's petition requesting that an Environmental Assessment Worksheet (EAW) be conducted for the proposed asphalt plant was submitted to the Minnesota Environmental Quality Board. The petition cited numerous environmental concerns with the proposal. The Minnesota Pollution Control Agency (MPCA) was designated to conduct the environmental review. Based on the start of the EAW, the City suspended any review and decision on the CONDITIONAL USE until the environmental review was completed.

On July 9, 2010, the MPCA released the draft EAW to the public for comment and review. The MPCA took public comments until September 10, 2010. In total, the MPCA received 167 comments, with almost every comment citing concerns about the asphalt plant and pointing out flaws with EAW and requesting that the MPCA conduct an Environmental Impact Statement (EIS) for the proposed asphalt plant.

On October 11, 2010, the City adopted an amendment to the City Code that the prohibited numerous uses, including asphalt plants, in Industrial Zoning Districts. Based on that action, the MPCA, in a letter dated October 29, 2010, informed the City that the agency had suspended the environmental review since the newly adopted ordinance prohibited the proposed asphalt plant and that it does not conduct environmental review for uses that are not allowed.

Subsequent to the MPCA decision, the Roseville City Attorney contacted the legal counsel of Bituminous Roadways, Gregory E. Korstad of Larkin Hoffman, informing the applicant of the MPCA's decision and asking how Bituminous Roadways would like to proceed with their application. Mr. Korstad requested in a letter dated November 10, 2010, that the City find that that the new ordinance prohibiting asphalt plants does not apply and that Bituminous Roadway's conditional use request be considered under the previous ordinance.

5.0 STAFF COMMENTS

City staff, in conjunction with the City Attorney has reviewed the full record regarding Bituminous Roadways proposal to construct an asphalt plant at 2280 Walnut Street. This record includes all application materials submitted by Bituminous Roadways in 2009, meeting minutes of the Planning Commission, the City Public Works, Environment and Transportation Commission, and City Council discussions on the proposal, the Draft EAW and Draft Air Emissions Facility Permit; the 167 written public comments provided during the public review period, and written and oral information provided by interested parties, including surrounding property owners, residents, and Bituminous Roadways.

From the extensive review of the public record, City staff has come to the conclusion that the proposed conditional use should be denied. This recommendation is based on the following facts:

1) Section 1017.15 of the Roseville City Code expressly prohibits asphalt plants in the I-2 Industrial Zoning Districts. Any subordinate use (whether permitted or a conditional use) to a prohibited use cannot be allowed to operate on the site. Therefore, the conditional use to have outdoor storage of material piles needs to denied.

2) Under City Code that existed at the time of the original application for a conditional use, the overall operation of the asphalt plant as proposed was not allowed. While the actual manufacture of asphalt could be considered a permitted use under the 2009 code, other parts of the asphalt plant operation were not permitted. These components include outdoor storage of piles (a conditional use) and outdoor storage of fuel tanks (a conditional use). In addition, under both the 2009 code and the current code, crushing of

material is not permitted or conditionally permitted. Therefore, one cannot say that the proposed asphalt plant is permitted under the 2009 City Code. Since the asphalt plant as proposed was not allowed under the 2009 ordinance and a subordinate use (outdoor storage of material) to a prohibited use cannot be allowed to operate on the site, the conditional use for outdoor storage of material piles needs to be denied.

3) A review of the public record relating to the asphalt plant proposal has demonstrated that the proposal submitted to the City will not be conform to Section 1007.01D (Performance Standards) of the Roseville City Codes. Staff's analysis has determined, that at a minimum, the proposal would violate Sections 1007.01D1 (Noise); Section 1007.01D2 (Smoke and Particulate Matter); Section 1007.01D3 (Toxic and Noxious Matter); and Section 1007.01D4 (Odor). A use that does not meet the City's industrial performance standards is not permitted. Any subordinate use (in this case, outdoor storage of material piles) to a prohibited use cannot be allowed to operate on the site. Therefore, the conditional use for outdoor storage of material piles needs to be denied.

4) Staff review of the conditional use request for outdoor storage of material piles cannot meet the criteria for approval of conditional use requests as stated in Section 1014.01D of Roseville City Code. Below is a review of the conditional use criteria:

a. **Impact on traffic:** While there has been a lot of concern about the traffic regarding the use and it is clear that the use will increase the amount of traffic on the roads, a review of the traffic impact by the City of Roseville Engineering Department has indicated that the surrounding road network has the capacity to handle the additional truck traffic. However, the safety at nearby intersections will be negatively impacted by the new truck traffic resulting from this conditional use.

b. **Impact on parks, streets and other public facilities:** The proposed outdoor storage of materials will negatively impact the nearby Gross Golf Course operated by the Three Rivers Park District due to the quantity and type of particulate matter emissions that will originate from the various outdoor storage piles of rubble, asphalt millings, asphalt shingles, concrete rubble, and aggregate as the emissions will impair a user's ability to enjoy the golf course.

c. **Compatibility of site planning, internal traffic circulation, landscaping, and structures with contiguous properties.** The proposed outdoor storage of aggregate materials will not be compatible with contiguous properties due to the quantity and type of particulate matter emissions that will originate from the various outdoor storage piles of rubble, the asphalt millings, asphalt shingles, concrete rubble, and aggregate piles as the emissions will

be harmful to nearby businesses which require clean air as part of their operations.

d. **Impact of the use on the market value of contiguous properties:** The proposed outdoor storage of materials will negatively impact the property values of the surrounding businesses due to the quantity and type of particulate matter emissions that will originate from the various outdoor storage piles of rubble, asphalt millings, asphalt shingles, concrete rubble, and aggregate as the emissions will be harmful to nearby properties and make the properties less desirable for future purchasers.

e. **Impact on the general public health, safety, and welfare:** The proposed outdoor storage of materials will negatively impact the general public, safety, and welfare of the public due to the quantity and type of particulate matter emissions that will originate from the various outdoor storage piles of rubble, asphalt millings, asphalt shingles, concrete rubble, and aggregate as the emissions will spread materials known to be carcinogenic to users of surrounding properties.

f. **Compatibility with the City's Comprehensive Plan:** The proposed outdoor storage of materials will not be compatible with the City's Comprehensive Plan due to the quantity and type of particulate matter emissions that will originate from the various outdoor storage piles of rubble, asphalt millings, asphalt shingles, concrete rubble, and aggregate as allowing these emissions will not be consistent with the following goals as established by the 2030 Comprehensive Plan for the City of Roseville:

i. **Land Use Goal #4.** Protect, improve, and expand the community's natural amenities and environmental quality.

ii. **Economic Development and Redevelopment Goal #6.** Integrate environmental stewardship practices to commercial development.

iii. **Environmental Protection Goal #1.** Protect, preserve, and enhance Roseville's water, land, air, and wildlife resources for current and future generations.

iv. **Environmental Protection Goal #5.** Ensure the City takes a leadership role in environmentally friendly property development, redevelopment, and maintenance practices.

6.0 RECOMMENDATION

Based on the findings contained in Section 5 of this report, staff recommends adoption of a resolution denying the conditional use request for outdoor storage of material piles.

7.0 SUGGESTED ACTION

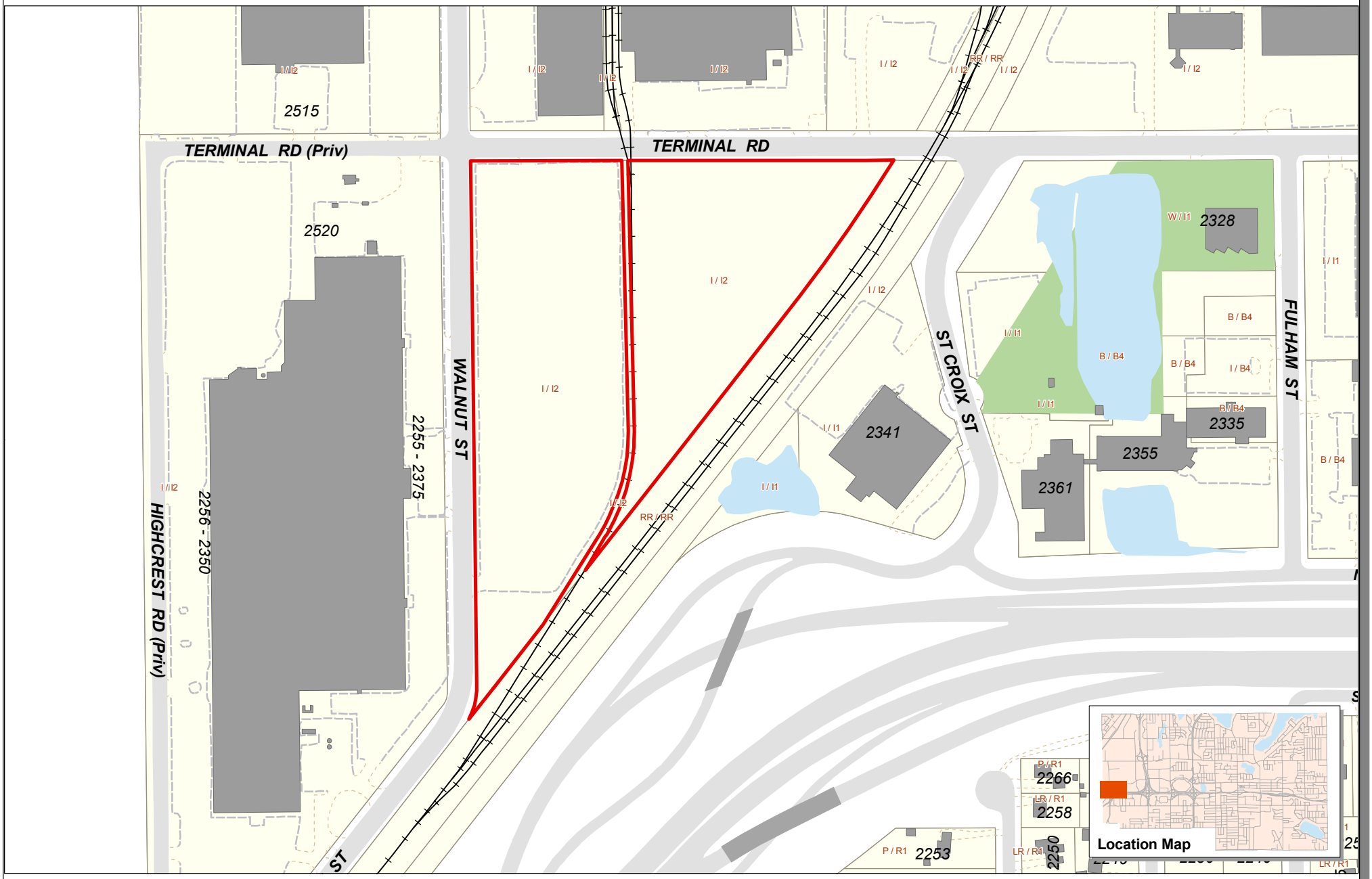
By motion, adopt a resolution to DENY the proposed CONDITIONAL USE to allow for outdoor storage material piles at 2280 Walnut Street, based on the findings contained in Section 5 of this report.

Prepared by: Patrick Trudgeon, Community

Development Director (651) 792-7071

Attachments:
- A: Area map
- B: Aerial photo
- C: Applicant narrative
- D: Proposed site plan
- E: Proposed landscape plan
- F: Letters from Larkin and Hoffman representing Bituminous Roadways
- G: Letter from Minnesota PCA dated October 29, 2010
- H: City Attorney Memo dated November 24, 2010
- I: Letter dated November 18, 2010 from Megan Dushin
- J: Letter dated November 21, 2010 from Gerald Larson
- K: Letter dated November 22, 2010 from Gerald Larson and Gary Grefenberg
- L: Letter from Moss and Barnett, representing, UC06 LLC, an adjoining property owner
- M: Draft Resolution

Attachment A: Location Map for Planning File 09-010



ROSEVILLE

Prepared by:
Community Development Department
Printed: March 13, 2009

Site Location

LR / R1 Comp Plan / Zoning Designations

Data Sources
* Ramsey County GIS Base Map (3/2/2009)
For further information regarding the contents of this map contact:
City of Roseville, Community Development Department,
2660 Civic Center Drive, Roseville MN

Disclaimer
This map is neither a legally recorded map nor a survey and is not intended to be used as one. This map is a compilation of records, information and data located in various city, county, state and federal offices and other sources regarding the area shown, and is to be used for reference purposes only. The City does not warrant that the Geographic Information System (GIS) Data used to prepare this map are error free, and the City does not represent that the GIS Data can be used for navigational, tracking or any other purpose requiring exacting measurement of distance or direction or precision in the depiction of geographic features. If errors or discrepancies are found please contact 651-792-7085. The preceding disclaimer is provided pursuant to Minnesota Statutes §466.03, Subd. 21 (2000), and the user of this map acknowledges that the City shall not be liable for any damages, and expressly waives all claims, and agrees to defend, indemnify, and hold harmless the City from any and all claims brought by User, its employees or agents, or third parties which arise out of the user's access or use of data provided.

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mapdoc: planning_commission_location.mxd

Attachment B: Aerial Map of Planning File 09-010

ROSEVILLE

Prepared by:
Community Development Department
Printed: April 20, 2009

Site Location

Data Sources
* Ramsey County GIS Base Map (3/30/2009)
* Aerial Data: Pictometry (4/2008)

For further information regarding the contents of this map contact:
City of Roseville, Community Development Department,
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C.U.P. NARRATIVE: PROPOSED BITUMINOUS ROADWAYS, INC. FACILITY – ROSEVILLE

March 6, 2009

About Bituminous Roadways, Inc.

Bituminous Roadways, Inc. is an asphalt paving contractor founded in 1946 in South Minneapolis. The company is unique in that it is one of the few asphalt paving contractors in the Twin Cities metropolitan area that produces its own asphalt for their paving projects. The company is locally based, family owned and currently employs 120 people at its three permanent asphalt plants located in Minneapolis, Inver Grove Heights, and Shakopee.

Bituminous Roadways is a strong believer in giving back to the community. We have consistently made in-kind and financial charitable contributions amounting to at least 2½% of the company's net profit annually. We are a member of the following chambers of commerce: Minneapolis Regional, River-Heights, Minnesota, and U.S.

Proposed Roseville Facility

On this site, Bituminous Roadways intends to construct a new permanent facility for the production of asphalt and handling of various construction materials.

Overview

The market areas served by Bituminous Roadways are typically restricted to a 15-mile radius. This is due to the cost prohibitive nature of transporting asphalt much further than that. This site is centrally located with good highway access. In addition, the site is located adjacent to the Minnesota Commercial Railway, allowing for the possibility of economical delivery of aggregates by rail from more remote locations. This is an important feature, as recent studies indicate that aggregate sources within the metropolitan area are rapidly being depleted.

The asphalt plant site will employ five people directly, and approximately thirty additional construction personnel that will be working on paving projects within the 15-mile radius described above. In addition, approximately 15 non-company personnel will be employed indirectly due

to trucking, maintenance and supply needs. Bituminous Roadways is a union contractor with an average wage of about $30 per hour. The company has very low employee turnover and is regarded as one of the best companies in the industry to work for.

Asphalt Plant – Features

The asphalt plant will be a brand new manufactured plant utilizing the latest technology. This plant will be equipped with several unique features that differentiate it from typical existing asphalt plants.

This plant will be capable of production of warm mix asphalt, a mix produced at lower temperatures than traditional hot mix asphalt. Warm mix is rapidly gaining acceptance nation wide due to lower fuel consumption in production and less smoke and odor during placement.

The plant will also be equipped with the latest emission control technology available which allows the plant to meet and exceed air quality requirements.

Included with this narrative are two additional documents. *Double Barrel Green* explains the environmental advantages of producing warm mix asphalt. *Meet the Neighbors* is a brochure that answers frequently asked questions about asphalt plant facilities.

Recycling

Included in the plan for this site is recycling of concrete, asphalt, and shingles. Rubble concrete and asphalt will be stockpiled on site when available from nearby reconstruction projects. Crushing of the rubble to finished products will most likely occur twice annually for a duration of 2 to 3 weeks as warranted by supplies of rubble and crushed concrete and asphalt. Crushing will be accomplished with portable equipment brought on site specifically for the short term crushing operations.

Rubble concrete will be crushed and reused as a base in the construction of new pavements. Crushed and milled asphalt will be reused in the production of new asphalt. Asphalt is 100% recyclable. It can be reused again and again, thus keeping its value perpetual. Recycled asphalt pavement is commonly available when roads or parking lots are milled or asphalt is removed for rehabilitation or widening projects. The Federal Highway Administration estimates that 91 million tons of asphalt is reclaimed during roadwork projects. Asphalt is the most recycled product in the world.

Asphalt produced on this site will also utilize recycled shingles. Since 1996, Bituminous Roadways has utilized scrap shingles in its mixes, recycling over 100,000 tons of shingles. This plant will be equipped to continue this environmentally friendly practice.

Other Features

Materials will need to be hauled to and from the site. Raw materials such as aggregates, asphalt cement, rubble concrete and rubble bituminous pavement will be hauled into the site. Finished products such as hot mixed asphalt and crushed aggregate road base will be hauled away from the site.

An on-site laboratory building is proposed on the southern portion of the site. The on-site materials testing laboratory will be used to perform necessary testing on the products produced as well as develop new mix designs for specific projects. This building will also include spaces for equipment maintenance, storage, and offices.

Also included in the site plan is a bulk storage facility for asphalt cement, the petroleum product used as a binder material in asphalt production. Asphalt cement will be brought in by truck or rail throughout the year and distributed to various asphalt plants by truck during the construction season.

This will be a state-of-the-art facility, with brand new plant and equipment that will be the most environment friendly of any such facility in the state. This will be a plant that will serve as a model for the industry. Bituminous Roadways is very excited about this facility.

Conditional Use Permit (C.U.P.) Criteria

The proposed Bituminous Roadways facility will manufacture and distribute finished construction products from raw materials, both new and recycled. This is consistent with the permitted uses in the I-2 General Industrial District.

A Conditional Use Permit will be required because of the proposed outdoor storage of aggregates and equipment. In addition, the finished asphalt storage silos (74 feet high) and bulk asphalt cement storage tanks (56 feet high) exceed the maximum building height, but are considered exempt as accessory structures. The remaining proposed structures and stockpiles will be less than 40 feet in height.

1. Impact on Traffic

Traffic generated will be consistent with surrounding industrial uses, with trucks bringing in raw materials and hauling off finished products. The primary season for use will be the 8 month period from April through November. The amount of trucks per day will vary based on area construction activity and subsequent product demand.

A peak day will generate approximately 250 round trip truck visits. Of these, approximately 120 will be loads of asphalt headed out to construction sites, with the remainder being incoming aggregate, incoming rubble or out-going base. We estimate that 65 percent of the out-going traffic will be southbound with 35 percent northbound. The incoming aggregates will come mainly from the south.

Averaged over the 8 month construction season, the facility will generate approximately 120 truck round trips per day. These trip numbers are based on trucking of all aggregate, and may be reduced through the use of rail aggregate delivery service.

The outload operation has been designed to allow adequate off-street stacking of trucks. Up to 24 trucks could wait to “load out” off-street if needed. This occurrence would be unlikely due to careful scheduling and the economic realities of equipment and labor costs. A “tarping area” has also been reserved to allow adequate space for drivers to inspect and tarp their loads prior to exiting the site.

Adequate internal circulation exists within the proposed site plan for in-coming trucks to proceed into the site without interrupting the flow of off-site traffic.

2. Impact on Parks, Streets, Other Public Facilities

No impacts to parks or other public facilities are foreseen.

Area streets appear to have been designed adequately for the industrial use of the area. This use will be consistent with its industrial neighbors. In addition, the proposed drainage plan will eliminate most of the direct surface stormwater runoff to surrounding streets exhibited by the current site.

Sanitary sewer and water use will be relatively minor. Sanitary sewer will serve on site restrooms and limited laboratory use. Municipal water will be used for domestic and laboratory uses with minor use of water in production. Municipal water will also be utilized for periodic on-site dust control as well as filling of water trucks for use on construction sites.

3. Compatibility with Contiguous Properties

The site is separated from contiguous properties on the north and west by existing streets and on the east and south by streets, railroad right-of-way and electric transmission easements.

The existing streets and neighboring properties will be additionally buffered by a 3 foot± high earth berm with an 8 foot high opaque fence and/or landscape screening. All internal pavement is setback a minimum of 40 feet from the right-of-way. Sufficient internal traffic ways have been reserved to prevent the use of city streets other than for ingress and egress to the site. The number of driveway accesses has been reduced from 5 existing to 3 proposed.

4. Impact on Market Value of Contiguous Properties

No impacts to contiguous property values or other property in the near vicinity is expected.

The proposed use is consistent with permitted uses in the I-2 District. The properties surrounding the site include; Macy's Warehouse, FedEx Freight, MN Commercial Rail, Unysis, and the Meritex Facility. These uses in this area are predominately "transportation" oriented and include varying amounts of outside storage for truck and trailer storage. The exceptions to this are the Unisys building and the Meritex Facility. The Unisys building is located north and west of the subject property and is used mostly for office. The building has glass lines facing both east (Macy's Warehouse) and west (the golf course), and has limited visibility to the subject property. The Meritex Facility is expected to be redeveloped, and the future tenant of that property is unknown at this time; however, it is expected that the end user for the facility will be similar to the surrounding uses, and see value in locating in an industrial park that has an I-2 zoning and permits 'heavier' types of uses. Additionally, the subject property is currently used for outside storage of trailers and equipment with little to no screening.

Bituminous Roadways is committed to maintaining the appearance and function of its new state of the art facility. As such, the effect on the neighboring properties is expected to be neutral to positive, considering the adjacent uses, zoning, and current use of the subject property.

5. Impact on Public Health, Safety, and General Welfare

Environmental Factors

Asphalt plants need to address several environmental concerns that include: air emissions, odors, noise, and fugitive dust. Many of these environmental factors are addressed by a Minnesota Pollution Control Agency (MPCA) air quality registration permit, air emissions control equipment, noise abatement techniques, and proper watering to minimize fugitive dust. Federal and State law requires that the owner or operator of an asphalt plant must calculate each year the actual emissions from the plant and ensure that total emissions remain below the thresholds established by the MPCA.

Air Emissions and Odor

As hot air passes through the aggregate during the production of hot mix asphalt it picks up some fine sand and dust particles. These particles are removed by the emissions control system before the air goes into the atmosphere. The brand new plant intended for Roseville will have both primary and secondary collectors to remove these particles. The coarsest particles are collected in the primary collector and returned to the mix. The finest particles are then collected in the secondary collector and are also returned to the mix.

Warm Mix Pavement Technology

The plant will utilize technology allowing the production of warm mix asphalt. Warm mix asphalt technology decreases the hot mixed asphalt production temperature by 30 to 100 degrees Fahrenheit. This allows for reduced energy consumption, lowered emissions, and the elimination of visible smoke and odor.

Noise

The site must operate in compliance with State noise standards. Vehicles and equipment will operate with standard noise reduction features such as mufflers. Bituminous Roadways will invest significant resources into perimeter berms and landscaping that will reduce noise emissions from the site.

Fugitive Dust

The entire operational area of the site will be paved. The stock piles and conveyors will be watered on a scheduled basis.

Petroleum Storage
Bulk petroleum storage areas will be constructed to applicable State and local standards, including secondary containment where needed. Bituminous Roadways provides training to its employees regarding petroleum storage and handling. The company is making a significant long term investment with this new facility and is committed to preventing pollution of its site.

6. Compatibility with City's Comprehensive Plan

The property is guided Industrial. The comprehensive plan designation states: "Industrial deals with showrooms, warehousing, laboratories, manufacturing uses and related office uses, and truck/transportation terminals (I-2 Zone Only)".

This use is consistent with the above statement.

Bituminous Roadways is committed to being a responsible corporate citizen of Roseville and a good neighbor to surrounding properties. We are excited about this facility and look forward to discussing our plan at upcoming meetings.

ASTEC

MEET THE NEIGHBORS

Everything you wanted to know about Hot Mix Asphalt facilities

ASPHALT

WHAT IS ASPHALT?

Liquid asphalt cement is a complex mixture of hydrocarbons. It may also be referred to as "binder" or bitumen (term commonly used outside North America). Some asphalt comes from natural asphalt lakes such as the La Brea Tar Pits. Most of the asphalt used in road building is actually a by-product of crude oil refining. Asphalt is left over after the lighter grades of oil are drawn off at the refinery. It can be further processed for use in paving mixtures or other industries such as roofing. Asphalt is a thermoplastic, which means it is hard at normal highway temperatures, but thick and sticky when heated. It is the material in pavement that coats aggregate and glues (or binds) the mix together. Eighty percent of asphalt used in the United States is for paving mixtures.

IS TAR THE SAME AS ASPHALT?

No. Tar is a black or brown liquid derived from the destructive distillation of organic matter. Though it can be produced from petroleum, it is most often from coal as a by-product of coke production. It was once used to seal roadways, roofing shingles, and wooden ship hulls. However, since the 1970s, asphalt has completely replaced the use of tar in paving mixtures.

WHAT IS ASPHALT PAVEMENT?

Pavement is a highly controlled mixture consisting of liquid asphalt cement and aggregate. Before being placed on a roadway, this mixture is referred to as hot mix asphalt (HMA), asphaltic concrete, or bituminous concrete. An HMA pavement mixture is about 95% aggregate and 5% asphalt cement.

IS ASPHALT A TOXIC HAZARD TO ANYTHING IN THE ENVIRONMENT?

No. Asphalt is insoluble and does not react with water. In fact, hot mix asphalt (HMA) has been used to line surfaces of fish hatchery ponds and community water reservoirs. For example, the Metropolitan Water District of Southern California has used hot mix asphalt liners in its reservoirs for over four decades. Asphalt is also used to seal potable water supply pipes. Another important use of hot mix asphalt is industrial retention ponds and landfill liners. Asphalt liners prevent harmful substances from leaching into the soil and possibly contaminating ground water.

FACILITIES

HOW IS HOT MIX ASPHALT (HMA) MADE?

Aggregate is divided and placed into bins according to size. Depending on the mixture of aggregate called for, the bins automatically meter out the right amount of each size needed onto a conveyor belt. The belt deposits the aggregate into a rotary dryer. This machine tumbles the aggregate through hot air to dry it thoroughly. A fuel burner is located at one end of the drum to provide a flame for heat. It is necessary to remove the moisture from the aggregate so the asphalt cement will stick to the rock. Remember, water and asphalt do not mix. After drying, the aggregate is sent to a mixing device where it is coated with heated asphalt cement and thoroughly mixed.

HOW MANY ASPHALT FACILITIES ARE THERE IN THE UNITED STATES?

According to the EPA estimates, there are approximately 3,600 operating Hot Mix facilities throughout the country.

WHY ARE SO MANY FACILITIES NEEDED?

Considering how large the United States is, there really are not a lot of facilities. This amounts to only one facility for every 983 square miles. Approximately ninety-four percent of the roads in the U.S. are paved with hot mix asphalt. Road maintenance and construction projects require over 550 million tons of hot mix asphalt each year. Hot mix must be used quickly after being loaded into the haul truck because it hardens as it cools. Cooling occurs during transport from the facility to the paving site. The haul distance needs to be as short as possible to minimize the amount of heat lost during transport because only "hot" hot mix asphalt can be worked (laid down by a paving machine and compacted by rollers). In addition, trucking is a large part of road maintenance and construction costs. Minimizing haul distances will result in lower road paving costs.

RECYCLING

CAN ASPHALT PAVEMENT BE RECYCLED?

Hot mix asphalt pavement is completely recyclable. Before repaving an existing road the upper asphalt surface is milled off. The removed material is called Reclaimed (or Recycled) Asphalt Pavement (RAP) and is added to new mix while it is being made at the asphalt facility. Recycling asphalt pavement reduces the quantity of new material required, lessens environmental impacts from the facility, and minimizes disposal of old pavement in community landfills. Asphalt pavement is the most widely recycled product in the U.S., both in terms of tonnage and percentage. Approximately 80% of the asphalt pavement removed from roadways during maintenance is recycled each year (approx 80.3 million tons). Other recyclable products, such as glass, rubber tires, and roofing shingles, can also be used in the production of hot mix asphalt. Paving mixtures containing RAP are referred to as recycled asphalt mix (RAM). Advances in technology are leading to increased RAP usage.

WHAT POLLUTANTS ARE EMITTED DURING THE DRYING PROCESS?

The burners of most aggregate dryers run on fuel oils or natural gas. These fuels are hydrocarbons (compounds containing hydrogen and carbon atoms) and produce carbon dioxide (CO_2) and water (H_2O) during complete combustion. However, no actual combustion process ever completely burns all of the fuel. Thus, the exhaust stream will include moisture, particulate matter, products of combustion, and unconsumed nitrogen and oxygen molecules from the air. The products of combustion generally include carbon monoxide (CO), oxides of nitrogen (NOx), sulfur dioxide (SO_2), and hydrocarbons. These hydrocarbons can fall into several categories, including volatile organic compounds (VOCs). All of these pollutants are measured in the exhaust stream in parts per million (ppm). Pollutant emission rates depend on fuel type and aggregate source, as well as plant design. Modern asphalt facility burners are extremely clean burning and, therefore, typically produce only very slight amounts of VOCs.

HEALTH

IS AN HMA FACILITY A LARGE SOURCE OF EMISSIONS?

No. In fact, studies show that emissions from the HMA industry have decreased over 97% since 1970 despite a 250% increase in production. All emissions from HMA facilities are well below the established threshold limit values (TLVs) set forth by the American Conference of Governmental Industrial Hygienists (ACGIH). The EPA delisted HMA facilities from the MACT (Maximum Available Control Technology) standard in February 2002 because such facilities are not major sources of air pollutants. The HMA industry continues to develop new technologies to minimize emissions during mix production and paving operations.

DO HMA FACILITIES CAUSE CANCER?

Extensive testing has been conducted on asphalt fumes, both from paving and roofing applications. NIOSH (National Institute of Occupational Safety and Health) concluded in their December 2000 report that based on their data there is insufficient evidence to associate lung cancer with paving asphalt fumes.

IF THERE IS NOT CANCER DANGER, WHY HAVE THERE BEEN SO MANY STUDIES?

Hundreds of tests have been conducted primarily because of the apparent similarity of asphalt and tar. What the tests have proven is that these are two completely different materials from completely different sources and with completely different health effects. Coal tar does have some harmful health effects. Those same effects have not been found to be associated with asphalt.

WHAT IS "PARTICULATE MATTER"?

Particulate matter ("PM") is a term used to denote microscopic liquid or solid particles much smaller than the diameter of human hair. Particle size is measured in microns, which is equal to one-millionth of a meter. Particulate matter results from the drying process at an HMA facility. In the case of HMA facilities, the particulate is almost entirely stone dust. Stone dust is a valuable part of the product that the facility owner does not want to lose. It is collected by a baghouse and returned to the mixer for inclusion in the paving materials.

CLEAN AIR

WHAT IS A BAGHOUSE?

A baghouse is a large filtering device that removes particulate matter in the process air from HMA production. A large fan on the outlet end of the baghouse pulls dirty air from the drum into the filter unit. Hundreds of long cylindrical cloth bags hang in rows within the filter section. The air is pulled through the bags and dust particles collect on the bags' outer surface. Filtered air is released into the atmosphere through the exhaust stack. Collected dust is frequently removed from the bags and conveyed to the mixer to be added to the asphalt pavement mixture. Baghouses filter out virtually all of the particulate from the air stream (over 99.9%). The Clean Air Act states that HMA facilities cannot emit more than 0.04 grains (grain = 1/7000th of a pound) of particulate matter per dry standard cubic foot of air. Most baghouses routinely emit less than half of the allowable particulate matter.

ARE HOT MIX ASPHALT FACILITY EMISSIONS REGULATED?

The Clean Air Act of 1990 requires that all stationary emission sources obtain air permits in order to operate, including hot mix production facilities. An air permit contains the operating conditions that must be met by the facility. Particulate emissions and opacity are regulated on a federal basis, though many states have implemented tighter requirements. Individual states and local authorities regulate other pollutants, including the products of combustion. Facilities must maintain extensive records to demonstrate compliance with those regulations. This includes production and fuel consumption rates from which emission levels can be calculated. Failure to comply with operating permit conditions results in fines and/or facility shut down.

ARE HOT MIX FACILITIES TESTED?

Federal requirements in the Clean Air Act mandate that all permitted emission sources must be stack tested within 180 days of startup. Subsequent testing requirements are determined by individual states and permitting authorities. For example, some states require yearly testing while others may only require the initial test as long as permit operating conditions are met.

PERMITS

WHERE CAN HOT MIX FACILITIES BE LOCATED?

While zoning ordinances vary significantly across the U.S., most facilities must be placed on property zoned heavy industrial. In addition, the majority of facilities must obtain special land use permits. Such permits contain specific requirements with which the facility must comply. These many include operating hours and noise levels to name a few.

WHAT CAUSES THE ODORS ASSOCIATED WITH THE PRODUCTION OF HMA?

The most common odor detected at a hot mix facility comes from the hydrocarbons driven off the liquid asphalt cement. Overheating the hot mix materials during the drying process is the primary cause. As fuel has become more and more expensive, most owners and operators have become more aware of the cost of overheating materials and have learned to control temperature with greater precision. The fumes, known as "blue smoke", have a characteristic petroleum-type odor. Blue smoke forms as the hydrocarbons condense in the ambient air. Its formation is highly dependent on temperature and the facility configuration. Minimizing opportunities for the fumes to enter the ambient air and lowering mix/storage temperatures decreases odor levels from the facility.

WHAT ARE THE DIFFERENT TYPES OF FACILITIES IN USE TODAY?

Modern hot mix asphalt facilities fall into two categories: batch and drum mix facilities. As the name implies, batch facilities make individual batches of material. All the ingredients for the batch are fed into a mixer. When mixing is complete, the mixer is emptied, most often into a waiting haul truck. Batch facilities usually have smaller hourly production capacities than drum mix facilities. They are suitable for small production runs or frequent changes in mix type.

Drum mix facilities operate on a continuous basis. The mix is stored in storage silos and discharged into haul trucks as needed. They can be either parallel-flow or counterflow, which is an indication of the material flow versus the airflow within the drum. Material moves in the same direction as the airflow in a parallel-flow drum whereas the material moves against the airflow in a counterflow drum. Modern drum mix facilities almost exclusively include counterflow drums. This is because they use less fuel and generate lower hydrocarbon emissions than parallel-flow drums.

PAVEMENT

ARE ALL PAVEMENTS THE SAME?

No. Hot mix asphalt mixtures are designed according to the traffic they will handle. Therefore, an interstate paving mixture will be very different from one used for a residential driveway. Differences may include types and sizes of aggregate as well as the grade of liquid asphalt cement selected.

IS THE BINDER USED IN PAVEMENT THE SAME AS IN ROOF APPLICATIONS?

No, though they are both by-products of petroleum refining. Paving asphalts are typically softer so that they are more pliable than roofing asphalts. Also, liquid cements at HMA facilities are not heated to temperatures as high as in roofing applications. That means that emissions and odors produced by paving operations are not the same as those produced by roofing.

CAN HOT MIX ASPHALT BE USED FOR ANYTHING OTHER THAN ROADWAYS?

Yes! Hot mix asphalt is used in a variety of applications. Because it is a non-toxic, impermeable material, hot mix asphalt is commonly used to line fish hatchery ponds, commercial water reservoirs, and industrial retention ponds. It is also used to pave recreational paths (for running & bicycling), golf cart paths, airport runways, and tennis courts. Hot mix asphalt has been used in commercial livestock applications such as paving feedlots and lining barn and poultry house floors for easy cleaning. Additional uses include creation of sea walls and dikes to manage beach erosion.

WHAT CAUSES NOISES ASSOCIATED WITH THE PRODUCTION OF HMA?

There are a few common sources of noise emanating from a hot mix facility. Some are derived directly from the hot mix production components, including the burner and exhaust stack. Others are generated from movement of the product, including trucks and loaders. Recent advancements in HMA production equipment design have drastically reduced sound levels. Astec has worked to reduce sound from the hot mix process by providing quieter components on a facility. Likewise, some facility owners have initiated on-site quiet operations and practices for movement of the product. It is often possible to participate in conversations using normal speaking tones while adjacent to most facility components at new facilities.

WHAT HAPPENS IF THE ASPHALT SPILLS?

Asphalt cement is hard at ambient temperatures and liquid only when heated. It is kept hot at an HMA facility so that is can be mixed with the aggregate to form pavement. Should the asphalt cement spill onto the ground, it will harden because it is no longer being heated. Once completely set, it can be picked up and disposed of. For additional safety, asphalt storage tanks, as well as the facility fuel tanks, are typically housed within a concrete wall to contain spills should they ever occur.

WHAT EQUIPMENT MAKES UP A HMA FACILITY?

There are several components found at HMA facilities, whether they are a batch or continuous mix plant. Aggregate is separated according to size and fed, usually by a front-end loader, into cold feed bins. These bins are used to meter the virgin aggregate to the dryer. The dryer is used to drive off the surface moisture and heat the aggregate in preparation for mixing with the asphalt cement. Mixing may occur within a variety of devices, depending on the type of facility. Environmental controls include a baghouse, which is typically preceded by a primary collector such as a cyclone or inertial separator. Dust augers return the collected particulate matter to the mixer. Liquid asphalt cement is stored in heated tanks that are connected via piping to the mixer. Finished mix is held in storage silos, which are typically insulated and heated to main product temperature until it is loaded into a haul truck. Mix can often be stored for days before discharge.

WILL AN HMA FACILITY AFFECT GROUNDWATER?

No. HMA facilities do not generate industrial wastewater, as water is not required during the production process. Storm water discharge permits and retention ponds may be required in some locations to handle runoff from rainfall. Stack emissions from a facility do not contaminate groundwater.

WHAT ABOUT TRUCK TRAFFIC?

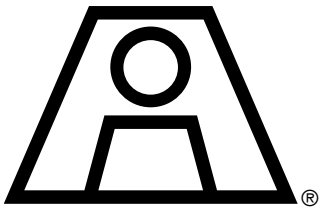
Materials used to produce hot mix asphalt are typically delivered to the production facility via truck. Rail lines are used in some locations. Paving mixtures are transported to the construction site via truck. The actual quantity of trucks entering and leaving the facility is dependent on the production requirements for active paving projects.

DO HMA FACILITIES OPERATE CONTINUALLY?

No. While HMA facilities can operate on a continual basis, mix production is highly dependent on weather conditions and product demand for paving projects. Facilities operate at their highest capacity during the summer, with those located in cold climates shutting down during winter months. Routine equipment maintenance is typically scheduled during the shut down. Some facilities may operate at night as many paving projects on busy thoroughfares must occur when there will be the least commuter impact.

WHAT ARE SOME BENEFITS OF HMA?

There are many benefits to using hot mix asphalt. Road construction and reconditioning projects can be completed faster and at lower cost when paving with asphaltic concrete. Studies show that asphalt pavements have a lower life cycle cost (cost of installation and maintenance over the life of the product) than concrete pavement and are engineered to last decades with little to no maintenance. This generates savings to taxpayers for road construction and maintenance projects in a community. Hot mix pavements are smoother to drive on, which results in greater fuel efficiency, less vehicular wear and tear, and a quieter ride.



ASTEC, INC. an Astec Industries Company
4101 JEROME AVENUE • CHATTANOOGA, TN 37407 USA • 423.867.4210 • FAX 423.867.4636 • astecinc.com

DOUBLE BARREL® GREEN

A Cost Effective, Fuel Efficient, Eco-Friendly Asphalt Mix System

ASTEC®

DOUBLE BARREL® GREEN SYSTEM

The benefits of warm mix asphalt such as reduced energy consumption, lowered emissions, and elimination of visible smoke are well-known in the hot mix industry. Warm mix technology allows mix to be prepared and placed at lower temperatures, typically 50°F to 100°F lower, than conventional hot mix. To achieve this, the viscosity of the asphalt cement (AC) must remain free flowing (low viscosity) at the reduced temperatures. Maintaining a low viscosity at lower temperatures allows mix to flow freely through storage, transfer and placement equipment and also is more easily worked by hand.

Unfortunately, all of the previous technologies for warm mix production rely on additives, special asphalt cement, special procedures and/or special AC delivery systems to achieve low viscosities at low temperatures. The additives are expensive and add significant cost per ton of mix. The "Astec Multi-nozzle Device" eliminates the need for expensive additives and special asphalt cement by mixing a small amount of water and AC together to create microscopic bubbles. These small bubbles act to reduce the viscosity of the AC coating on the rock thereby allowing the mix to be handled and worked at lower temperature.

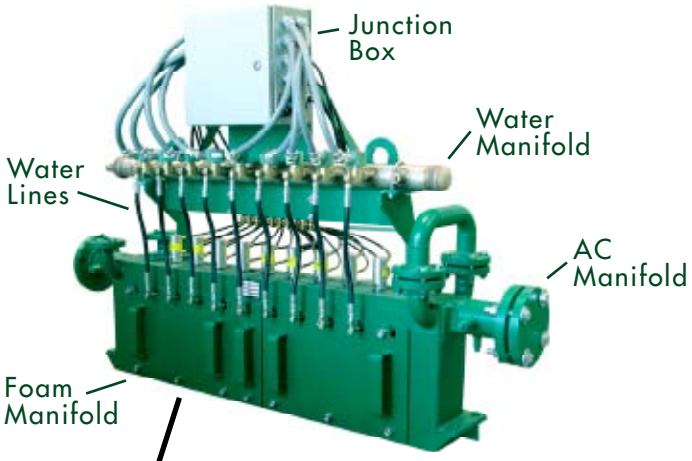
Odorless, low-viscosity mix from the Double Barrel Green System is easily worked by hand.

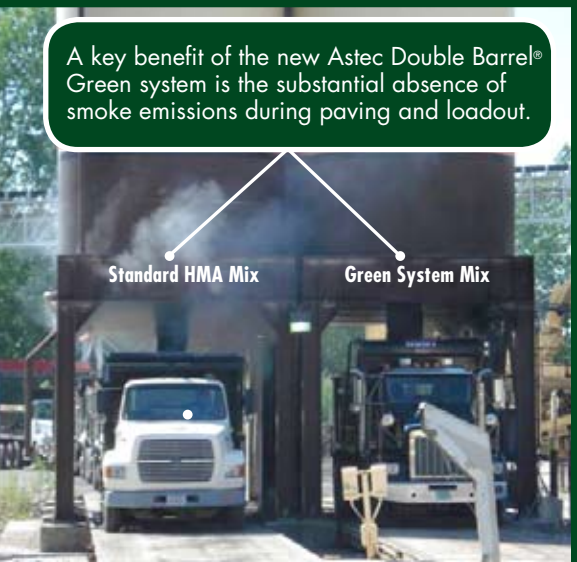
Each nozzle is capable of passing AC and producing foam for 50 tph of production. The 10 production valve-assemblies in the multi-nozzle arrangement are capable of passing AC and producing foam for production rates up to 500 tph when all valves are opened. As production rate varies, a computer control opens and closes these AC solenoid valves so that each valve assembly and nozzle operates in a narrow range of AC flow and back pressure to achieve consistent foaming in the foaming chamber. In addition to the 10 valve assemblies used for production, an eleventh valve (not shown) is located on the manifold for retrieving AC samples.

- **Improved Workablilty**
- **No Smoke - No Smell**
- **High Percentage Recycle Mix with Standard Grade of Asphalt**
- **Longer Life Pavement**
- **14% Less Fuel**
- **14% Higher Production**

Water is delivered to the system via a positive displacement piston pump capable of delivering water at pressures in excess of 150 psig. Water pump speed is modulated proportionally to the speed of the liquid AC pump to accurately meter water into the AC valve-nozzle assemblies. Individually controlled water solenoid valves control the flow of water into each nozzle for each nozzle assembly so that water solenoid valves open at the same time each of the AC solenoid valves open. PLC control provides for smooth and consistent operation of all of the valves as production rates increase or decrease. Water is supplied to the system via a skid-mounted 550-gallon corrosion-free water reservoir with an automatic filling valve that will keep the container full as long as water is supplied to it. If supply water is lost, a low-water alarm alerts plant personnel quickly so the problem may be resolved quickly without wasting mix.

Multi-Nozzle Device





A key benefit of the new Astec Double Barrel® Green system is the substantial absence of smoke emissions during paving and loadout.

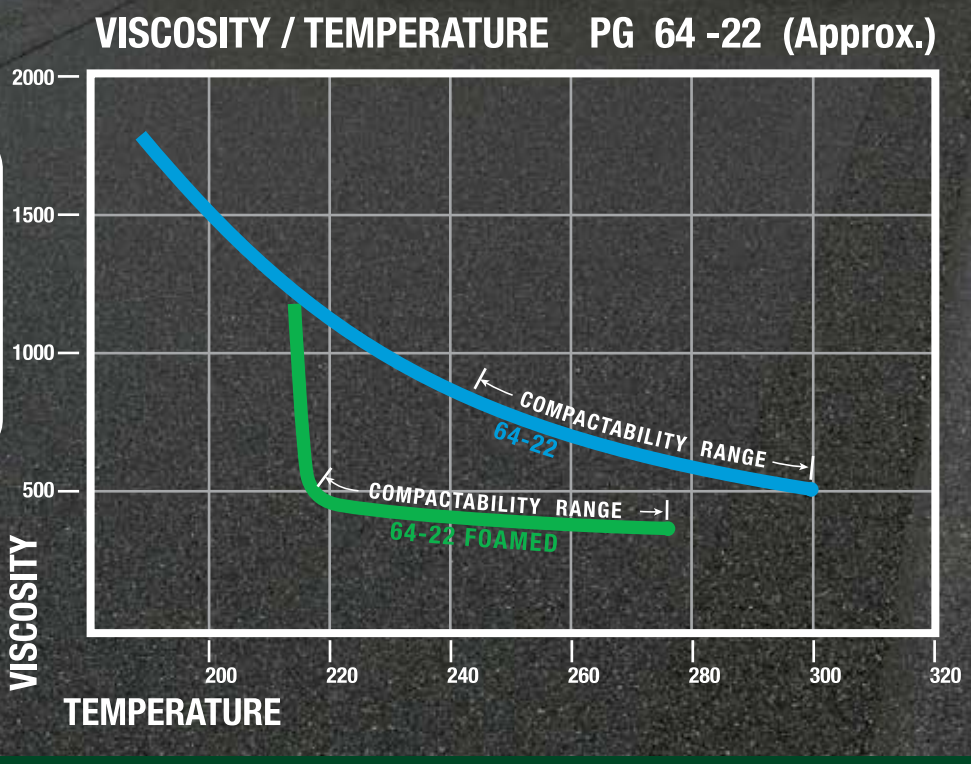
Astec Multi-Nozzle Device
The device consists of multiple valves, mixing chambers, and nozzles supplied by a common AC manifold that is surrounded by a continuous circulating jacket of hot oil. Water is injected into a mixing chamber above each foam nozzle.

Actual mix from the Double Barrel® Green system being laid in Chattanooga, Tennessee.

Note: No smoke emissions from Roadtec's RP-190 paver.

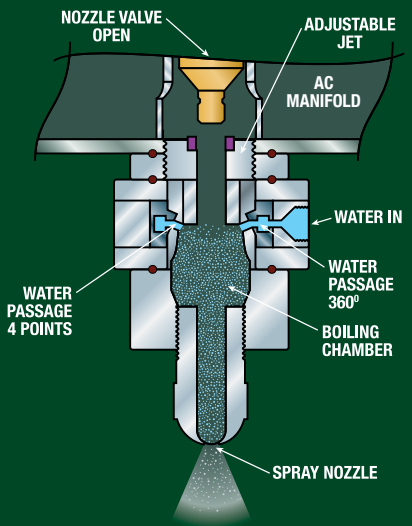
A skid-mounted 550-gallon corrosion-free water reservoir is included with the Double Barrel Green System package.

An optional cold weather package is available to prevent damage to components when nighttime temperatures drop below freezing.

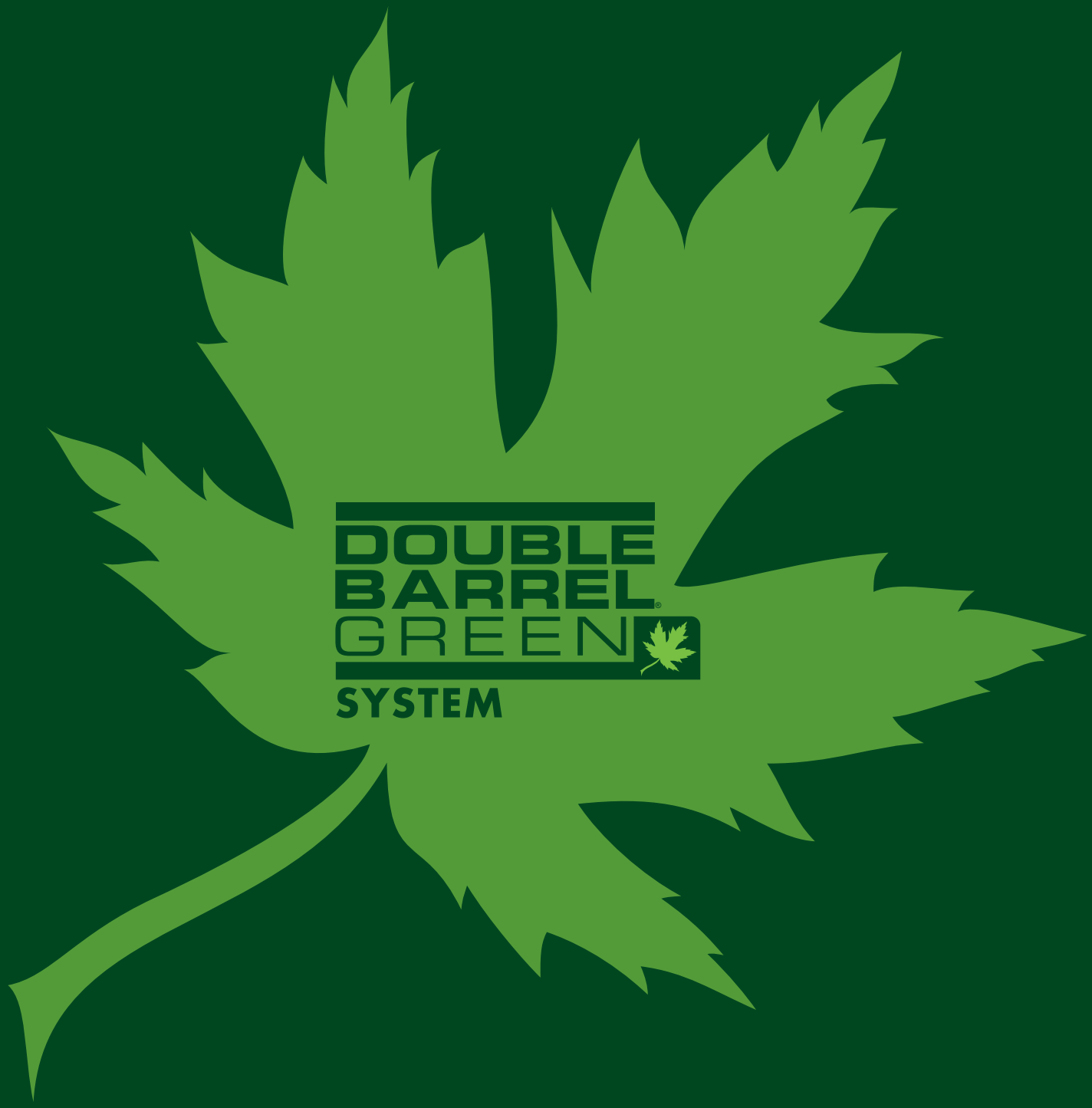


VALVE MAINTENANCE

Though the system is compact, it has been designed with the plant crew in mind. AC solenoid valve maintenance and inspection doors may be removed without disturbing water solenoid valve plumbing or wiring. Individual AC solenoid valves and water solenoid valves may be removed and replaced quickly and easily without disassembling the entire manifold. Additionally, the PLC provides the means by which water flow may be verified in each nozzle in the unlikely event a water nozzle becomes clogged. An optional solvent spray system is available to extend maintenance intervals.



ASTEC



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ASTE NASDAQ LISTED

12-07

9050 JEFFERSON TRAIL WEST/ INVER GROVE HEIGHTS, MN 55077 / PHONE (651) 686-7001 / FAX (651) 687-9857

May 8, 2009

Pat Trudgeon
Community Development Director
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Dear Mr. Trudgeon:

Last Wednesday when the Roseville Planning Commission was considering the request of Bituminous Roadways for conditional use approval to allow the outside storage of aggregate materials and heavy equipment at 2280 Walnut Street there were some questions that arose regarding the air emissions, noise, and odor that will be generated by the proposed asphalt plant on the site. I would like to address these concerns.

The asphalt plant will be a brand new manufactured plant utilizing the latest emission control technology available which allows the plant to meet and exceed air quality requirements.

Air Emissions

The owner or operator of an asphalt plant must calculate each year the actual emission for the plant and ensure that all emissions remain less than or equal to the thresholds listed in the table below.

HAP	5 tons/year for a single HAP 12.5 tons/year total for all HAPs
PM	50 tons/year
PM_{10}	50 tons/year for an Attainment A 25 tons/year for a Nonattainment
VOC	50 tons/year
SO_2	50 tons/year
NO_x	50 tons/year
Pb	0.5 tons/year

Asphalt plants are required to submit an annual air emissions inventory that address each of the criteria air pollutants listed above. This inventory report is required to be submitted to the Minnesota Pollution Control Agency by no later than March 1st of the following year. Emissions calculated are for the

previous calendar 12-month period. A copy of the 2008 inventory report for Bituminous Roadways' Shakopee asphalt plant is attached.

You will notice on the attached report that there is nothing reported for Hazardous Air Pollutants (HAPs). Asphalt plants were originally listed as one of the types of sources for which the U.S. Environmental Protection Agency (USEPA) would be issuing regulations to limit emissions of HAPs. Those standards are called National Emissions Standards for Hazardous Air Pollutants (NESHAPs). The EPA has decided to drop asphalt plants from the categories of sources that need HAP regulations (i.e. asphalt plants are 'delisted'). There are no NESHAPs standards for asphalt plants.

Odor

The most common odor detected at an asphalt plant comes from the hydrocarbons driven off the liquid asphalt cement. Overheating the materials during the drying process is the primary cause. As fuel has become more and more expensive, most owners and operators have become more aware of the cost of overheating materials and have learned to control temperature with greater precision.

Warm Mix Pavement Technology

The new asphalt plant that Bituminous Roadways proposes for its Roseville facility will utilize technology allowing the production of warm mix asphalt. Warm mix asphalt technology decreases the hot mixed asphalt production temperature by 30 to 100 degrees Fahrenheit. This allows for reduced energy consumption, lowered emissions, and the elimination of visible smoke and odor.

Noise

There are a few common sources of noise emanating from an asphalt production facility. Some are derived directly from the asphalt production components, including the burner and exhaust stack. Others are generated from movement of the product, including trucks and loaders. Recent advancements in asphalt production equipment design have drastically reduced sound levels. It is often possible to participate in conversations using normal speaking tones while adjacent to most facility components at new facilities.

The site must operate in compliance with State noise standards. Vehicles and equipment will operate with standard noise reduction features such as mufflers. Bituminous Roadways will invest significant resources into perimeter berms and landscaping that will reduce noise emissions from the site.

I hope the above information helps answer some of the questions that arose at Wednesday's meeting and alleviates concerns. If there are any other questions or concerns that I can answer or further clarify, please do not hesitate to contact me.

Sincerely,

Kent Peterson
President

Minnesota Pollution Control Agency
Environmental Analysis and Outcomes Division
Environmental Data Management Unit
Michael Smith
520 Lafayette Road N
St. Paul, MN 55155-4194

2008 Air Emission Inventory For Hot Mix Asphalt
Option D Registration Permittees

Facility: Bituminous Roadways Inc - E500R
Facility ID#: 13900106

Please make corrections to the Emission Inventory Contact information below, if necessary:

Inventory Contact Name: Todd Smedhammer
Inventory Contact Title: Plant Manager
Mailing Address: 9050 Jefferson Trl W
Inver Grove Heights, MN 55077

Phone: (651)686-7001
Fax: (651)687-9857
Email: todds@bitroads.com

Total Facility Emissions (all emission for the whole facility):

Carbon monoxide (CO) total: 16.06 tons/year
Nitrogen oxide (NO_x) total: 3.15 tons/year
Lead (Pb) total: .0001 tons/year
Particulate matter smaller than 10 microns (PM_{10}) total: 7.10 tons/year
Particulate matter (PM) total: 10.90 tons/year
Sulfur dioxide (SO_2) total: .41 tons/year
Volatile organic compound (VOC) total: 5.83 tons/year

Please provide the following information used to calculate the Total Facility Emissions:

Hot Mix Asphalt Throughput:

Process Description	Throughput (asphalt mix)	Units	Amount Fuel Burned	Units	Control Type (circle one)
Batch Plant					
Rotary Dryer (natural gas)		tons		cubic (*) feet	fabric filter wet system
Rotary Dryer (No. 2 fuel oil)		tons		gallons	fabric filter wet system
Rotary Dryer (No. 6 fuel oil/waste oil)		tons		gallons	fabric filter wet system
Drum Mix Plant					
Drum Mix (natural gas)	242,407	tons	654,498	cubic (*) feet	(fabric filter) wet system
Drum Mix (No.2 fuel oil)		tons		gallons	fabric filter wet system
Rotary Dryer (No. 6 fuel oil/waste oil)		tons		gallons	fabric filter wet system

Minnesota Pollution Control Agency
Environmental Analysis and Outcomes Division
Environmental Data Management Unit
Michael Smith
520 Lafayette Road N
St. Paul, MN 55155-4194

Stationary Internal Combustion Engines, Generator(s):

Report either fuel usage **or** hours of operation, but **do not** list the same information both ways.

Fuel usage

Fuel Type	Fuel Burned	Units
No. 1 & 2 distilate oil, units less than 600 hp		gallons
No. 1 & 2 distilate oil, units greater than 600 hp		gallons
Natural gas, 4 cycle units		cubic feet (*)
Natural gas, 2 cycle units		cubic feet (*)

Hours of operation

Fuel Type	Hours of Operation	Horse Power Design Capacity	Units
			horsepower
			horsepower
			horsepower

Miscellaneous Fuel Usage, AC Heater:

Fuel Type	Amount Fuel Burned	Units
Natural gas	6400	cubic feet (*)
No. 1 & 2 distilate oil		gallons
No. 5 & 6 residual/waste oil		gallons
Liquefield petroleum gas		gallons

Unpaved Roads:

Round trip miles traveled on unpaved roads (**)	Credit Record Keeping Option (circle one)
0	(0%) 50% 75%

(*) Natural gas may be identified in ccf (hundred cubic feet), therms, or cubic feet on gas bill. If natural gas amounts are not in cubic feet, please identify what units you are giving natural gas amounts.

(**) Please **do not** Report the total vehicle miles traveled. Report the distance of one round-trip only.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervised by qualified personnel. The information submitted is, to the best of my knowledge and belief, true, accurate and complete. I understand that the data provided in this document will be used by the MPCA to calculate a fee, which the facility will be required to pay under Minn. R. 7002.0065, based on the tons of pollution emitted by the facility.

Signature and Title of Company Official: Todd Smedshammer **Date:** 1-14-09

Name and Title of Company Official (please print): Todd Smedshammer Plant Manager

Forms must be received by April 1, please mail us this form with an original signature. A copied or faxed signature is unacceptable.

Please contact Michael Smith (651) 757-2733 with any questions.

Sheet 3

Monthly or Yearly Emissions

Fill in grayed boxes as applicable for the month (for calculating 12 month rolling sum) or year (for calculating emission inventory)

Dec-05 Annual Estimate

SHAKOPEE

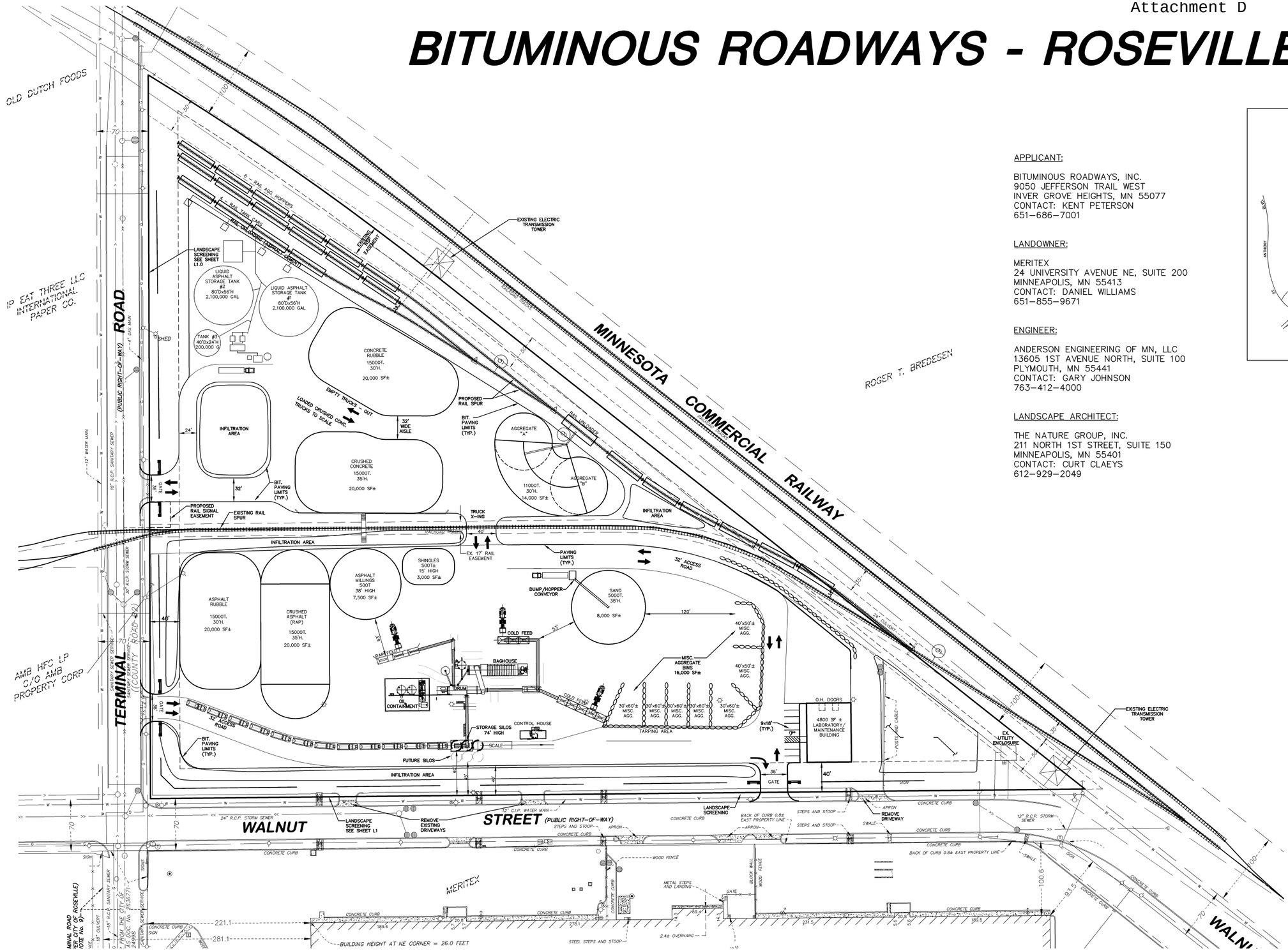
Tons of HMA (Natural gas fired)	242407
Tons of HMA (Fuel A fired)	0
Tons of HMA (Fuel B fired)	
Gallons Generator Fuel	0
Gallons of Misc. Fuel for AC Heater (Fuel A)	0
Cubic Feet of Misc. Fuel for AC Heater (Fuel B)	6450

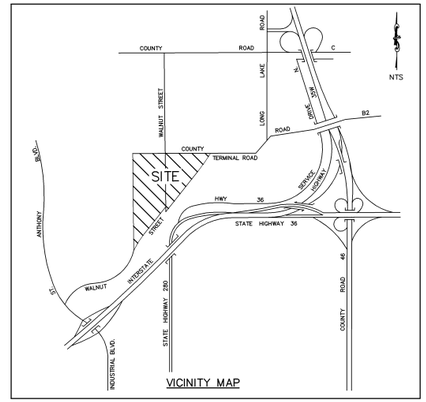
Emissions (lb)	**PM**	**PM_{10}**	**SO_2**	**NO_x**	**VOC**	**CO**	**Pb**
HMA plant (NG)	3490.6608	3490.6608	824.1838	6302.582	7757.024	31512.91	0.15029234
HMA plant (Fuel A)	0	0	0	0	0	0	0
HMA plant (Fuel B)	0	0	0	0	0	0	0
Load Out with site specific information	0	0			0	0	
Load Out without site specific information	126.53645	126.536454			947.568963	327.00704	
Silo Filling with site specific information	0	0			0	0	
Silo Filling without site specific information	142.0505	142.050502			2954.214109	286.04026	
Generator	0	0	0	0	0	0	N/A
Misc. Fuel A - Propane, No. 2 or No. 6 fuel oil, or Waste or Used Oil	0	0	0	0	0	0	0.0000
Misc. Fuel B - Natural Gas	0.04902	0.04902	0.00387	0.645	0.035475	0.5418	N/A
Mat'l Handling	4227.5781	4227.57808					
Roads (0% credit)	13817.199	6205.6192					
Roads (50% credit)	0	0					
Roads (75% credit)	0	0					
***SUM (TONS)	10.9020	7.0962	0.4121	3.1516	5.8294	16.0632	0.0001

*** Sum total calculated by adding the values in the column and dividing by 2000 lbs/ton

Attachment D

BITUMINOUS ROADWAYS - ROSEVILLE





VICINITY MAP

APPLICANT:

BITUMINOUS ROADWAYS, INC.
9050 JEFFERSON TRAIL WEST
INVER GROVE HEIGHTS, MN 55077
CONTACT: KENT PETERSON
651-686-7001

LANDOWNER:

MERITEX
24 UNIVERSITY AVENUE NE, SUITE 200
MINNEAPOLIS, MN 55413
CONTACT: DANIEL WILLIAMS
651-855-9671

ENGINEER:

ANDERSON ENGINEERING OF MN, LLC
13605 1ST AVENUE NORTH, SUITE 100
PLYMOUTH, MN 55441
CONTACT: GARY JOHNSON
763-412-4000

LANDSCAPE ARCHITECT:

THE NATURE GROUP, INC.
211 NORTH 1ST STREET, SUITE 150
MINNEAPOLIS, MN 55401
CONTACT: CURT CLAEYS
612-929-2049

SITE DATA:

ADDRESS: 2280 WALNUT STREET

P.I.D. - 082923320001

LEGAL DESCRIPTION: SEE SURVEY, PARCEL 3

SITE AREA: 14.62 AC.

ZONING I-2 GENERAL INDUSTRIAL
MIN PARCEL SIZE: 43,560 SF

SETBACKS (BUILDING)
FRONT: 40'
SIDE: 40'
REAR: 20'
(PARKING)
FRONT: 40' OR 20' WITH SCREEN/LANDSCAPING
REAR: 5'

MAX. BUILDING HEIGHT: 45' (60' FOR OFFICES)

MAX. BUILDING COVERAGE: 40% ONE STORY BLDG, 60% GREATER THAN ONE STORY BLDG.

SCREENING - 8' MIN. HEIGHT, TANKS SCREENED FROM EYE LEVEL AT STREET

AREA SUMMARY:

TOTAL SITE AREA = 636,715 SF (14.62 AC.)

PAVED/IMPERVIOUS = 391,222 SF (8.98 AC.)

OUTDOOR STORAGE = 128,500 SF (2.95 AC.)

PARKING

REQUIRED:
GREATER OF: 1 PER 1000 SF (BLDG) = 5 STALLS
OR 2 PER 3 EMPLOYEES = 4 STALLS

PROVIDED:
8 STALLS AT BUILDING

NOTES:
BOUNDARY & SITE FEATURES FROM A SURVEY DATED JAN 29, 2007 BY EGAN FIELD & NOWAK, TOPOGRAPHY FROM RAMSEY COUNTY LIDAR.

PLAN SHEET INDEX (C.U.P. SUBMITTAL)

C1 - PRELIMINARY SITE PLAN
C2 - PRELIMINARY GRADING, DRAINAGE & EROSION CONTROL PLAN
C3 - PRELIMINARY UTILITY PLAN
C4 - SCREENING PLAN W/ CROSS SECTION VIEW
L1.0 - CONCEPT LANDSCAPE PLAN
X1 - EXISTING CONDITIONS MAP

NO.	DATE	DESCRIPTION OF REVISIONS
1	3-6-09	C.U.P. SUBMITTAL

DESIGNED: GRJ
DRAWN: PSH
CHECKED BY:

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION, OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF MINNESOTA.
PRINT NAME: GARY R. JOHNSON, P.E.
SIGNATURE: NOT FOR CONSTRUCTION
DATE MARCH 6, 2009 LICENSE # 42010

Anderson Engineering of Minnesota, LLC
CIVIL ENGINEERING AND LAND SURVEYING
13605 1st AVENUE NORTH, SUITE 100. PLYMOUTH, MN 55441
TEL (763) 412-4000 FAX (763) 412-4090

BITUMINOUS ROADWAYS
ROSEVILLE, MINNESOTA
BITUMINOUS ROADWAYS, INC.

PRELIMINARY SITE PLAN

COMM. NO. 12345 | PLOTTED:
DRAWING NO. C1

Y:\12300\12345 BITUMINOUS ROADWAYS - ROSEVILLE\Dwg\11X17\SITE.dwg, 3/6/2009 11:44:11 AM, KPSON3000.pc3

Attachment E

1 CONCEPT LANDSCAPE PLAN 1" = 50'-0"

tng

Construction Drawing: 3-4-09

revisions

date	no.	comments
3-4-09	1	CITY SUBMITTAL

designed by: CHC
drafted by: JWD

I HEREBY CERTIFY THAT THIS PLAN, SPECIFICATION OR REPORT WAS PREPARED BY ME OR UNDER MY DIRECT SUPERVISION AND THAT I AM A DULY LICENSED LANDSCAPE ARCHITECT UNDER THE LAWS OF THE STATE OF MINNESOTA.

NOT FOR CONSTRUCTION

CURT H. CLAEYS
REG. NO. 41613
DATE:

CONCEPT LANDSCAPE PLAN
Bituminous Roadways Inc.
Asphalt Plant
Roseville, Minnesota

the nature group, inc.
landscape architecture and construction
211 North First Street
Suite 150
Minneapolis, Minnesota 55401
tel: 612.338.2049 fax: 612.288.8044

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October 11, 2010

The Honorable Mayor Craig Klausing
City Council Members
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113-1815

Re: Proposed Amendment to Chapter 1007 Industrial District to Prohibit Bituminous Roadways Asphalt Plant

Dear Mayor Klausing and City Council Members:

This letter is submitted on behalf of Bituminous Roadways, Inc., (the "Company") one of Minnesota's leading providers of asphalt paving materials. The Company is a locally owned and operated construction and materials source for high quality asphalt paving projects and has been a frequent provider to projects in and for the City of Roseville ("City"). The Company is asking the City not to adopt the proposed October 6, 2010 Ordinance changes for the reasons described below:

- The proposed ordinance changes have not been fully vetted through the ordinance amendment process required by state law and the Roseville City Code.
- The proposed ordinance is a direct response to adverse public opinion relating to the Company's proposal and does not reflect the rational judgment on the merits of the project.
- It is manifestly unjust to change the regulatory framework after asking the Company to perform environmental review and significant evaluation of environmental performance.
- The October 6, 2010 proposal is not supported by any change in the City's Comprehensive Plan and ignores the results of significant evaluation of the proposed project.
- The proposed ordinance is contrary to the City's Comprehensive Plan provisions sought to support the proposal.

Background

The Company submitted a proposal to staff for development of a new generation state of the art asphalt plant at 2280 Walnut Street and its application was deemed complete March 9, 2009. At the City Council meeting June 15, 2009, the City described the proposed project as consistent

with the Comprehensive Plan and staff recommended approval. Subsequently, the Minnesota Pollution Control Agency commenced an environmental review proceeding which is currently underway. Both the development of the proposed facility and its operation are subject to this review for which a determination on the need for an environmental impact statement will be made on November 16, 2010. In connection with the environmental review, the Company has prepared an air emissions permit application which has resulted in the MPCA issuing a notice of intent to approve the permit for air emissions.

On Wednesday, October 6, the Roseville Planning Commission held a public hearing on changes to the industrial district including eliminating asphalt plants as an authorized use. The staff report characterized this item as a direct response to the fact that "an asphalt plant is proposed to be located within the City of Roseville on property zoned general industrial district" and intending that the amendment "not allow a potentially undesirable use to start...." The matter was billed as a public hearing, however the Company was not notified that the matter would be considered notwithstanding it is directly intended to affect the Company's request currently pending before the City.

The Minnesota Pollution Control Agency will be considering environmental review of the project and considering significant environmental issues raised by project commentors at its November 16 meeting. This will allow creation of a significant body of information that will directly bear on the issues affected by the proposed ordinance. This will also directly bear on the Company's proposed project.

Legal Standard

The Minnesota Supreme Court has considered the circumstances of a change in regulatory framework during the pendency of a request for approval of a project. Where, as here, a legislative act is aimed primarily at a single project, it received more significant scrutiny. In the case of *Interstate Power Co. v Nobles County Board of Commissioners*, 617 NW 2d 566 (Minn. 2000), the Minnesota Supreme Court's analysis is an important precedent. In this case, the Court confirmed that although generally changes in regulatory requirements will be applicable if a project has not been approved and the project proponents' property right vested, there is a significant exception to this general rule. In this case, the Court carved out an exception for circumstances where an applicant will suffer a manifest injustice as a result of a zoning authority circumventing the regulatory process by a legislative change. In the *Interstate Power* case, Nobles County attempted to impose an unmeetable setback requirement as a means to prevent approval of a proposed project. The Court also recognized that the legal principles of promissory estoppel may also be applied to protect an applicant from change in standards during consideration of its application. At the encouragement of the City, the Company has spent thousands of dollars evaluating potential environmental concerns in the environmental review process all in furtherance of its permit request and in order to demonstrate compliance with City standards. Under estoppel principles, the City is prevented from now changing the standards to apply.

This issue was also addressed in *Northern States Power Co. v City of Mendota Heights*, 646 NW 2d 919 (Minn. App. 2002). In this case, the Court found that "where the city gave no explanation for the enactment of its franchise ordinance, and acknowledged that its sole purpose was to defeat Xcel's permit, the city is precluded from relying on its latter enacted ordinance to deny the permit." This is very analogous of the current circumstance in that this ordinance is being rushed through the process in an effort to block the Company's proposed facility. This is exactly the type of legislative abuse that the courts have found to be improper.

The City's Amendment Procedure Should Be Observed.

The Roseville City Code, Section 1016 describes the amendment process the City has developed for making changes to the Zoning Code. Section 1016.01 provides for zoning ordinance amendments to be initiated by property owners, or the City Council on its own motion. Section 1016.03 requires the Planning Commission to hold a public hearing in accordance with Chapter 108 of the City Code. Chapter 108 of the City Code requires that there be a public hearing and more specifically that all parties interested shall be given an opportunity to be heard. Notice of the time and place of the hearing is to be published over 10 days in advance of the hearing. In the event the hearing involves a particular parcel of land, mailed notice shall be given to the owner and property owners within 500 feet. It is clear from a review of the staff report that this action was intended to prevent the Company's asphalt plant. The Company has been working with City staff and the City Council for several months relating to this project. That the Company was not advised of the Planning Commission action prevented it from meaningfully participating in the public hearing and prevented it from an opportunity to be heard on this proposal aimed directly at it.

The Current Code Is Effective to Regulate Asphalt Plant.

The current ordinance code fully addresses each and every issue raised by anyone commenting on the Company's proposed project and regulation of asphalt plants in the City. The City's industrial district performance standards address issues of noise, smoke, dust, toxic or noxious materials, odors, vibration, glare, heat, and explosives use. Performance standards have been developed in a thoughtful way to assure that these considerations are addressed in connection with applications for land use approvals. The effect of the proposed ordinance is to abdicate the use of judgment in evaluating environmental performance for the Company's project. The effect of this is that the last several months worth of analysis and evaluation of the proposed project by the Company, MPCA, affected parties and City staff is effectively discarded in favor of outlawing the asphalt plant use in response to popular opinion. As recently as today, both City staff and advocates for project proponents are cited in newspaper articles as continuing a thoughtful evaluation of the project and its potential effects.

The Comprehensive Plan Doesn't Support the Changes Proposed.

The Comprehensive Plan continues to support heavy industrial uses at the site of the proposed project. The specific detail of the Comprehensive Plan identifies the industrial zoned areas of the City as places for heavy manufacturing. Under the current code and under the proposed changed

heavy manufacturing uses, uses which manage chemicals, uses which could have air emissions are still authorized within the industrial zone.

Certain segments of the Comprehensive Plan have been identified as the basis for singling out the asphalt plant use as a non-permitted use suggesting that asphalt plants can't meet those segments. This is not the case:

a) Land Use Goal No. 4. "Protect, improve and expand community's natural amenities and environmental quality." A state of the art modern asphalt plant utilizing environmental controls developed in response to a thorough EAW, compliance with current performance standards, and an effective air emissions permit is prevented from adversely affecting Roseville's natural amenities and environmental quality.

b) Land Use Goad No. 12. "Minimize the potential negative impacts of high intensity employment uses." A well regulated state of the art asphalt plant is designed and intended to minimize negative impacts by the use of environmental controls not found in earlier plants.

c) Economic Development and Redevelopment Goal No. 4. The proposed asphalt plant will be a productive use of the property. The CUP will assure it will provide a significant improvement to the current aesthetic. The plant will thus strongly support the construction economy in the City and its vicinity.

d) Economic and Development and Redevelopment Goal No. 6. "Integrate an environmental stewardship practice to commercial development." State of the art asphalt plants utilize significant environmental stewardship practices including utilizing the "warm mix" process, managing stormwater on site, recycling bituminous pavement materials which would otherwise be wasted, and capturing air emissions.

e) Environmental Protection Goal No. 1. "Protect, preserve and enhance Roseville's water, land, air and wildlife resources for current and future generations." A state of the art asphalt plant will, through both the City's performance standards and state permits, meet all of these considerations in the same fashion as some of the remaining uses that are authorized within the industrial district.

f) Environmental Protection Goal No. 5. "Ensure the City takes a leadership role in environmentally friendly property development, redevelopment and maintenance practices." Development of an asphalt facility utilizing state of the art practices in conformance with the City performance standards would allow the City to demonstrate its commitment to industries which improve their environmental stewardship by developing upgraded facilities with significant improvements to environmental compliance and management. This would give the City credit as a leader in helping the asphalt industry upon which the City is substantially relying to transform its operations to state of the art modern facilities.

Conclusion

Because the City has been a leader in having significant regulation in its performance standards, the effect is to impose a high standard on any industry doing business within the City. This high standard makes it unnecessary to arbitrarily and irrationally single out certain industries as not meeting standards while allowing other industries which could have similar emissions to generically be authorized as uses in the industrial district. The City's proposed action at this time when the environmental review process is not yet complete, and there has been, and continues to be, a substantial effort to evaluate the asphalt plant use within the City is manifestly unjust to Bituminous Roadways and should be deferred until the City has the benefit of a significant amounts of information being compiled about this proposed use.

Very truly yours,

Gregory E. Korstad, for
Larkin Hoffman Daly & Lindgren Ltd.

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October 21, 2010

The Honorable Mayor of Roseville
City Council Members
2660 Civic Center Drive
Roseville, MN 55113-1815

Re: Bituminous Roadways Asphalt Plant Technical Data

Dear Mayor and City Council Members:

In response to the discussions about Bituminous Roadways' proposed asphalt plant and its impacts, we thought it would be important for you to have information that analyzes the limited magnitude of possible effects from the project. Enclosed are the following:

- Technical Memorandum regarding noise monitoring studies for proposed Roseville asphalt plant prepared by Wenck Associates, Inc. dated October 7, 2010.
- Opinion of Edward Terhaar, P.E. on traffic impacts associated with the proposed Bituminous Roadways asphalt plant in Roseville.
- Technical Memorandum regarding Additional Odor/Hydrogen Sulfide Ambient Air Quality Analysis prepared by Wenck Associates, Inc., dated October 20, 2010.

As is evident from the documents, there has been a significant amount of analysis and evaluation of the proposed asphalt plant. It is also evident from these documents that the rational, thoughtful, evaluation of the potential environmental impacts being conducted through the Minnesota Pollution Control Agencies environmental assessment worksheet and air emissions permitting processes is an effective mechanism to address concerns raised by persons commenting on this facility.

Three very important considerations for the City are the lack of significant impacts in the areas of odor, traffic and noise relating to the proposed facility.

We hope this information is helpful as the City works through these issues. Bituminous Roadways and its consultants are always available to provide further information and/or to respond to questions or comments.

Thank you for your consideration.

Very truly yours,

Gregory E. Korstad, for
Larkin Hoffman Daly & Lindgren Ltd.

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Enclosures

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TECHNICAL MEMORANDUM

TO: Kent Peterson
Bituminous Roadways

FROM: Jeff Madejczyk
Wenck Associates, Inc.

RE: Noise Monitoring Study for Proposed Roseville Asphalt Plant

DATE: October 7, 2010

Project Approach

Bituminous Roadways has proposed to build a new asphalt plant within an existing industrial park in the City of Roseville, Minnesota. The plant would include raw material storage, asphalt drum, dryer, mixer, storage silos, load-out equipment and two large (approximately 1,000,000 gallon) liquid asphalt storage tanks. The proposed plant would be designed for a maximum production of 5,000 tons of asphalt per day with typical operations of approximately 2,500 to 3,000 tons per day. Additionally the plant would include a temporary mobile crushing operation that would be used for a period of two to three weeks two times per year.

An Environmental Assessment Worksheet (EAW) was prepared for the proposed plant by Wenck Associates, Inc. (Wenck) and submitted to the Minnesota Pollution Control Agency (MPCA). As required under Minnesota Rules the EAW was placed out for public comment by the MPCA. Comments on the EAW were submitted by a number of residents and businesses in the vicinity of the project area. One of the concerns over the construction of the proposed asphalt plant was the potential for the increase in noise in the area. The comments submitted also requested that additional on-site noise data from areas adjacent to the project site be presented as part of the analysis.

As part of the preparation of responses to comments on the EAW, Bituminous Roadways contracted Wenck to conduct further analysis on the potential impacts of the noise generated by the proposed project, including on-site noise monitoring in the vicinity of the project site.

Noise Generated by the Proposed Project

Bituminous Roadways operates several existing asphalt plants in the Twin Cities metro region. To estimate the noise levels created by the proposed project, noise monitoring was conducted at two of Bituminous Roadways existing asphalt plants located in Shakopee and Inver Grove Heights. The existing asphalt plants operate with equipment similar to what is proposed for the new plant in Roseville. Noise monitoring was conducted at each plant during normal operating

conditions with the asphalt silo and load-out drum in operation and with trucks on-site loading and hauling asphalt. The results of the noise monitoring from the two existing plants are presented in Table 1. Wenck recorded the noise levels of a crushing operation during a previous noise monitoring study at a facility in New Brighton. The noise level generated by the crushing operation was 82 dBA at 50 feet (Table 1) while all crushing equipment was in operation.

Table 1: Monitored noise data from existing plants

Facility	Noise Reading	Monitored Noise Level (dBA)
Inver Grove Heights	30 feet away – Between Asphalt Drum and Silo	71.2
Shakopee	20 feet away - Between Asphalt Drum and Silo	79.4
Crushing Operation	50 feet away from Crusher	82.0

The noise levels from the Shakopee plant were used in noise calculations to estimate the level of noise at the proposed project site to provide a conservative estimate of future noise levels created by the proposed Roseville plant. The monitored noise levels are considered "average" levels and are compared to the MPCA L50 noise limits.

The noise levels at 250 ft intervals from the proposed location of the asphalt silo and load-out drum on the proposed project site are presented in Figure 1. The data displayed in Figure 1 supports the conclusions presented within the EAW that the proposed project will comply with MPCA noise standards at properties adjacent to the project site.

Under normal operational conditions, the noise created by the proposed project would range from 39.4 to 57.7 dBA at properties within the industrial park (Figure 1). These values are less than the MPCA Daytime and Nighttime L50 noise standard which are both 75 dBA within industrial areas.

The nearest residential receptors are located to the south of the proposed project site, approximately 1,500 feet from the proposed asphalt silo and load-out drum. Noise levels produced by the proposed project under normal operating conditions would range from 39.4 to 41.9 dBA within the residential neighborhood south of the project site (Figure 1). This is less than the MPCA Daytime L50 residential noise standard of 60 dBA and also less than the Nighttime L50 noise standard of 50 dBA.

The proposed project will also employ a temporary mobile crushing unit two times a year for up to a three week period each time. While the normal operations of the asphalt plant will be generally from 6:00 am to 8:00 pm and may include 24-hour operations on some days if required by state highway projects, the operation of the crushing unit will be limited to daytime hours from 7:00 am and 7:00 pm. Wenck recorded the noise levels of a crushing operation during a previous noise monitoring study at a facility in New Brighton. The noise level generated by the

crushing operation was 82 dBA at 50 feet (Table 1) while all crushing equipment was in operation.

The noise generated by the crushing operation (Table 1) was added to the noise levels monitored at the existing Shakopee plant to estimate the total noise generated from the proposed project when the mobile crushing operation is present on site. The noise levels at 250 ft intervals from the center point of proposed location of the asphalt silo/load-out drum and the mobile crushing operation are presented in Figure 2. The data displayed in Figure 2 supports the conclusions presented within the EAW that the proposed project would be able to comply with MPCA noise standards during crushing operations.

The noise levels generated during crushing operations will range from 50.3 to 68.4 within the industrial park (Figure 2). These levels are less than the MPCA Daytime L50 noise standards for industrial areas of 75 dBA. The noise levels generated by the proposed project will range from 52.8 to 50.3 within the residential areas south of the project site (Figure 2). These levels are below the MPCA Daytime L50 noise standards for residential areas of 60 dBA.

Noise Monitoring of Existing Conditions

In response to comments on the EAW requesting additional information on existing noise levels near the proposed project site, noise monitoring was conducted. On September 14th, 2010 noise monitoring was conducted at four locations near the proposed project site. There were two noise monitoring locations within the industrial park. Monitoring location #1 was located west of the project site near the western edge of the industrial park and location #2 was located northeast of the project site near the railroad tracks and the Old Dutch Potato Chip factory. There were also two monitoring locations within the residential area south of the proposed project site. Monitoring location # 3 was at the end of Eustis Court immediately south of I-35W and location #4 was along St. Croix Street in the middle of the block, further away from the highway than location # 3. All four noise monitoring locations are presented in Figure 3.

Noise levels were recorded using Quest 300 noise docimeters. The meters were placed on tripods at each location at approximately five and a half feet off the ground to record the noise at human ear level (see Attachment A) The normal operations at the proposed plant will take place from 6:00 am to 8:00 pm but could occasionally include 24-hour operations if required for state highway projects.

The MPCA noise standards are broken out into Daytime (from 7:00 am to 10:00 pm) and Nighttime (from 10:00 pm to 7:00 am) standards. Noise monitoring began at each location prior to 6:00 am in order to collect a minimum of one full hour of noise data during nighttime conditions (6:00 am to 7:00 am). Noise monitoring continued through at least 5:00 pm at all locations. This allowed for the calculation of L50 noise levels at each monitoring location during nighttime levels but also during morning, midday and afternoon/evening traffic and noise patterns.

The noise data collected from each of the four monitoring locations is provided in Table 2. The nighttime L50 values within Table 2 are based on the data collected from 6:00 am to 7:00 am at each location. The daytime L50 values presented in Table 2 is the average L50 of all hours of noise data collected from 7:00 am until 5:00 pm at each location.

Table 2: Noise monitoring data at four locations near the proposed project

Location and NAC[1]	Description	Nighttime L50 dBA[2]	MPCA Nighttime L50 Standard	Daytime L50 dBA[3]	MPCA Daytime L50 Standard
#1 - Ind	West end of Industrial Park	60.7	75	59.7	75
#2 - Ind	Old Dutch & Railroad	66.2	75	65.9	75
#3 - Res	End of Eustis Court	62.5	50	62.5	60
#4 - Res	St. Croix St. - Mid-block	58.2	50	56.3	60

(1): NAC = Noise Area Classification; Ind = Industrial Noise Area; Res = Residential Noise Area.
(2): Nighttime L50 was calculated from noise data collected between 6:00 am and 7:00 am.
(3): Daytime L50 presented is the average L50 from 12 hours of noise data collected from 7:00 am to 5:00 pm.

The monitored existing L50 levels from the four monitoring locations were used in conjunction with the measured noise levels at the existing Bituminous Roadways Shakopee asphalt plant to calculate the future noise levels at the noise monitoring locations. The potential future noise levels from the proposed project at each noise monitoring location were calculated using the following formula:

$$dBA_{distance} = 79.4\ dB(A)_{20} - 20\ \log_{10}(distance/20)$$

Once the noise levels generated by the proposed project were determined for each noise monitoring location, these values were then added to the existing monitored noise levels to yield the predicted future noise levels. The following formula was used to calculate the summation of the existing noise with the new noise created by the proposed project:

$$\text{Future dBA} = 10\ \log\ (10^{(\text{existing dBA}/10)} + 10^{(\text{new dBA}/10)})$$

The predicted future daytime noise levels under normal plant operations are presented in Table 3 for each of the four monitoring locations. Under normal operations the noise generated by the proposed project would increase the noise levels at the four monitored locations by 0 to 0.2 dBA. An increase of this magnitude is not detectable by the human ear and supports the conclusions presented in the EAW that the proposed project would not result in a significant increase in noise in areas adjacent to the project. Figure 3 presents the existing noise levels at each location as well as the predicted future noise levels at each location with the asphalt plant under normal operation.

Table 3: Predicted total future daytime noise levels under normal conditions.

Location	Existing Daytime L50	Plant Noise Level Under Normal Operations at each Location	Total Predicted Future Daytime Noise Levels
#1	59.7	46.1	59.9
#2	65.9	44.2	66.0
#3	62.5	41.3	62.5
#4	56.3	40.4	56.5

The temporary crushing operation would create additional noise beyond the normal operational conditions. The crushing operation would be louder than the equipment in use at the plant under normal operations and would therefore add noise to the proposed project site. The noise levels created by the crushing operation were calculated for each of the four noise monitoring locations. These noise values were then added to the predicted future noises levels of the combined existing noise plus the plant under normal operations.

This returned a predicted future noise level at each location with the addition of the proposed plant plus while the crushing operation is one site. There are two potential locations on the project site for the mobile crushing operations. The crusher would be located at each location for a portion of two to three week period the crusher is on site and in operation. The noise levels heard at a location are dependant on the distance from the noise source. As a result, for the calculations in Table 4 that predict the future noise levels at the monitoring locations during crushing, the crusher location that was closest to each monitoring location was used for the calculation. This calculation would then provide the greatest possible increase in noise at a location due to the presence of the plant and the crusher for future noise levels.

Table 4: Total predicted future daytime noise levels site including crushing

Location	Existing Daytime L50	Plant Noise Level Under Normal Operations at each Location	Crusher Noise Level at each Location	Total Predicted Future Daytime Noise Levels
#1	59.7	46.1	56.7	61.6
#2	65.9	44.2	56.0	66.6
#3	62.5	41.3	51.6	62.9
#4	56.3	40.4	51.0	57.5

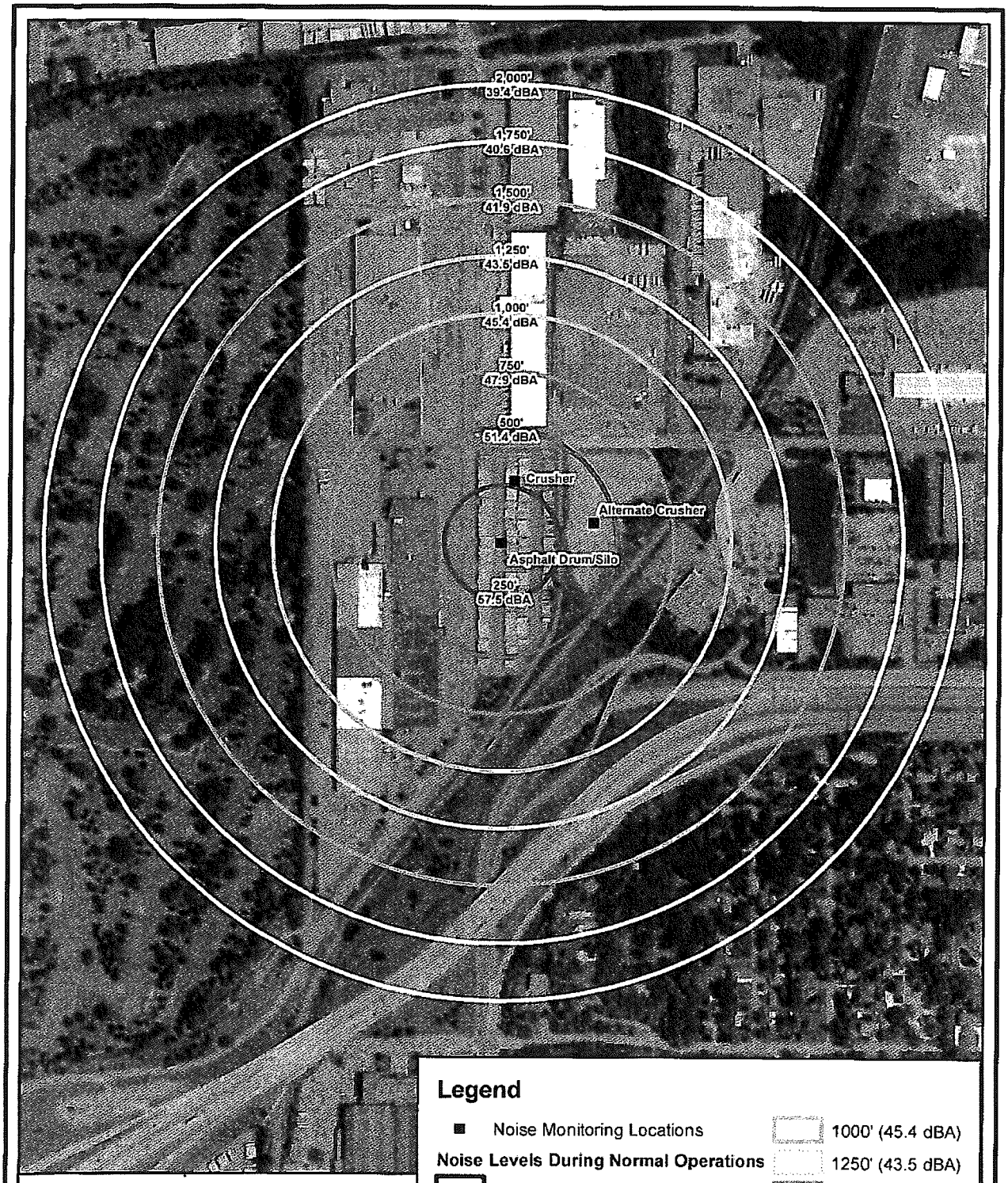
The noise generated by the proposed project during crushing operations will result in a 0.5 to 1.9 dBA increase to the existing noise levels at the four monitored locations near the project site. Based on MPCA noise guidance, a 1 dBA increase is not detectable by the human ear and a 3 dBA increase is considered the threshold of perception (*A Guide to Noise Control in Minnesota*; MPCA, 2008). As a result, the small increases in noise created by the proposed

project during the temporary crushing operations are unlikely to be detectable at the monitoring locations and would not be a significant increase in existing noise levels.

Conclusions

The noise level data collected and analyzed supports the conclusions within the EAW that the Bituminous Roadways proposed Roseville Asphalt Plant would comply with MPCA noise standards. The noise generated by the proposed project would be less than the appropriate noise standards at both industrial and residential properties adjacent to the project site. This would be true under both normal operations conditions as well as during times when crushing would take place at the facility. Monitoring of the existing noise levels near the project site was conducted. The addition of the noise generated by the proposed project to the existing noise levels would result in a slight increase of noise, less than two decibels in all instances. This small increase is below the human threshold for perceptible detections of changes in sound levels. As a result, the proposed project would not result in significant impacts to noise levels in the project area.

Figures



BITUMINOUS ROADWAYS

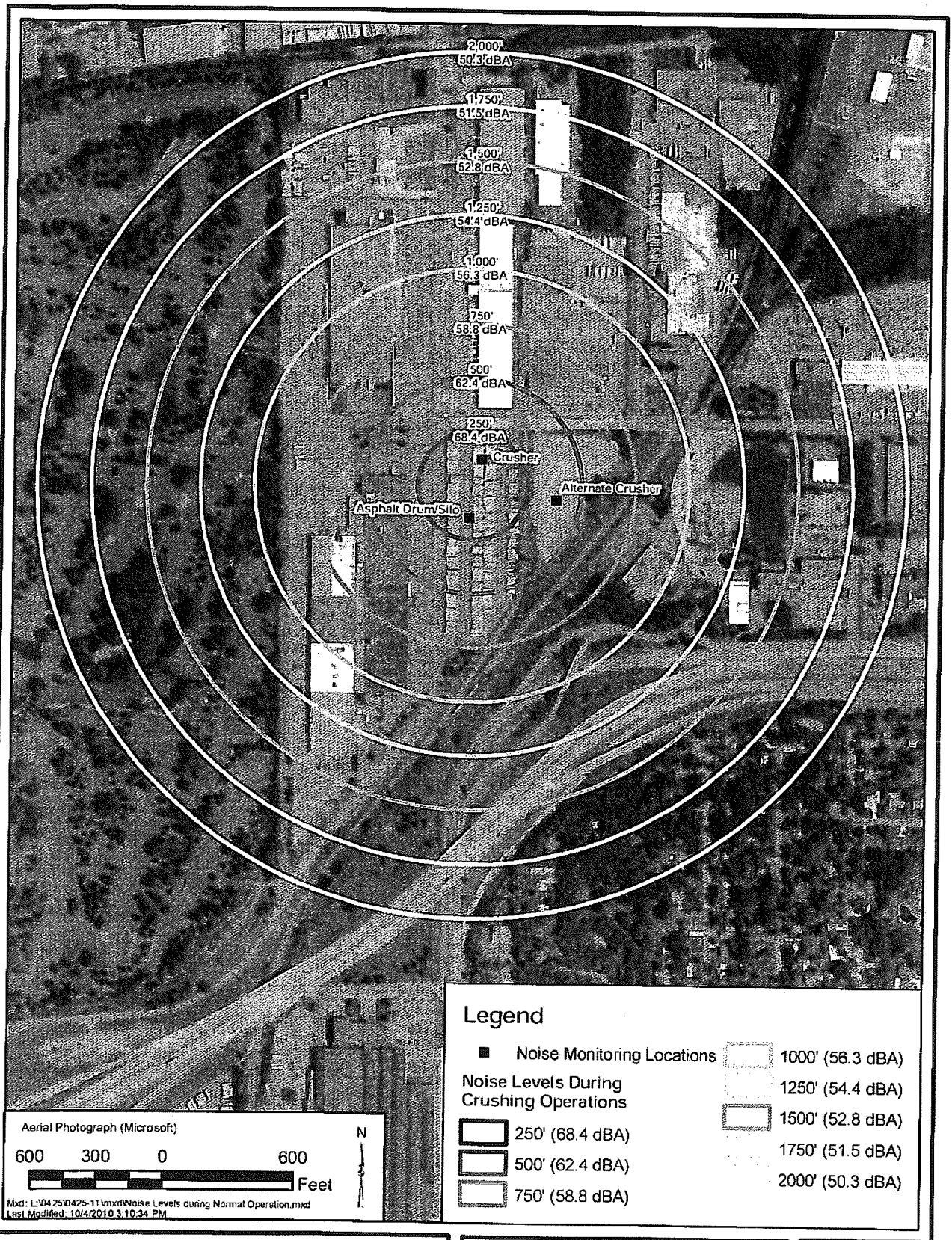
Noise Levels During Normal Operations

Wenck

Wenck Associates, Inc. 1800 Pioneer Creek Center
Environmental Engineers Maple Plain, MN 55359-0429

OCT 2010

Figure 1



BITUMINOUS ROADWAYS

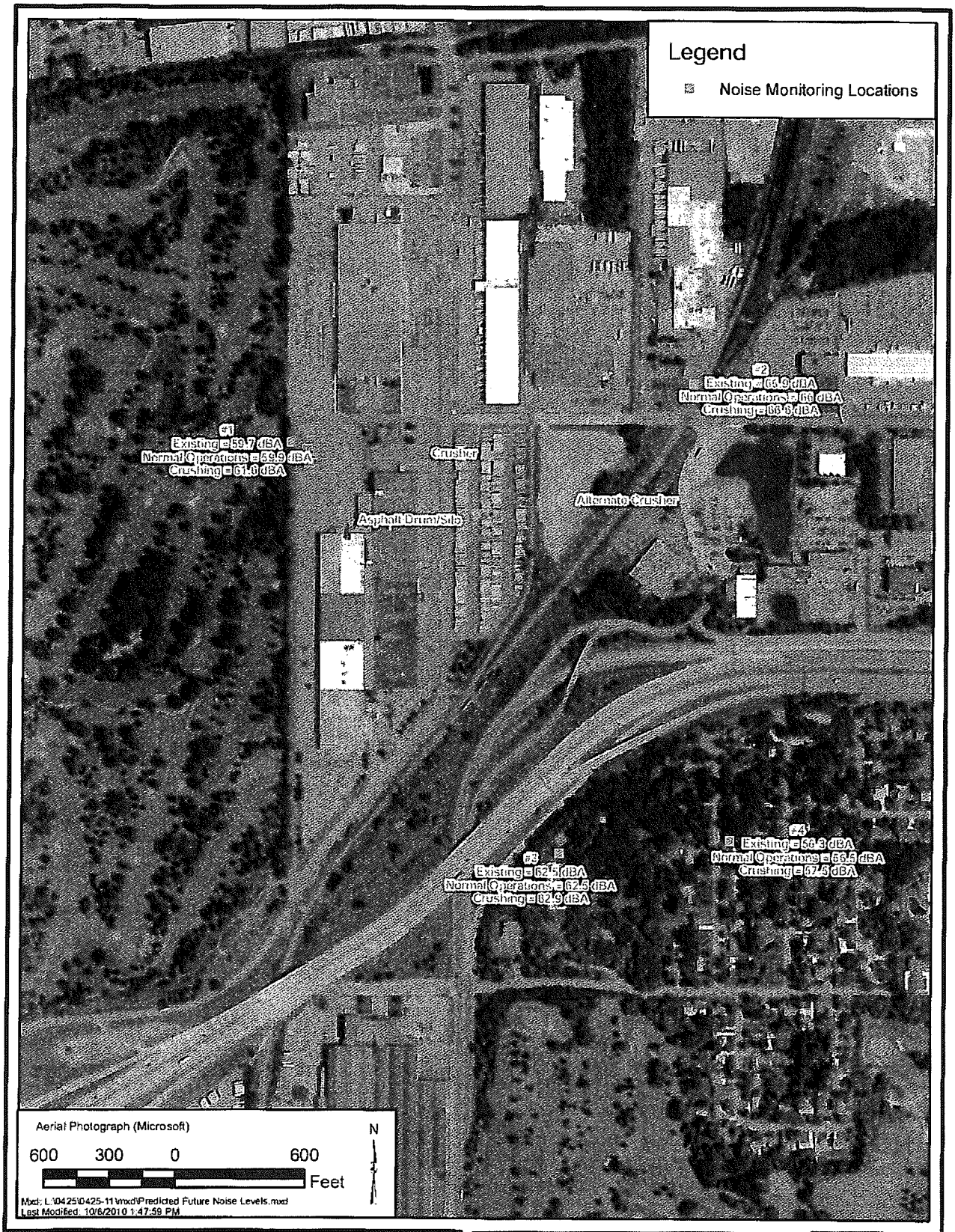
Noise Levels During Crushing Operations

Wenck

Wenck Associates, Inc. 1800 Pioneer Creek Center
Environmental Engineers Maple Plain, MN 55359-0429

OCT 2010

Figure 2



BITUMINOUS ROADWAYS
Predicted Future Noise Levels
from the Proposed Roseville Plant

Wenck Associates, Inc. 1800 Pioneer Creek Center
Environmental Engineers Maple Plain, MN 55359-0429

OCT 2010

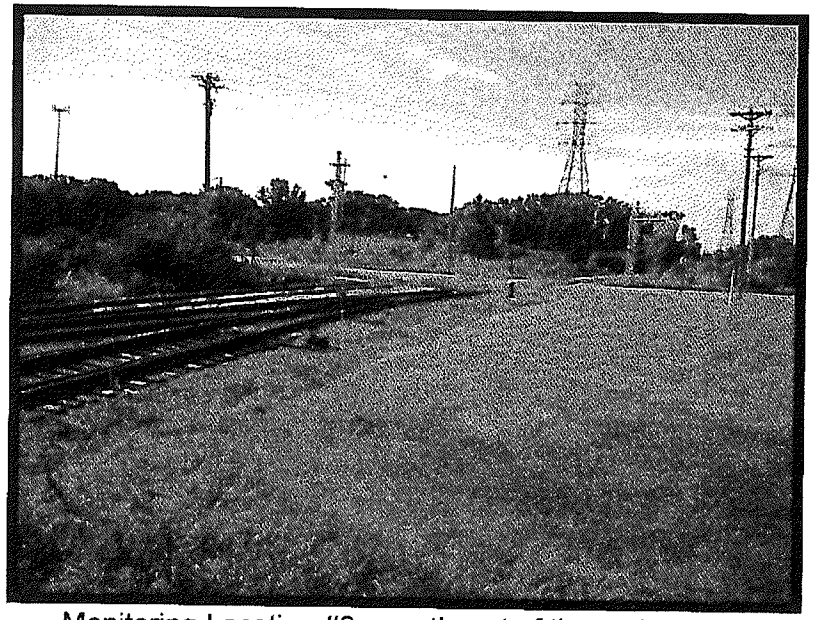
Figure 3

Attachment A

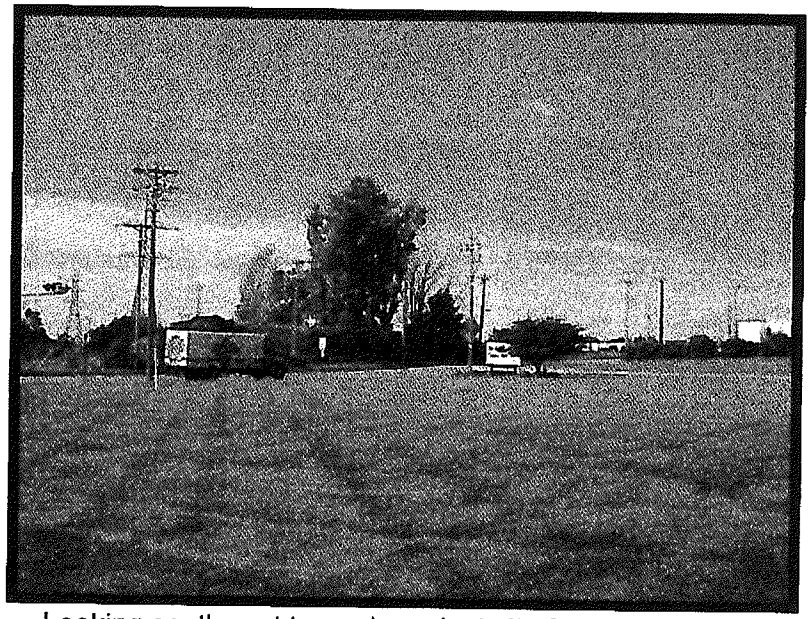
Site Photographs

Noise Monitoring Location #1 – west of the proposed project site

Looking east towards project site from Location #1

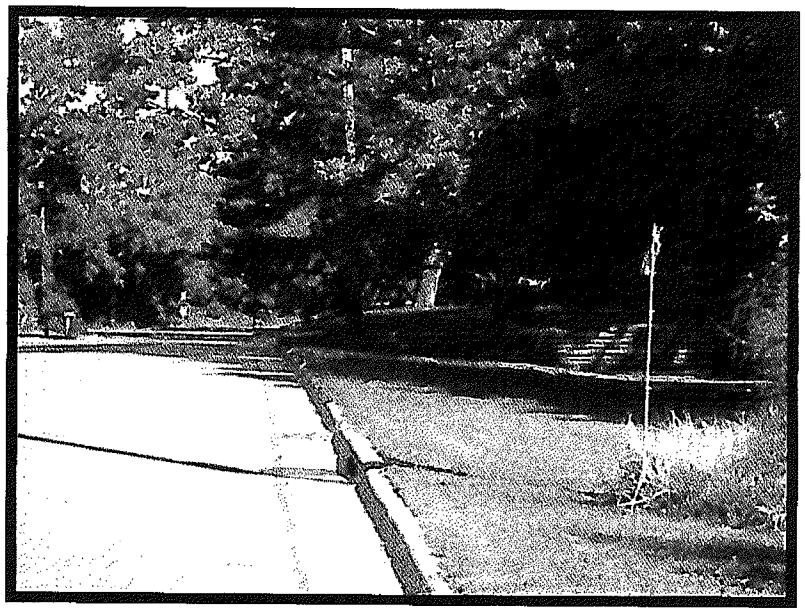


Monitoring Location #2 – northeast of the project site.



Looking southwest towards project site from Location #2

Monitoring Location #3 – south on the project site at the end of Eustis Court.



Monitoring Location #4 – south of the project site mid-block on St. Croix Street.

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TECHNICAL MEMORANDUM

TO: Kent Peterson
Bituminous Roadways

FROM: Edward Terhaar, P.E.
Wenck Associates, Inc.

RE: Opinion of Edward Terhaar, P.E. on Traffic Impacts Associated with the Proposed Bituminous Roadways Asphalt Plant in Roseville, MN

DATE: October 8, 2010

The traffic information presented in the EAW was reviewed relative to comments received. As shown in the EAW, the proposed project is expected to generate 594 trips per day under standard operations and 674 trips per day under maximum operations. The number of trips generated is based on asphalt production at the plant and is not based on operating hours. The maximum amount of asphalt production at the proposed plant would be 5,000 tons per day while the standard operating conditions would produce 2,500 to 3,000 tons per day. The daily trip estimates account for trucks, employees, and vendors that would access the site during a 24 hour period to meet the production needs of the proposed project. However, the proposed project would not typically operate for a continuous 24 hour period, but would instead operate for 14 hours from 6 am to 8 pm under normal conditions. As a result, the maximum possible traffic impacts potentially created by the proposed project would be the production of the maximum of 5,000 tons of asphalt per day within the normal14 hour work day. This scenario would entail the largest amount of trucks entering and leaving the project site in the shortest potential operational scenario.

During the weekday a.m. peak hour, the project is expected to generate 5 employee trips, 47 truck trips, and 4 vendor trips during maximum asphalt production. This equates to 56 trips during the weekday a.m. peak hour. During the weekday p.m. peak hour, the project is expected to generate 5 employee trips, 46 truck trips, and 4 vendor trips. This equates to 55 trips during the weekday p.m. peak hour.

As stated within the EAW under the Question 21 heading, a Traffic Impact Study is required if the peak hour traffic generation exceeds 250 trips or if the daily generation exceeds 2,500 trips. As shown above, both the hourly and the daily maximum trip generation numbers are below the identified thresholds and therefore a Traffic Impact Study is not required.

As stated in the EAW, the directional distribution is expected to be 35 percent to and from the north and 65 percent to and from the south. Trips to and from the north will access I-35W at County Road. C. Trips between the project site and I-35W will use Walnut Street, Terminal Road, and Long Lake Road to access County Road C.

Trips to and from the south will use both I-35W and T.H. 280. Trips to and from the south on I-35W will access I-35W at Industrial Boulevard. Trips to and from the south on T.H. 280 will access T.H. 280 at the direct access on Terminal Road. Trips to and from the south will use Terminal Road, Walnut Street, and Industrial Boulevard to access the regional roadway system.

The capacity of the surrounding roadways was reviewed to determine the impact of the proposed project. Generalized planning level average daily traffic (ADT) volume thresholds for each type of roadway that maintain acceptable levels of service were compared to post project traffic volume projections. At all locations the existing roadways have adequate capacity to accommodate the projected traffic volumes. Additional volume information is described below.

On Walnut Street adjacent to the site, the three lane section has maximum ADT threshold of approximately 14,900 vehicles per day. The 2009 ADT plus the maximum project trips equates to 3,335 (22 percent of maximum), which is far less that the maximum ADT threshold. On Walnut Street south of the site, the two lane section has maximum ADT threshold of approximately 8,500 vehicles per day. The 2009 ADT plus the maximum project trips equates to 3,335 (39 percent of maximum), which is far less that the maximum ADT threshold. On Walnut Street north of terminal road, the three lane section has maximum ADT threshold of approximately 14,900 vehicles per day. The 2009 ADT plus the maximum project trips equates to 4,285 (29 percent of maximum, which is far less that the maximum ADT threshold. On Terminal Road immediately east of Walnut Street, the four lane section has maximum ADT threshold of approximately 20,100 vehicles per day. The 2009 ADT plus the project trips equates to 4,095 (20 percent of maximum), which is far less that the maximum ADT threshold.

Overall, the surrounding roadway system has adequate capacity to accommodate the proposed project. As shown above, the local street system has adequate capacity to accommodate the projected traffic volumes. The project will have minimal impact on the regional system. This conclusion is supported by a comment letter submitted by Mn/DOT on the EAW.

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Maple Plain, MN 55359-0249

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Fax (763) 479-4242
E-mail: wenckmp@wenck.com

Wenck

TECHNICAL MEMORANDUM

TO: Kent Peterson, Bituminous Roadways

FROM: Jared Anderson & Ed Hoefs, Wenck Associates, Inc.

CC: Greg Korstad, Larkin & Hoffman

RE: Additional Odor/Hydrogen Sulfide Ambient Air Quality Analysis

DATE: October 20, 2010

This memorandum summarizes the results from additional hydrogen sulfide air dispersion modeling for Bituminous Roadways' proposed asphalt plant/asphalt cement storage facility, to be located in Roseville, Minnesota. Hot mix asphalt production and asphalt cement storage and handling can result in odors. Odors can be traced primarily to hydrogen sulfide in asphalt cement. Hydrogen sulfide can be present due to sulfur in crude oil. To address the potential for hydrogen sulfide impacts from the proposed operation, an odor impact analysis for the proposed project was conducted. Prior modeling analyses have included emission sources from the hot mix asphalt plant, the asphalt cement storage facility and the asphalt tanker railcar heating. On October 15, 2010 you requested that Wenck Associates, Inc. (Wenck) summarize the predicted 1-hour hydrogen sulfide (H_2S) concentrations from the proposed hot mix asphalt (HMA) plant alone in comparison with the H_2S concentrations from the proposed asphalt cement storage facility as well as the asphalt tanker railcar heating. Similar to all other modeling analyses completed for the proposed HMA plant and asphalt cement storage facility, Wenck used AERMOD to complete the modeling analysis.

The maximum predicted H_2S concentrations at the property boundaries from these proposed groups of emission sources are listed in Table 1. Also listed in Table 1 are the odor thresholds relied upon in the Environmental Assessment Worksheet that the predicted impacts are compared against. The results in Table 1 assume that activated carbon would be used to control the H_2S emissions while the railcars are being heated.

Table 1. 1-Hour Hydrogen Sulfide Predicted Concentrations

Impact	Updated Modeling				EAW Modeling
	HMA Plant ($\mu g/m^3$)	Tank Farm ($\mu g/m^3$)	Railcar Heating ($\mu g/m^3$)	All Sources with Railcars Controlled[1] ($\mu g/m^3$)	All Sources with Railcars Uncontrolled[1] ($\mu g/m^3$)
Modeled Concentration	4.4	6.9	1.9	7.2	18.8
Odor Nuisance Threshold	56				
Minnesota State Standard	42				
Odor Detection Threshold	11				

[1]The concentrations listed for the HMA Plant, Tank Farm and Railcar Heating operations are not additive because their individual maximum impacts occur under different 1-hour events and locations in the model compared to the maximum event for all units operating simultaneously.

The modeling results summarized in Table 1 were compiled on a one-hour basis. AERMOD can estimate concentrations for a minimum time period of one-hour. However, people can detect the presence of hydrogen sulfide at time intervals less than 1-hour. Notwithstanding the 1-hour odor results previously tabulated by Wenck for the Environmental Assessment Worksheet, we attempted to locate an odor nuisance level for time periods less than one hour. A Task Force of the International Programme on Chemical Safety (IPCS)[2] recommended that a 30-minute average time period with hydrogen sulfide concentrations less than 7 $\mu g/m^3$ is unlikely to produce odor nuisances in most situations.

The 1-hour concentrations listed in Table 1 can be scaled down to 30-minute concentrations using a conversion technique outlined by the "Air Dispersion Modelling Guideline for Ontario"[3]. The conversion from 1-hour concentrations to 30-minute concentrations is:

$C_{30\text{-min}} = C_{1\text{-hr}} * (60 \text{ min}/30 \text{ min})^{0.28}$

$C_{30\text{-min}} = C_{1\text{-hr}} * 1.2$

Using this conversion factor and the predicted concentrations listed in Table 1, the 30-minute average concentrations are calculated as summarized in Table 2.

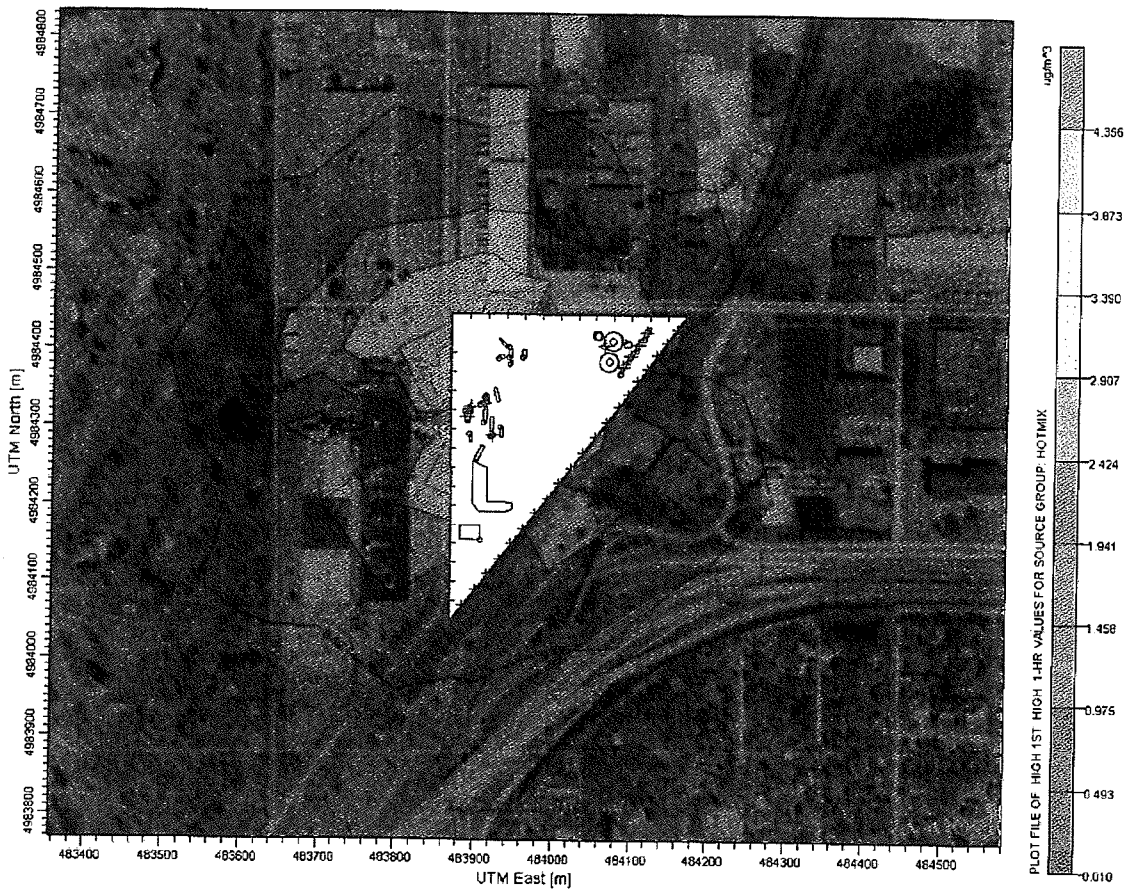
Table 2. 30-Minute Hydrogen Sulfide Predicted Concentrations

Impact	HMA Plant ($\mu g/m^3$)	Tank Farm ($\mu g/m^3$)	Railcar Heating ($\mu g/m^3$)	All Sources with Railcars Controlled ($\mu g/m^3$)	All Sources with Railcars Uncontrolled ($\mu g/m^3$)
Modeled Concentration	5.2	8.3	2.3	8.6	22.6
IPCS Odor Nuisance Threshold	7				

As you can see in Table 2, the HMA plant alone is less than the IPCS 30-minute odor nuisance threshold at the property boundary. The attached isopleth of 1-hour concentration from the HMA plant alone shows the area of maximum concentrations is located at the west side of the property. Concentrations dissipate from 4.4 $\mu g/m^3$ to less than 1 $\mu g/m^3$ with distance from the HMA plant. This suggests that people are unlikely to experience odor nuisance levels of hydrogen sulfide odors from the HMA plant operating alone.

[2]International Programme on Chemical Safety. 1981. Environmental Health Criteria 19. Hydrogen Sulfide. Geneva: World Health Organization. p. 41.

[3]Ontario Ministry of the Environment. 2009. Air Dispersion Modelling Guideline for Ontario Version 2.0. Toronto, Ontario. March 2009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PLOT FILE OF HIGH 1ST HIGH 1-HR VALUES FOR SOURCE GROUP: HOTMIX

Larkin Hoffman ATTORNEYS

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7900 Xerxes Avenue South
Minneapolis, Minnesota 55431-1194

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November 10, 2010

Caroline Bell Beckman
Erickson, Bell, Beckman & Quinn, P.A.
1700 West Highway 36
Roseville, MN 55113

Re: Bituminous Roadways, Inc.

Dear Ms. Beckman:

This letter responds to your correspondence of November 1, 2010. Bituminous Roadways, Inc. (the "Company") continues to seek approval from the City of Roseville ("City") of the development of its facility as first presented to the City on March 6, 2009. The development of this industrial facility in an isolated industrial area of the City continues to be a very sound proposition.

Since that time, and in response to direction from the City, the Company has, in addition to submitting all required applications for the project, submitted the project for environmental review conducted by the Minnesota Pollution Control Agency (MPCA). This environmental review required that the Company prepare an air emissions facility permit in order that MPCA could fully evaluate potential air emissions. As a result, MPCA has prepared a draft air emissions permit which confirms the air emissions for the facility meet state and federal standards.

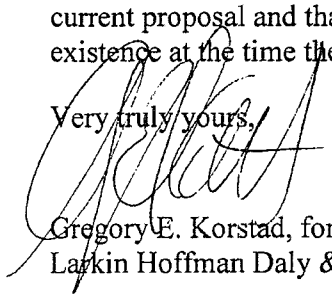
The result of the environmental review process to date is that an environmental assessment worksheet has been prepared which concludes that the proposed facility (including a rail transload facility which is not currently proposed for construction but was evaluated by MPCA because it is a potential extension of the project) does not present a potential for significant environmental effects from the proposed project.

In addition, and in response to issues raised by the City Council's discussions of the Company's project at recent council meetings, the Company had further evaluated traffic, noise, and odor. The results of these additional studies were presented to the City concluding that none of those items would present adverse impacts relating to the proposed project.

The present status of the environmental review is that the technical and scientific analysis of the project demonstrates the lack of adverse effects from the proposed project. Nevertheless, the City Council has acted to circumvent the environmental review process by changing its ordinances after the Company has incurred significant expense in reliance on the direction it received from the City.

This patently unfair change to the regulatory framework would prejudice the Company's ability to obtain fair and unbiased consideration of its project if applied to the Company's pending application. Therefore, the Company's request is that the ordinance revisions not apply to the current proposal and that the City review the Company's proposal under the framework in existence at the time the application was submitted.

Very truly yours,



Gregory E. Korstad, for
Larkin Hoffman Daly & Lindgren Ltd.

Direct Dial: 952-896-3292
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Email: gkorstad@larkinhoffman.com

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Minnesota Pollution Control Agency

520 Lafayette Road North | St. Paul, MN 55155-4194 | 651-296-6300 | 800-657-3864 | 651-282-5332 TTY | www.pca.state.mn.us

October 29, 2010

Mr. Bill Malinen
City Manager
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Dear Mr. Malinen:

As you are aware, Bituminous Roadways, Inc. has proposed and submitted permit applications for the construction of an asphalt production facility at the southeast corner of Terminal Drive and Walnut Street, within an industrial district in the city of Roseville, Minnesota. The primary elements of the proposed project include an asphalt plant, aggregate storage piles, periodic crushing operations, liquid asphalt cement storage tanks, and related material storage and handling facilities. The project was subject to the preparation of a mandatory Environmental Assessment Worksheet (EAW) with the Minnesota Pollution Control Agency (MPCA) acting as the responsible governmental unit. An EAW was prepared for the project and distributed for a comment period that began on July 12, 2010, and ended on September 10, 2010. Numerous comment letters were received during the EAW comment period, including a letter from the city of Roseville requesting the preparation of an Environmental Impact Statement.

On October 11, 2010, the Roseville City Council adopted an amendment of its land use ordinance that prohibits using land zoned as "industrial" for asphalt plants and for crushing or recycling of aggregate materials. The amended ordinance would appear to preclude the construction of an asphalt plant or aggregate crushing activities on the proposed project site. The ordinance amendment was published and became effective on October 19, 2010. Consequently, the proposed Bituminous Roadways Roseville Asphalt project, as it was described in an air quality permit application submitted to the MPCA and as it was reviewed in the EAW, appears to be prohibited by this newly enacted local law.

The MPCA does not conduct environmental review on projects that are prohibited by local law or are denied by another governmental unit and has suspended work on the environmental review and permitting of the project. If circumstances change regarding the status of permit application(s) submitted to the city or if the MPCA has not appropriately interpreted the amended ordinance, we request that you inform the MPCA.

If you have any questions or require further assistance, please contact me at 651-757-2181.

Sincerely,

Craig Affeldt
Supervisor, Environmental Review Unit
St. Paul Office
Regional Division

CA:mbo
cc: Kent Peterson, President, Bituminous Roadways, Inc.
Kathleeen Winters, Office of the Attorney General
Kevin Kain, MPCA

ERICKSON, BELL, BECKMAN & QUINN, P.A.

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James C. Erickson, Sr.
Caroline Bell Beckman
Charles R. Bartholdi
Kari L. Quinn
Mark F. Gaughan
James C. Erickson, Jr.

Robert C. Bell – *of counsel*

MEMORANDUM

TO: **Pat Trudgeon, Mayor Klausing and Councilmembers**

FROM: **Caroline Bell Beckman/Charles R. Bartholdi**

DATE: **November 24, 2010**

RE: **City of Roseville - Procedure for Bituminous Roadways Conditional Use Permit Application Set for November 29, 1010**
Our File No: 1011-00196-1

As you are aware, the above matter is set for a special City Council meeting on Monday, November 29, 2010. This matter is being returned to the Council in order to determine whether to proceed with Bituminous Roadways' Conditional Use Application. Since the City passed the recent ordinance amendment prohibiting Asphalt Plants in I-2 Zoned District, the Minnesota Pollution Control Agency ("MPCA") has suspended its environmental review of the asphalt plant based on their conclusion that the MPCA will not consider applications for uses that are prohibited.

The following is the recommended procedure for the City Council:

1. The City Council should first address whether newly adopted Ordinance 1397 ("Amended Ordinance") applies to the Asphalt Plant being proposed by Bituminous Roadways and its Conditional Use Application. In making this analysis you should address Bituminous Roadways' request that the City not apply Ordinance 1397 to their proposal. (See attached correspondence from Attorney Gregory E. Korstad, dated November 10, 2010).

2. The City Council should next address whether an Asphalt Plant is allowed as a permitted use under Roseville City Code Section 1007.015 as it existed at the time of Bituminous Roadways' Application ("Original Ordinance") and Roseville City Code Section 1007.01D (Performance Standards).

3. If you determine that Asphalt Plant is a permitted use pursuant to both Step 1 and 2 above, then the Minnesota Pollution Control Agency should be so advised and the environmental review continued. If you find that an Asphalt Plant is not a permitted use under either step 1 or 2 above, then you should proceed to consider Bituminous Roadways' Application for a conditional use permit. The determination of whether the

conditional permit should be given should be based upon the criteria set forth in Roseville City Code Section 1014.01D which is as follows:

A. Impact on traffic.
B. Impact on parks, street and other public facilities.
C. Compatibility of the Site Plan, Internal Traffic Circulation, Landscaping and Structures with contiguous properties.
D. Impact of the use on the market value of contiguous properties.
E. Impact on the general public health, safety and welfare.
F. Compatibility with the City's comprehensive plan.

4. If the City finds that the Asphalt Plant is not permitted under the Original Ordinance, the City should include in its written findings why it is not permitted using the criteria set forth in Original Ordinance Code Section 1007.015, Section 1007.01D and any other facts which the City Council deems pertinent.

5. If the City finds that the Asphalt Plant is not permitted under the Amended Ordinance, such fact should be stated in its written findings.

6. If the City Council determines that the Bituminous Roadways' conditional use application should be denied, the specific reasons (using the criteria set forth in Roseville City Code Section 1014.01D) should be included in the written findings.

7. A draft of proposed written findings is attached for your consideration. The attached findings state that the proposed Asphalt Plant is not allowed as a permitted use under both the Original and Amended Ordinance, that the conditional use is denied because the primary use (being the asphalt plant) is not a permitted use, and that the conditional use is denied because it would negatively affect public health, safety and welfare based upon the criteria set forth in Roseville City Code Section 1014.01D. The enclosed findings can be supplemented and/or edited by the City Council based upon evidence presented regarding the Application, your deliberations and your decisions made at the Council Meeting.

We believe that regardless of what decision the City Council makes in this matter, it is important that an adequate record (with supportive findings) be adopted to support your decision. If the written statement of the reasons for the denial is not adopted at the same time as the denial, it must be adopted at the next meeting following the denial. The statement of reasons for denial must be provided to Bituminous Roadways (and we would also recommend upon Meritex Enterprises, Inc.) upon adoption.

CBB/ljl/CRB/alb
Enclosure

Larkin Hoffman ATTORNEYS

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November 10, 2010

Caroline Bell Beckman
Erickson, Bell, Beckman & Quinn, P.A.
1700 West Highway 36
Roseville, MN 55113

Re: Bituminous Roadways, Inc.

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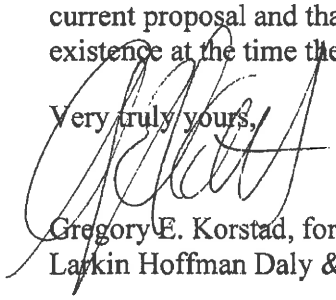
Very truly yours,



Gregory E. Korstad, for
Larkin Hoffman Daly & Lindgren Ltd.

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Direct Fax: 952-842-1722

Email: gkorstad@larkinhoffman.com

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November 18, 2010

Pat Trudgeon
Community Development Director
Roseville City Hall
Roseville, MN 55113

Mr. Trudgeon,

Thank you for inviting public findings in your report to City Council on November 29, 2010. The focus of my comments is on the A) unreliability of the data presented by Bituminous Roadways, and B) prohibition of this plant on account of allowable uses as determined in the pre-amended (Ord. 1397; 10-11-10) industrial zoning codes. I'm well aware that there are additional health, economic, and environmental issues at hand, however I simply couldn't include all the evidence possible. I ask that you please review both of my personal letters submitted to the MPCA, as well as the NAAP contested case hearing petition letter for additional findings.

Misleading Data

First, it is important to note that the information provided by Bituminous Roadways is sometimes misleading, contradictory, confusing, and/or insufficient, as noted in many of the comment letters, and below.

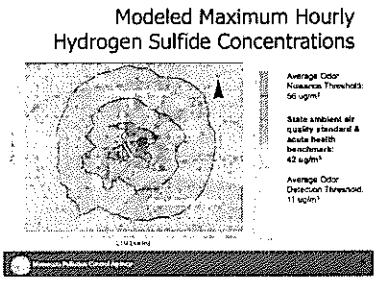
For one, the data presented in the EAW implies a significant increase in project scope from what was presented in Bituminous Roadways' original application on March 6, 2009. The original application alludes to warm mix technology and its benefits in eliminating odor and smoke (including a flyer with detailed information on such benefits), whereas in the environmental review process it became apparent that warm mix technology was not acceptable to local construction companies, and therefore the plant would be using entirely hot mix technology.

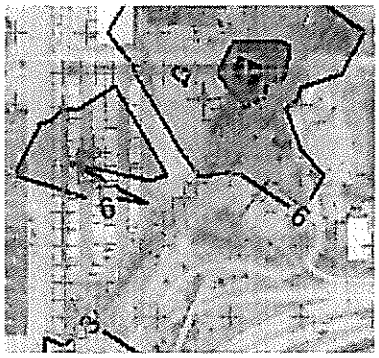
Additionally, the odor figures presented in the EAW seem illogical. For instance, the data presented in Table 12 (pg. 29) indicates that the golf course would have slightly higher odor levels than the nearest residence (3.63 vs. 2.95 ug/m^3 respectively). Yet according to BR's information and MPCA's documentation, the primary source of odor is at the LAC storage tanks in the NE corner of the site. One would presume that the point closest to the odor source would experience more odor, unless of course wind is considered. However, as we all know, and according to meteorologist Paul Huttner, the prevailing wind direction for Minneapolis/St. Paul is from the northwest to the southeast (in the direction of the residence), especially in the spring and fall.

Finally, in the technical memorandum provided by Wenck Assoc. to the MPCA (dated Oct. 20, 2010), updated odor estimates are provided, as requested by the MPCA, yet they contradict information in the EAW and in the MPCA presentation slides. With regard to the EAW, the

odor levels estimated at the rail cars assume that "activated carbon would be used to control the H_2S emissions while the railcars are being heated" (pg. 19 of electronic file). Yet, in the EAW, it states, "Due to the portable nature of the rail cars and the small amount of emissions generated, it is not feasible to control the rail cars as they are being heated" (pg. 29). How is it that they intend to control odor emission with "activated carbon" at the heating railcars? There is no explanation in the memo.

With regard to contradictory information in the MPCA presentation, Table 1 of the technical memorandum indicates the "updated" modeled hourly concentration at the HMA plant is 4.4 ug/m^3 and at the tank farm is 6.9 ug/m^3. Yet in slide 9 of the MPCA presentation on July 29, 2010, the maximum hourly concentrations of H_2S at both points are expected to be significantly higher (see below). The tank farm itself would likely have concentrations at or above 20 ug/m^3, and I recall Heather, the MPCA representative presenting this data that evening, indicating that this was the case at the storage tank facility. Again, there is no explanation or even reference made to an operational change that would warrant such reduced estimates.





Again, this presents confusing and what seems to be erroneous data.

Prohibited Uses

Aside from this, I would like to point to specific Roseville zoning ordinances that would prohibit this plant from being built.

In the current *and* pre-amended (Ord. 1397, 10-11-10) industrial zoning codes, chemicals "involving noxious odors or danger from fire or explosives" are implicitly prohibited in Table 1007.015, General Requirements (by way of the double-negative we're all familiar with). Additionally, "noxious" is defined in Chapter 1002 Rules and Definitions as, "material which is capable of causing injury or malaise to living organisms or is capable of causing detrimental effect upon the health or the psychological, social or economic well-being of human beings." (Ord. 275, 5-12-59)

ODOR

There are no state standards for odor. However, even using these potentially unreliable figures, we can expect that people working and living in the area will experience health, psychological, and/or economic issues, thereby failing to meet Roseville's standards.

According to the EAW, the estimated odors at the NE corner of the property line would be 21.54 ug/m^3 (16ppb), and both the golf course and nearest residence would be over 2ppb (Table 11, pg. 29)[1]. Duke University scientists have discovered that people who live or work around foul odors often become depressed and irritable, given that the olfactory region of the brain is closely linked to the limbic system, the area that governs emotions (Schiffman, S.S. & Nagle, H.T. Effect of environmental pollutants on taste and smell. Otolaryngology - Head & Neck Surgery 106: 693-700, 1992). Hydrogen sulfide is most certainly a foul odor.

The North Carolina Division of Air Quality Science Advisory Board reported that "symptoms such as headache, nausea and eye and throat irritation" are found in communities with ambient levels "as low as 7 to 10 ppb" associated with periodic fluctuations at higher levels (JJH 10/2/01). The odor estimated at the property line is nearly double that at 16 ppb.

Additionally, researchers investigating the adverse health effects from chronic, low-level exposure to hydrogen sulfide (as low as an annual average of 7-27 ppb) found that exposed residents experienced detrimental health affects to the central nervous system, respiratory system, and circulatory (blood) system significantly greater than those not exposed (Legator, M.S., Singleton, C. R., Morris, D. L., Philips, D. L.. *Health Effects from Chronic Low-Level Exposure to Hydrogen Sulfide.* Archives of Environmental Health, Mar/Apr 2001, Vol. 56 Issue 2, p123).

With regard to economic impact, the concerns expressed by residents and businesses (Old Dutch, Gross National Golf Course, Midland Hills Golf Course, and many others) about the impact of these noxious odors in our community are backed by sound technical knowledge and research. For instance, although real estate research studies are difficulty to come by, there is research in North Carolina indicating that property values diminished by as much as 56% and as far away as 3,200 feet from the plant (Pineola Property Study). This points to some substantiated concerns about the economic welfare of Roseville.

Anecdotally, on a summer Saturday evening at 8pm when the plant was not operating , I spoke with a homeowner who lives across the street from Bituminous Roadways' Minneapolis asphalt plant. Although I could smell the rotten egg odor clearly at this time, his whole family was relaxing outside, because, he said, *they can never do this on a weekday.* (I was amazed they were even outside then.) He said they close their doors and windows when the plant is operating and do not play outdoors until weekends when it is not operating. He also mentioned that he signed his home purchasing papers on a Sunday, prior to ever knowing the extent of the odors on a weekday, and was then locked into the deal. An unfortunate circumstance for him and his family.

I believe it is clear that hydrogen sulfide would constitute a noxious odor that causes detriment to physical, psychological, and economic well-being.

---

[1] Note that I converted figures from ug/m3 to ppb using the standard calculation - MolWeight * ppb = 24.45 * ug/m3 – since most of the research uses ppb units. See calculations at the end of this letter.

DANGER FROM FIRE OR EXPLOSIVES

In addition to noxious odors, the clause in Table 1007.015 (Roseville's pre-amended zoning code) prohibits chemicals involving *danger from fire or explosives.* There are explosive chemicals involved in asphalt production, and numerous accounts of dangerous fires are available online. For instance, three of the six cases described in Asphalt Plant Safety – Part I involved explosions and/or fires. This YouTube video of news coverage of a Portland asphalt plant fire on August 22, 2010 interviews a firefighter who indicates "liquid asphalt... is very flammable". This, too, points to the reasons an asphalt plant with chemicals involving danger from fire or explosives is not permitted in Roseville.

I realize there are many substantiated reasons to deny the conditional use permit and notify Bituminous Roadways that their proposed asphalt plant is not permitted in Roseville, MN. Again, you have many comment letters to reference, and hopefully this information provides you with additional cause.

Thank you,

Megan Dushin
2249 St. Stephen Street
Roseville MN 55113

Odor Calculations

Conversion from ug/m^3 to ppb: MolWeight * ppb = 24.45 * ug/m^3

NE corner of property line
34.08 * ppb = 24.45 * **21.54ug/m^3**
34.08*x* = 526.653
x = **15.45ppb** or .01545ppm

Golf course
34.08 * ppb = 24.45 * **3.63ug/m^3**
34.08*x* = 88.75
x = **2.61ppb** or .0261ppm

Nearest residence
34.08 * ppb = 24.45 * **2.95ug/m^3**
34.08*x* = 72.13
x = **2.12ppb** or .0212ppm

Attachment J

November 21, 2010

To: Patrick Trudgeon
Director, Department of Community Development
City of Roseville

From: Gerald Larson
2180 St. Stephen St.
Roseville, Mn 55113

Dear Mr Trudgeon.
Please consider my remarks in your decisions and recommendations regarding the asphalt plant proposed by Bituminous Roadways, and its consistency with the existing Roseville Zoning Ordinance, that is, as the code as it existed prior to the date on which the Roseville City Council specifically prohibited Asphalt Plants. My remarks below are the same as I made in a letter which I sent to Mayor Klausing and each of the City Council members dated November 5, 2010.

I have reviewed the EAW prepared by the MPCA on the proposed plant, and contrasted data from the EAW with various provisions of the Roseville Zoning Code. I believe a fair analysis clearly shows the proposed plant could not meet a number of the Performance Standards in the current Roseville Code (Code). That fact alone should lead the Roseville City Council to reject the proposal. All permit applications should be denied.

Recall that the Code itself points out (1001.01.A), "The provisions of this Zoning Title shall be **minimum requirements** adopted to protect the public health, safety, morals, comfort and general welfare of the people."

And further, "Said restrictions and regulations are for the purpose of protecting and enhancing the character, stability, and vitality of residential neighborhoods as well as commercial areas, … and to provide compatibility between different land uses." (1001.01.B)

The Code itself is also very clear that any proposed use should be denied which does not meet various Code provisions, including the performance standards. This is set out unambiguously at 1001.2, Scope:

"…no building, structure or land shall be occupied or used which is not in conformity with the regulations and terms of this title."

Against this backdrop, please consider the following:

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007.01 D Performance Standards
Performance Standard 1 Noise: Any use established in an industrial district shall be so

operated that no noise resulting from said operation which would constitute a nuisance is perceptible beyond the premises. This does not apply to incidental traffic, parking and off-street loading operations.

As indicated in the EAW at pages 29-31, noise attributable to the proposed asphalt plant would extend beyond the premises. Many of us living in nearby neighborhoods believe the EAW seriously understates the noise levels associated with the proposed plant, and in particular the crushing operation. Both the operation of the proposed plant itself, and in particular the crushing operation, are likely to produce greater noise levels than used in the EAW analysis.

Further, we must not confuse the MPCA noise standards and findings in the EAW with the Roseville Code. MPCA noise standards apply to the exterior of particular land uses, e.g. the yard of a residence. The language in Roseville Performance Standard 1 relates to the noise level essentially at the property line of the noise generator, that is "beyond the premises." There is no doubt that nuisance level noise would extend beyond the premises of the proposed asphalt plant.

Performance Standard 2. Smoke And Particulate Matter: The emission of smoke or particulate matter is prohibited where such emission is perceptible beyond the premises to the degree as to constitute a nuisance.

There should be no doubt that the proposed plant could not meet the standard found above. Data in the EAW, at pages 19-22, show the proposed plant would produce readily detectible particulate emissions beyond the premises. Further, as acknowledged in the public meeting at Roseville in August, MPCA staff indicated that emission control technology at the proposed plant have not yet been used in similar facilities, making the emissions information suspect and possibly understating the impact.

Further, the proposed site will have huge stockpiles of material, see Figure 4 of the EAW. These eight separate piles include aggregate, uncrushed asphalt and concrete rubble, crushed asphalt and concrete, aggregate, sand, shingles, asphalt millings, and sand. The proposed site would contain more than 112,000 square feet of ground area containing piles of exposed material. More importantly, these are three dimensional piles, each of which is 30 or more feet in height. Therefore, the surface area of exposed rubble and crushed material containing fine particulate is substantially greater than the 112,000 sq. ft. These piles would be exposed to wind 12 months a year, regardless of whether the plant would be operating or not. As shown on Figure 4 of the EAW these piles are in close proximity to the proposed site boundaries, indeed both the concrete rubble and asphalt rubble piles are shown directly adjacent to the property lines.

There can be no doubt that the proposed asphalt plant would result in particulate matter being perceptible beyond the premises to the degree as to constitute a nuisance.

Performance Standard 3. Toxic Or Noxious Matter: No use shall, for any period of time, discharge across the boundaries of the lot wherein it is located, toxic or noxious matter of such concentration as to be detrimental to or endanger the public health, safety, comfort or welfare or cause injury or damage to property or business.

Noxious matter is defined in the Code at 1002.02, "Noxious Matter: material which is capable of causing injury or malaise to living organisms or is cable of causing detrimental effect upon the health or the psychological, social, or economic well being of human beings."

There can be no doubt that the proposed plant cannot meet this performance standard. There is ample testimony in the record about the anxiety of preschool operators near the proposed site. There is evidence in the record about concerns articulated by nearby property owners/operators about the impact of the proposed plant on their land uses and values. There is the stated demonstrable effects upon the food processing operations of the Old Dutch Company. There is evidence submitted in comment letters on the EAW about the effect of an asphalt plant on the value of nearby property.

Performance Standard 4. Odors: The emission of odorous matter in such quantities as to be readily detectable beyond the boundaries of the immediate site is prohibited.

There can be no doubt that the proposed plant cannot meet this performance standard. There is ample evidence in the EAW (pages 28-29) and presented at the Public Meeting in August that odors will be readily detectible beyond the boundaries of the site. The information in the EAW (which many residents believe substantially understates the likely odor transmissions) indicates that odors caused by the operation of the proposed asphalt plant would move beyond the boundaries of the site.

Old Dutch Company, one of the major employers in the city, has indicated that odors attributable to the proposed asphalt plant would travel to its operations at such a level as to substantially impair their operations, perhaps causing the company to cease operations in Roseville. This alone should be sufficient to disallow the proposed plant from operation.

Zoning Ordinance Conclusion

It is clear that the City of Roseville Zoning Ordinance prohibits the operation of the proposed plant analyzed in the EAW. At the very least it cannot meet at least four of the Performance Standards for industrial use zones. As indicated at the beginning of my letter, these performance standards describe the "minimum standards" which are to be applied to proposed uses.

Conditional Use Permit Considerations
The Roseville Code criteria for issuing of a conditional use permit are found at 1013.13D.

Criterion 1. Impact on Traffic.
Certainly the movement of nearly 700 heavy commercial vehicles (trucks), many loaded with hot mix asphalt, would have an adverse impact on local traffic. The EAW in its traffic analysis focused on the freeway system and gave only cursory attention to the local street system. Local traffic faces low levels of service on several of the freeway ramps under current conditions. These would be worsened by the addition of several hundred trucks.

Criterion 2. Impact on Parks, streets and other public facilities
This proposed asphalt plant would have a substantial adverse effect on the Gross Golf Course, located directly west of the proposed plant. The Golf Course is not located in Roseville, and perhaps the City Council may not consider effects outside the city. However, the operation of the proposed plant would have a very adverse visual effect on the Golf Course, as well as from other aspects of the plant operation, e.g. noise, dust, odors, etc.

In addition, as alluded to above, the ability of the local street system to safely accommodate the operation of several hundred additional large trucks is problematic.

Criterion 4. Impact of the use on the market value of contiguous properties.
There is research that the presence of an asphalt plant adversely affects the market value of contiguous properties. Such research is usually site specific, and would not have a direct correspondence to the plant proposed by Bituminous Roadways. However, this research establishes a sufficient cause that would require a comprehensive market analysis prior to approving any Conditional Use permit which would allow the proposed plant to be constructed or operated. A comprehensive market analysis would have to be performed which would examine market values of nearby property values with and without the proposed asphalt plant. While I am not an appraiser, I would believe that such an analysis would show substantial adverse market value impacts. These in turn would likely translate into adverse impacts to Roseville and School District property tax receipts.

Criterions 5. Impact on the general public health, safety and welfare.
The public safety of residents and others would be reduced by the introduction of hundreds of additional truck trips in the vicinity. It would be reduced by the possibility of accidents with those trucks, many of which would be carrying 19 tons of hot asphalt mix at a temperature of hundreds of degrees.

The general welfare of the City of Roseville, its residents, businesses and visitors would

not be served by the construction and operation of the proposed Asphalt Plant.

Conclusion

The City Council of the City of Roseville must take the steps necessary to insure the conditions of its Zoning Ordinance are upheld. This requires the City to deny the Bituminous Roadway Company permits or approvals necessary to construct and operate the proposed asphalt plant, and to so inform the company of its Findings.

Attachment K

November 22, 2010

To: Patrick Trudgeon
Director, Department of Community Development
City of Roseville

From: Gerald Larson
2180 St. Stephen St
Roseville, MN

Gary Grefenberg
91 Mid Oaks Lane
Roseville, MN

Re; Proposed Asphalt Plant
Conditional Use Permit Application

Dear Mr. Trudgeon

As residents of Roseville. we have a strong interest in the proposal by Bituminous Roadways to construct and operate an asphalt plant in Roseville. We respectfully submit this analysis to the City Council and Staff of Roseville.

We have analyzed the Conditional Use Permit (CUP) application and associated documents developed by Bituminous Roadways in support of their application for a Conditional Use Permit for their proposed asphalt plant. We have developed the comments found below. Please accept this analysis for use in development of the recommendations which you will be presenting to the Roseville City Council for their action on this item

Analysis of C.U.P Application Narrative for a
Proposed Bituminous Roadways Inc Facility - Roseville
Dated March 6, 2009

The above titled document was developed by Bituminous Roadways as part of its application for a Conditional Use Permit from the City of Roseville to construct and operate an asphalt plant.

The document is so scant on detail that it is difficult to review. It contains almost no information. It is perhaps best seen as a kind of cheerleading exercise for the company and the proposed asphalt plant.

A close reading of the document reveals substantial errors of commission and omission. These errors are such that even if the Roseville City Council were in fact inclined to approve the conditional use permit, the applicant should be required to submit a new application with updated, thorough and accurate information.

Item 1. The document is evasive to the point of being disingenuous.

For instance, the proposed asphalt plant in the CUP was marketed to the city and public as a "warm mix asphalt" facility. Yet, the company in its application and narrative does not really say it's a warm mix plant, but rather that the "plant will be capable of production of warm mix asphalt." (page 2)

Later, the document says "The plant will utilize technology allowing the production of warm mix asphalt." (page 6)

Warm mix was presented as being more environmentally friendly than hot mix. The application says that warm mix allows for reduced energy consumption, lowered emissions, and the elimination of visible smoke and odor. (page 6)

In Bituminous Roadways testimony both to the Roseville City Council (May 18, 2009) and to the Public Works, Environment, and Transportation Commission (May 26, 2009) it almost exclusively emphasized the warm mix nature of the proposed plant.

Yet, the EAW circulated during the summer of 2010 describes the plant as a "hot mix" plant at pages 3 and 4 of the EAW.

It is impossible not to conclude that the application and narrative document submitted for the CUP in 2009 is misleading. The City Council cannot be expected to approve an application when it contains such a fundamental misstatement as even to the nature of the plant itself. This should lead the Council to turn down the CUP application. If the company should decide to attempt to move the proposed plant forward, the Council should require a new CUP application.

Item 2. CUP Application Narrative discussion on Impact on Traffic

The "data" presented in this section of the CUP narrative is seriously discrepant from that presented in the EAW. The CUP narrative indicates, "A peak day will generate approximately 250 round trip truck visits." (page 4) Further, that same section indicates that, "averaged over the 8 month construction season, the facility will generate approximately 120 truck round trips per day." (page 4)

In the EAW circulated in the summer of 2010, the "Standard Production Scenario" is said to generate 594 truck trips per day. (page 18) The "Maximum Production Scenario" is indicated in the EAW to generate 674 truck trips per day.(page 18)

So, the standard production scenario will not be 120 truck trips, but nearly 600 truck trips.

The Peak Day, or Maximum Production Scenario, will not produce 250 truck trips per day, but nearly 700 truck trips

These are serious misstatements. These are not rounding errors, but rather are errors of more than 100 percent in each case.

Once again, it is impossible not to conclude that the CUP application and narrative is significantly misleading. This should lead the Council to turn down the CUP application and require a new CUP application if the proposer should choose to move forward.

Item 3. Compatibility with Contiguous Properties
The analysis in the CUP application and narrative on this point is non existent. They did not try to determine if an asphalt plant would be compatible with neighbors, but rather simply said they would construct a berm and put up a fence. This completely misses the point of the question. Their avoidance of analysis on this point leads one to suspect that they knew the proposed plant would not be compatible with neighbors, and to not respond to the item in any meaningful manner.

Item 4. Impact on Market Value of Contiguous Properties
The CUP application and narrative offers the completely unsubstantiated conclusion that, "No impacts to contiguous property values or other property in the near vicinity is expected."

Additionally, the CUP Narrative actually asserts that "...the effect on the neighboring properties is expected to be neutral to positive..."

The basis for such an assertion is not stated. We are convinced no professional market analysis was performed. It appears now that they did not even have conversations with neighboring commercial property owners. Their assertion that the proposed asphalt plant may actually increase the market value of neighboring properties is such a baseless self serving statement that it is difficult to even respond to it.

Item 5. Impact on Public Health, Safety, and General Welfare

Sub-items: Air Emissions and Odor and Warm Mix Pavement Technology
Multiple readings of this section submitted by the company would lead to the conclusion that no odor would leave the plant site. This is due, the company says, to the particles which carry the odor being removed and recycled back into the process.

This section of the CUP narrative (page 5) says that the warm mix technology will provide for the "elimination of visible smoke and odor."

Data in the EAW and EAW background information clearly indicate that this not the case for the proposed plant. The EAW background information and that presented by MPCA staff at the Roseville meeting this summer clearly indicate that H2S will leave the property.

Once again, it is impossible not to conclude that the Bituminous Roadways CUP application ns misleading. This should lead the Council to turn down the CUP application and require a new CUP application if the proposer chooses to move forward.

Sub-item: Noise

This section of the CUP application and narrative asserts that the site will be in compliance with state noise standards. It is the noise criteria of the City that must be met in order for the proposed plant to receive an approved CUP.

Further, the narrative in the noise section is absolutely silent on the issue of railroad noise. The CUP application narrative at page 1 and again at page 4 indicates that some proportion of the aggregates used at the proposed plant are expected to be provided via rail. Railroad operations are noisy. The noise associated with rail operations such as moving and placing the rail cars, and the noise associated with dumping aggregate from the cars and conveying it to the proposed stockpiles, is not even mentioned

Once again, it is impossible not to conclude that the CUP application and narrative is misleading. In the case of noise it is misleading through a virtual absence of analysis and full disclosure of the possible sources of noise, and the magnitude and duration of noise. This should lead the Council to turn down the CUP application and require a new CUP application if the proposer should choose to move forward.

Conclusion

A fair analysis of the CUP Application and Narrative and further data presented in the EAW circulated this past summer leads to the conclusion that the CUP Application contains numerous very serious errors and omissions. These errors, in some cases errors exceeding 100 percent, should lead the Roseville City Council to Reject the Conditional Use Application submitted by Bituminous Roadways.

Attachment L

Moss & Barnett
A Professional Association

November 23, 2010

Members of the Roseville City Council
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Re: Bituminous Roadways Proposed Asphalt Plant
Our File No.: 51429.2

Dear Members of the City Council:

We represent Gladstone Commercial Corporation, and its affiliate, UC06 Roseville MN LLC ("Gladstone"), the owner of the office building ("Unisys Building") at 2501 Walnut Street (also 2470 Highcrest) in Roseville. Gladstone's building is across the Walnut and Terminal intersection from where Bituminous Roadways ("Bituminous") proposes developing an asphalt plant. In letters dated August 11, 2010 and September 10, 2010 to the MPCA (the "Letters"), Gladstone stated in detail the results of a technical analysis of the EAW record and the reasons for its request that the MPCA require an EIS. The Letters are attached to our September 21 letter to the City Council summarizing the deficiencies in the EAW. We understand that after the MPCA suspended the EAW process, the Council scheduled a special meeting to be held November 29, 2010 to consider whether the proposed project is a legal use under the City Code and alternatives for handling the application by Bituminous for a conditional use for outdoor storage. Gladstone requests that the Council (i) find that the asphalt plant is a prohibited use under the current Code, (ii) determine that the asphalt plant was not a permitted use under the Code as it existed prior to the Text Amendment effective October 18, 2010, (iii) make appropriate findings terminating furthering consideration of the conditional use application, and (iv) dismiss the application.

To support Gladstone's request, we offer into the City record this letter analyzing certain provisions of the Code, including the performance standards for the I-2 Industrial District and the following items, copies of which are attached: the Letters; our September 21 letter to the Council; and the November 18, 2010 letter by air quality expert Patrick J. Mulloy analyzing odor issues relating to the asphalt plant. **Mulloy's analysis shows that the project as described by its proponent does not and cannot satisfy the performance standard for odor.** The legal analysis and factual record are conclusive. The proposed asphalt plant is not a legal use.

1. The City Code expressly prohibits an asphalt plant in the Industrial District.

The Text Amendment effective October 18, 2010 clarifies Section 1007.15B, and expressly states that asphalt plants are a prohibited use. Minnesota law is well established that the controlling law for zoning decisions is the law in effect at the time of the decision. *Rosecliff Landscape Nursery v. Rosemount,* 467 N.W.2d 641 (Minn. Ct. App. 1991); see also *Property Research and Development Co. v. City of Eagan*, 289 N.W.2d 157, 158 (Minn. 1980).

In the *Rosecliff* case, Rosemount amended the zoning ordinance after the date of an application for a building permit and site plan approval, but before final action on the application. The Court of Appeals stated that the applicant's "right to rely on the initial ordinance was subordinate to the city council's power to enact a different zoning regulation." Id. at 644. Whatever right the applicant may have had to approval of the building permit application and site plan under the prior ordinance was lost when the city amended its ordinance. The applicant had not acquired a vested right to construct its project in accordance with the law in effect when it made its application. The amended ordinance controlled.

The situation with the asphalt plant is nearly identical. Bituminous had no vested right in the prior Code to have the application reviewed under the prior Code. The City has the authority to amend the Code in accordance with its Comprehensive Plan and legislative policy determinations. The issue of whether the outdoor storage would satisfy the criteria for a conditional use was undecided when state law stopped the City process. The City amended the Code at a time when the City had no legal authority to approve or deny the application regardless of the language of the Code. There was no wrongful conduct or act by the City and upon which Bituminous detrimentally relied, and requiring consideration of the application under the old Code. Id. at 644. The zoning laws of the City are those currently in effect and the ones the Council should use to review the proposed project.

2. The asphalt plant is not a legal use under the prior ordinance.

a. The City Attorney correctly stated in a October 14, 2010 memo, that there are features of the proposed project that are not a permitted use nor a conditional use under Section 1007.015 as it existed before the amendment. That remains true. Crushing is not listed as either a permitted or conditional use in Section 1007.015, and is therefore illegal at the site. The crushing operation is an integral part of the project and is intended as a continuing and permanent part of that operation. Accordingly, the crushing is not a temporary use and cannot qualify as an interim use.

b. The asphalt plant operation was not identified as a permitted or conditional use before the amendment and was never a legal use. The code establishes permitted, conditional and "not permitted" use in the Industrial Districts by designating specific industrial uses and listing particular activities and products. Examples include the following: glass products; ice, dry and natural; insecticides; machine tools; metal and metal products; paper products; rubber products; soaps and detergents; sporting athletic equipments; tools and hardware. The October amendment clarifies the Code as it existed when Bituminous applied for a conditional use. Many of the uses that are now listed as prohibited industrial uses were not listed in the previous version of Section 1007.15 as conditional or permitted and were already prohibited. Asphalt production was already excluded from the list of permitted and conditional uses. The listed use that seems most germane for asphalt production is "chemicals", but the Code only refers to chemicals not involving noxious odors or dangers from fire or explosives. By listing chemicals in that manner, it is logical to conclude that chemical production involving noxious odors, such as associated with the asphalt plant, was not, and continues not to be a permitted use.

c. The asphalt plant and the outdoor storage of piles of rubble are so fully integrated with each other that the consideration of a conditional use for outdoor storage necessarily has to include consideration of the asphalt plant. When the Council first reviewed the project, members expressed reluctance to evaluate the outdoor storage independently of an analysis of the asphalt plant. That reluctance was well-founded. The uses do not function independently, and the effects of the outdoor storage cannot be isolated from those of the asphalt plant. The Council should consider the project as a whole. The Council has the authority to determine that the Code treats the outdoor storage and asphalt plant as linked, and if necessary, to affirm that point, including by making appropriate modifications to the Code.

3. The factual record establishes that the project does not meet the requirements and performance standards set forth in Section 1007.01 of the City Code.

The City record already provides ample factual grounds for the Council to conclude that the project, as proposed, does not meet the performance standards in Section 1007.01.D, and therefore is prohibited. The City developed a substantial record when it decided to request an EIS. Public comments to the Council, and the Letters and expert reports and the comments made to the MPCA, all of which are available to the City, demonstrate that the project does not and cannot meet the performance standards. The attached November 18, 2010 letter from Patrick J. Mulloy, the expert who completed the technical analysis for the Letters, **unequivocally establishes that the project fails to meet the standards.**

a. **Noise will constitute a nuisance.** Noise will be perceptible beyond the site itself. The EAW purports to show that the asphalt plant operation complies with MPCA's noise standards, but the EAW fails to consider the actual use of the properties adjacent to and nearby the site, and fails to consider a number of specific site and activity features. (See pages 3 - 5 of Gladstone's August 11 Letter.) The EAW comments regarding sound barriers are vague and there is no plan for a sound barrier high enough to deflect noise heading toward the Gladstone building or other sensitive uses. Notably, the analysis does not consider what happens when the activities at the site operate concurrently nor the penetrating sound of truck operations, including backup signals and the clanking of gates as rubble is moved around the site. The Council should keep in mind that the rubble piles may be as high as 40 feet and that trucks may be operating well over the height of any contemplated "buffering" shown in the plans provided to the City. As such, the applicant has yet to satisfy the performance standards. Extensive additional work is required before the City can conclude that the standard could be satisfied.

b. **Smoke and particulate matter will be perceptible beyond the premises and will constitute a nuisance.** With regard to particulate matter, the EAW assumes that the mitigation technology works as well as purported, which the Letters note has yet to be demonstrated. Further, the EAW focuses on health risks. It does not thoroughly consider nuisance dust and the effect of that dust on the existing nearby uses. (See pages 12 and 13 of the September 10, 2010 Letter.) These effects cannot be dismissed simply on the grounds that the property is in an I-2 Industrial District. Office use is a permitted use of the Gladstone building. Gladstone's air quality expert has confirmed that dust and particulate matter will be

drawn into the Gladstone building from multiple roof air intakes. Uses in the building, such as the data center, are sensitive to dust and particulates, and dust and particulates will interfere with those uses. The performance standard reflects the legislative decision that designation of the district as "Industrial" does not mean that the uses in the district must tolerate dust from other uses in the area. There is an abundance of evidence in the record establishing that particulate matter will be perceptible beyond the premises of the asphalt plant, and that regardless of the adequacy or inadequacy of the mitigation technology, the particulate matter will interfere with the use of adjacent properties.

c. **Toxic or noxious matter.** The asphalt plant emissions will contain a multiplicity of problematic materials serious enough to require an EAW and EIS. The City's standard does not require a demonstration that a use will violate MPCA health standards for the Council to find that the use will violate the performance standard. Even if the control technology works as advertised, emissions will cross the property line. They will impair the overall public health, safety, comfort and welfare of the area and cause injury or damage to property and businesses. The EAW analysis of toxic matter concerns the MPCA's health risk standards and asserts that at the property line the emissions do not violate that standard. The EAW assumes the effectiveness of the proposed control technology, but the Letters raise numerous problems with that assumption and the technical analysis it depends upon. The analysis described in the Letters shows that particulate matter will get past the property line. There will be adverse effects on other properties, including the Gladstone property and the Old Dutch property. Consequently the performance standard will not be satisfied.

d. **Odors will be readily detectible beyond the boundary of the immediate site of the asphalt plant.** The project as proposed **does not** satisfy the performance standard. There is no reason to proceed further with the any application regarding the project. Section 1007.01.D.4 of the City Code states:

> Odors: The emission of odorous matter in such quantities as to be readily detectible beyond the boundaries of the immediate site is prohibited.

The data in the EAW shows that the asphalt plant will violate this standard.

The Letters raise numerous concerns regarding the selection of odor standard in the EAW, the effectiveness of the mitigation technology, and the potential effect on adjacent property. The EAW asserts that "with controls in place, H_2S impacts at the property line and nearest residence are not expected to be significant." As described in the Letters, air quality expert Patrick J. Mulloy raised numerous concerns and questions regarding the effectiveness of the mitigation technology and the merits of the underlying odor modeling. Most importantly, for purposes of applying the performance standard there is one unassailable fact, **odors will be readily detectible beyond the boundaries of the immediate site.** This will occur even if the mitigation technology works as assumed in the EAW.

Figure 13 of the EAW depicts the Maximum Acute Risk Value associated with the levels of hydrogen sulfide concentration determined from the odor modeling completed for the EAW. That analysis concerns health risk standards. It does not respond directly to the performance standard. However, the concentration levels reported to consider the health risk can also be used to determine whether the odor associated with hydrogen sulfide can be detected. When the concentration of hydrogen sulfide is at a threshold level developed by the U.S. Department of Health and Human Services, fifty percent (50%) of the population can detect its distinctive rotten egg smell. When the concentration is higher than the threshold level, the percentage of people who can smell the odor increases. Mulloy analyzed the concentration levels reported in the EAW with respect to the odor detection threshold. He concluded as follows:

> During my review of the EAW and the related MPCA file, I reviewed the odor modeling completed with respect to the proposed asphalt plant. The modeling shows that when using the air quality control measures in the proposed air permit, odors from the plant (hydrogen sulfide (H_2S)) will be readily detectible beyond the property limits of the proposed site. The extent of the area in which the odors will be perceptible may depend on each individual. We do not know that the mitigation technology will be effective to the extent assumed by the model, and therefore may be perceptible in a larger area than shown by the EAW.
>
> I have specifically reviewed the odor discussion in the EAW. The EAW shows maximum concentrations of hydrogen sulfide (H_2S) of 21.54. It also shows maximum concentrations of hydrogen sulfide (H_2S) of 21.54 ($\mu g/m^3$) at the property line, 3.63 ($\mu g/m^3$) at the Gross National Golf Club, and 2.95 ($\mu g/m^3$) at the nearest residence. The Agency for Toxic Substances and Disease Registry (ATSDR), a federal public health agency of the U.S. Department of Health and Human Services, states that H_2S has "...a characteristic rotten-egg odor that is detectable at concentrations as low as 0.5 parts per billion (ppb). At 25° C, 1 ppb H_2S = 1.4 $\mu g/m^3$ and 0.5 ppb under the same conditions equal 0.7 $\mu g/m^3$. This concentration is accepted as the concentration level at which 50% of the population will detect the rotten egg odor associated with H_2S. The EAW provides a diagram of Acute Risk Impacts (Figure 13). The diagram shows Maximum Acute Risk values ranging from 0.46 to 0.02 plotted on a map of the area. Assuming that the risks at different locations are mathematical ratios of the concentrations in the modeled exhaust stream, converting the Max Acute Risk values to H_2S concentrations ($\mu g/m^3$) shows that at least 50% of the population will detect a rotten egg odor from H_2S in an area from roughly County Road C West on the north; Long Lake Road on the east; County Road B West on the south; and the second and tenth fairways of the Gross National Golf Club to the west. The table below converts Max Acute Risk values to approximate H_2S concentrations:

Maximum Acute Risk Values

Max Acute Risk	H2S Concentration ($\mu g/m^3$)	H2S Odor Threshold -ATSDR ($\mu g/m^3$)
0.46	21.54	0.7
0.22	4.99	0.7
0.20	4.54	0.7
0.16	3.63	0.7
0.12	2.72	0.7
0.10	2.27	0.7
0.08	1.82	0.7
0.06	1.36	0.7
0.04	0.91	0.7
0.02	0.45	0.7

The analysis shows and establishes that the odors will be readily detectible beyond the boundaries of the immediate site. Hydrogen Sulfide gas is a health risk and Hydrogen Sulfide odor is objectionable and a nuisance.

The conclusion is clear: odors will be detectible well-beyond the property line, violating the performance standard. The violation is prohibited and the asphalt plant is prohibited.

4. The project cannot satisfy the conditional use permit standards.

The EAW process intervened in the City's process for determining whether the project satisfied the conditional use criteria for outdoor storage. If the Council determines that in fact the asphalt plant is a legal use, the EAW process should still proceed. Assuming for the sake of argument, however, that at some point the City undertakes the conditional use analysis, interested parties, including Gladstone, need an opportunity to comment. The conditional use criteria do not mirror the environmental analysis for the EAW, and the record has expanded from what was previously available to the City. Even at that, the record should be supplemented to address the conditional use criteria. Nonetheless, the City has legally sufficient reasons to deny the conditional use application.

Regardless of any ultimate conclusion by MPCA as to public health risks, the asphalt plant will have a direct and negative effect on the adjacent properties. With respect to impact on the general public health safety and welfare, the record is replete with factual matters raising objections and concerns regarding the impact over and above any health risk determination by the MPCA. Odors and particulates are the most obvious problems.

The extensive outdoor storage and the asphalt plant will have a direct and negative effect on the overall development pattern and the use and development of adjacent properties, including,

but not limited to, Gladstone's. The piles of rubble will not be adequately buffered and anyone traveling to and from Gladstone's building and the building users will be in an area characterized by piles of rubble. The 40 feet tall piles of rubble would directly undermine the marketability of Gladstone's office building. Other properties will suffer the same ill-effects.

The previous analysis by the Planning Commission was undertaken without the benefit of the extensive public discussion, and the analysis and scientific study completed by Gladstone, Old Dutch and others, which has taken place during recent months. The initial review relied on the concept that designation of the area as an I-2 Industrial District was sufficient grounds for making findings regarding the conditional use criteria. That approach fails to take into account the multiplicity of permitted uses in the area that would be adversely affected by the outdoor storage as well as the outdoor storage and asphalt plant taken together. No conditions in the proposal or any that would enable the project to proceed, would solve the problem.

It would distort reality to consider the outdoor storage as if the asphalt plant were also not part of the proposed use. The asphalt plant is the only reason for the outdoor storage. Future outdoor storage of the type proposed by Bituminous would not satisfy the criteria or enable the Council to make the findings required for granting the conditional use.

Thank you for the opportunity to comment regarding the asphalt plant and to make certain that the record includes the Letters, our September 21, 2010 letter, the November 18, 2010 letter from Patrick Mulloy, and this letter.

Very truly yours,

Paul B. Zisla
Attorney At Law
P: (612) 877-5328
ZislaP@moss-barnett.com

PBZ/cag
Enclosures
cc: Mr. William Malinen, City Manager (w/encl.)
Mr. Chris Massey (w/encl.)
Mr. Chris Gliedman (w/encl.)
Ms. Caroline Bell-Beckman (w/encl.)
1701298v3

Mulloy Environmental Services, Inc.
3636 Garfield Ave. S.
Minneapolis, MN 55409
(612) 825-5857

November 18, 2010

Members of the Roseville City Council
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Re: Bituminous Roadways Proposed Asphalt Plant

Dear Members of the City Council:

I am the environmental consultant retained by Gladstone Commercial Corporation and UC06 Roseville MN LLC to review the environmental assessment worksheet and proposed air permit for the proposed Bituminous Roadways Roseville Asphalt Plant. My resume is attached hereto. I reviewed the EAW and proposed air permit and examined the MPCA file with respect to the EAW and the proposed air permit. The letter dated August 11, 2010 from UC06 Roseville to Kevin Kain of the Minnesota Pollution Control Agency, and the letter dated September 10, 2010 from the law firm of Moss & Barnett to Mr. Kain and Terik Hanafy of the MPCA (together, the "Letters"), incorporate the technical work that I completed (copies are attached). I am responsible for the analysis and technical substance of the Letters. I examined the Letters, as signed and delivered to the MPCA. The Letters accurately state the results of my analysis and findings. This letter incorporates the Letters without qualification, and you may rely on the Letters as accurately stating my analysis. I completely concur with each and every statement in the Letters regarding the Asphalt Plant and the EAW.

During my review of the EAW and the related MPCA file, I reviewed the odor modeling completed with respect to the proposed Asphalt Plant. The modeling shows that when using the air quality control measures in the proposed air permit, odors from the plant (hydrogen sulfide (H_2S)) will be readily detectible beyond the property limits of the proposed site. The extent of the area in which the odors will be perceptible may depend on each individual. We do not know that the mitigation technology will be effective to the extent assumed by the model, and therefore may be perceptible in a larger area than shown by the EAW.

I have specifically reviewed the odor discussion in the EAW. The EAW shows maximum concentrations of hydrogen sulfide (H_2S) of 21.54. It also shows maximum concentrations of hydrogen sulfide (H_2S) of 21.54 ($\mu g/m^3$) at the property line, 3.63 ($\mu g/m^3$) at the Gross National Golf Club, and 2.95 ($\mu g/m^3$) at the nearest residence. The Agency for Toxic Substances and Disease Registry (ATSDR), a federal public health agency of the U.S. Department of Health and Human Services, states that H_2S has "...a characteristic rotten-egg odor that is detectable at concentrations as low as 0.5 parts per billion (ppb). At 25° C, 1 ppb H_2S = 1.4 $\mu g/m^3$ and 0.5 ppb under the same conditions equal 0.7 $\mu g/m^3$. This concentration is accepted as the concentration level at which 50% of the population will detect the rotten egg odor associated with H_2S. The EAW provides a diagram of Acute Risk Impacts (Figure 13). The diagram shows Maximum Acute Risk values ranging from 0.46 to 0.02 plotted on a map of the area. Assuming that the risks at different locations are mathematical ratios of the concentrations in the modeled exhaust stream, converting the Max Acute Risk values to H_2S concentrations ($\mu g/m^3$) shows that at least 50% of the population will detect a rotten egg odor from H_2S in an area from roughly County Road C West on the north; Long Lake Road on the east; County Road B West on the south; and the second and tenth fairways of the Gross National Golf Club to the west. The table below converts Max Acute Risk values to approximate H_2S concentrations:

Maximum Acute Risk Values

Max Acute Risk	H2S Concentration (µg/m3)	H2S Odor Threshold - ATSDR (µg/m3)
0.46	21.54	0.7
0.22	4.99	0.7
0.20	4.54	0.7
0.16	3.63	0.7
0.12	2.72	0.7
0.10	2.27	0.7
0.08	1.82	0.7
0.06	1.36	0.7
0.04	0.91	0.7
0.02	0.45	0.7

The analysis shows and establishes that the odors will be readily detectible beyond the boundaries of the immediate site. Hydrogen Sulfide gas is a health risk and Hydrogen Sulfide odor is objectionable and a nuisance. Thank you for the opportunity to provide these comments affirming the statements in the Letters to the MPCA, and the additional supplemental comments contained in this correspondence.

MULLOY ENVIRONMENTAL SERVICES, INC.

By _____

Patrick J. Mulloy, President

Patrick J. Mulloy

President
Mulloy Environmental Services, Inc.

Air Quality, Regulatory and Reporting Services

Pat Mulloy's 25 years environmental expertise includes developing state and federal air permits, and permit modifications, various aspects of New Source Review and Prevention of Significant Deterioration projects, Best Available Control Technology review, and Section 112(g) Review. He has also worked on NPDES permits and has helped clients obtain variances from state water quality standards. Pat Mulloy has a demonstrated track record working with regulators to expedite permits for his clients and to maximize their flexibility. Experience negotiating regulatory agreements for state agencies and writing state rules has made him an effective advocate for business.

Regulatory experience includes developing the Minnesota State Implementation Plan (SIP) for Sulfur Dioxide and Particulate Matter nonattainment areas, the Minnesota New Source Review program, the Minnesota Offset Rule, and other rules and SIP revisions related to air quality issues. Also negotiated administrative agreements between federal, state, regional and local units of government, developed flexible permitting approaches, and expedited regulatory agreements.

Project Management experience has included managing state-wide and multi-state programs, evaluating various project proposals, prioritizing projects for funding, and monitoring project performance to ensure compliance with funding goals. Project evaluation has required technical understanding of various environmental restoration approaches and an understanding of various agency funding requirements. Project development has involved working with multiple funding sources, agencies, governmental units, businesses and citizens' groups. One project that won national recognition involved coordinating agencies from two federal regions, two states, five counties, several cities and a citizen's group.

Air Quality

- Air Dispersion modeling for an air toxic review for a Texas facility that manufactures and reconditions off shore oil rigs (2010).
- Environmental assessment and air toxics review for a Minnesota facility that processes recovered light bulb glass (2010).
- Air permitting, air compliance for Minnesota Tribal Community (2005 – 2010).
- Air Permitting, environmental compliance for Minnesota malting facility (2002 – 2010).
- Air permits for two Minnesota non-metallic minerals processing plants (2010).
- Air Permit, process environmental review, for Minnesota Boat manufacturer (2010).
- Air permits for four furniture plants in Kentucky and Minnesota (2007 - 2009).
- Air Permit assessment for Minnesota trucking firm (2009 – 2010).

- Air permit and environmental assessment for Minnesota biodigester (2008 – 2009).
- Air Permitting for peak shaving generator for Minnesota community and technical college (2008)
- Managed major New Source Review for a Minnesota multi-fuel biomass combined heat and power plant, including NOx, CO and PM BACT, air toxics review, air dispersion modeling, biomass emission factor development, PSD permitting (2005 – 2007).
- Evaluation of environmental aspects of biomass combustion and gassification technologies for biomass combined heat and power plant engineering design.
- Biomass fuel study for a biomass power plant including fuel sources, combustion characteristics and emission rates (2000 – 2004).
- Major air permit modification for Minnesota kitchen cabinet manufacturer (2006).
- RACT review, SIP modification for Tennessee boat manufacturer (1999 - 2000).
- BACT, LACT and MACT analysis, major modifications, Title V permits for two Wisconsin boat manufacturing plants (1999 – 2002).
- Title V air permits, BACT, MACT and air toxics analyses for three Michigan Boat manufacturing plants (2000 – 2005).
- BACT, MACT and air toxics review for Michigan plastics plant (1994).
- Major air permit modifications for boat manufacturing plants in Minnesota and Florida (1998 – 2005).
- Air toxics reviews for manufacturing facilities in Michigan, Wisconsin, Minnesota and Pennsylvania (1997 – 2004).
- Background research and technical assistance for an oil refinery undergoing an EPA multimedia investigation (1997 – 1999).
- Permit modification to install a wood fired boiler at a furniture plant (1998).
- Several permit modifications for circuit board manufacturer (1992 – 2004).
- Two Section 112(g) permit modifications for Minnesota boat manufacturers (1999 – 2002)
- Property transfer compliance work for Seven boat manufacturing plants (2000).
- Title V permit and BAT analysis and several permit modifications for Pennsylvania plastics manufacturer (1998 – 2007)
- Permit modification involving Section 112(g) review for Florida Boat manufacturer (1999).
- Air compliance assistance, Title V permit, several modifications for mineral processing facility.
- Air dispersion modeling for Florida boat manufacturer to evaluate potential for odor issues due to ventilation system modifications (2002).
- Air compliance assistance for several large boat manufacturers (1997 – 2007).
- Air compliance assistance for plastic manufacturer (1997 – 2007).
- Air permit transfers, compliance review for 12 pipeline terminals in 6 states.
- Prepared air permit applications for facilities in Minnesota, Wisconsin, Michigan, South Dakota, Iowa, Nebraska, Kansas, Illinois, Indiana, Ohio, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, Florida, Alabama, and Michigan (1998 – 1999).

- Testified on revisions to Minnesota Odor Rule for printers, circuit board manufacturers, furniture manufacturers, and two trade associations (1997).
- Developed and managed air quality program that achieved $3.8 million in sales and prepared over 150 air permit applications over a five-year period (1992 – 1997).
- Major air permit modification involving Prevention of Significant Deterioration review and Best Available Control Technology review for corn processing plants in Minnesota and Nebraska. Permit applications involved calculating fugitive emissions from truck traffic and determining increase in fugitive emissions due to expansion (1993 – 1994).
- Title V operating permit applications for several food processing plants in Minnesota, Kentucky, Indiana, Iowa, Nebraska and Kansas. Permit applications included calculating fugitive emissions from truck traffic and criteria pollutant emissions from combustion sources. Evaluated fugitive emissions from process equipment, material handling and storage (1992 – 1997).
- Air permit assessments for several food processing plants and manufacturers in Minnesota. Evaluations included calculation of criteria pollutant emissions from combustion and process sources and fugitive emissions from processes, traffic, and material handling and storage (1992 – 1997).
- Air permit applications and permit assessments for aggregate mining operations. Air permits involved calculating fugitive dust from truck traffic on haul roads, loading and unloading and storage piles (1992 – 2004).
- Air permit applications and assessments for grain elevators in Minnesota. Applications involved calculating criteria pollutant emissions from loading and unloading, truck traffic, and various fugitive emission sources (1992 – 1997).
- Applications for permit modifications and operating permits for printers in Minnesota and Michigan. Applications involved calculating criteria and toxic pollutant emissions from surface coating operations, printing, storage, and material handling (1992 – 1997).
- Applications for permit modifications and operating permits for several spray painting operations in Minnesota. Applications involved calculating emissions from spray painting, material handling and storage, and preparation. Calculated fugitive emissions from sawdust piles (1992 – 1997).
- Air permit applications for several furniture manufacturers and building products manufacturers in Minnesota (1992 – 2007).
- Review of BACT Determinations for oriented strand board plants in Minnesota, Michigan, Wisconsin, Georgia, Texas, Virginia, Florida, North Carolina, Louisiana, Alabama and Mississippi for purposes of planned plant expansions (1994).
- Title V permitting for Minnesota Paper Mill (1995).
- Calculated storage tank emissions from several tank farms (1998 – 2000).
- Negotiated administrative orders for Twin Cities and Rochester PM_{10} State Implementation Plan. Negotiations included EPA, MPCA, and facility staff. Involved reviewing and approving methodologies for calculating point source and fugitive emissions for waste water treatment facilities, barge facilities, a steel mill, grain handling facility, aggregate mine, two asphalt plants, and other facilities.

Fugitive emission calculations included storage piles, truck traffic on haul roads, unpaved public roads, paved public roads, and unvegetated areas. Negotiated implementation of control measures to bring area into attainment for particulate matter (1987 – 1992).

- Negotiated administrative orders for Twin Cities and Rochester Sulfur Dioxide State Implementation Plan. Negotiations included EPA, MPCA, and facility staff. Involved reviewing and approving methodologies for calculating point source and fugitive emissions for major combustion sources including several power plants, district heating stations, large combustion sources and two oil refineries. Negotiated implementation of control measures to bring area into attainment for sulfur dioxide (1987 -1982).
- Prepared Total Suspended Particulate State Implementation Plan for Duluth harbor area. Project involved reviewing and approving emission calculations for point and fugitive dust sources and developing air quality permit amendments to enforce controls to bring area into attainment for particulate matter (1987 – 1992).
- Several fast track air permit modifications for Minnesota manufacturers (1992 – 1997).
- Won a Seven Wonders of Engineering Award for a Fast Track Air Permit from the Minnesota Society of Professional Engineers for expansion at a chemical plant (1992).
- Air quality permit modification to allow flexibility of operations for a Minnesota building products manufacturer (1996).
- Developed several air quality rules, including new source review rule. Process involved establishing technical advisory committees, holding public hearings, and preparing "Statement of Need and Reasonableness" and technical support documents evaluating impact of rules (1987 – 1992).

Environmental Review

- Environmental Assessment Worksheet for Combined Heat and Power Plant (2007).
- Environmental Assessment Worksheet for Wastewater Treatment Plant Expansion (2006 – 2007)
- Prepared Environmental Assessment Worksheets in Minnesota for plant expansions at a corn processing facility (1994).
- Prepared environmental review for Pennsylvania composites plant (1998).
- Environmental assessment worksheet for Minnesota plastics plant expansion (1996).
- Environmental Impact Statement for reliever airport expansion (1993 – 1995)
- Environmental portion for 6 reliever airport master plans (1993 – 1995)

Other

- Watershed management planning for Minnesota watershed districts (1992 – 1997)

- Stormwater management plans for food processing, plastics, boat manufacturing, and wood products plants in Minnesota, Pennsylvania, and Michigan (1994 – 2007).
- Minnesota Pollution Control Agency Grants Program Coordinator (1987) set funding priorities and negotiated agreements with EPA for $66 million construction grants budget.
- Minnesota Pollution Control Agency Clean Lakes Coordinator responsible for technical and financial review, funding and management of projects, and overall program management (1982 -1986)
- Energy consultant providing energy audits, auditor training, and energy conservation research for manufactuers, utilities and community energy programs (1978 – 1982)
- Teaching Assistant, Department of Sociology, University of Toronto, (1975 – 1978)
- Teaching Assistant, Central Michigan University, (1974 – 1975)
- Student Coordinator, United Migrants for Opportunity (1969 – 1972)

Publications

Patrick J. Mulloy and Joseph G. Maternowski, "Equal Access to Justice Acts: Regulatory Relief for Small Business, *Environmental Liability, Enforcement and Penalties,* August, 2000

Patrick J. Mulloy, "Environmental Impacts of Boating," *Focus 10,000: Minnesota's Lakeside Magazine,* July, 1999

Patrick J. Mulloy and Joseph G. Maternowski, "Environmental Liability and Freedom of Information on the Information Superhighway: New Opportunities and Concerns for Business," in *Environmental Liability, Enforcement and Penalties,* December, 1998.

Patrick J. Mulloy, "ISO 14000: New Tools for Business," in *The Minnesota Environmental Initiative Update,* December, 1998.

Patrick J. Mulloy and Joseph G. Maternowski, "What to Do When the Inspector Comes," in *Environmental Compliance and Litigation Strategy,* December, 1998.

Patrick J. Mulloy, "Europe Leads the Way on Product Stewardship," in *The Minnesota Environmental Initiative Update,* October, 1998.

Patrick J. Mulloy and Joseph G. Maternowski, "Minnesota Whistle-Blower Law Shuts Company Files: Corporate Shenanigans or Public vs. Individual Rights?" in *Environmental Liability, Enforcement and Penalties,* September, 1998.

Patrick J. Mulloy and Joseph G. Maternowski, "Confidentiality: How Safe Are Your Secrets?," in *Business and Industry Magazine,* August, 1998.

Patrick J. Mulloy, "Do You Have More Air Permit Than You Really Need?" Minnesota Wood Works, August, 1998

Patrick J. Mulloy, James Haertle, and Kathy Draeger, "Wetland Mitigation Banking in Minnesota: A Description and Evaluation of Approaches, Water Environment Federation, 1997

Patrick J. Mulloy, "Biosolids Use on Disturbed lands," in Kathy Draeger, ed., *The Use of Biosolids in Watersheds,* Water Environment Federation, 1997

Patrick J. Mulloy, "Clean Water Act Impacts on Biosolids," in Kathy Draeger, ed., *The Use of Biosolids in Watersheds,* Water Environment Federation, 1997

Patrick J. Mulloy, "Watershed Management and Biosolids Use," in Kathy Draeger, ed., *The Use of Biosolids in Watersheds,* Water Environment Federation, 1997

Patrick J. Mulloy, "Water Quality," *Minnesota Asphalt Pavement Association Pollution Prevention and Regulatory Training,"* 1996.

Patrick J. Mulloy, *Harnessing the Regs: Wood Products Air Quality Seminar,* Minnesota Wood Promotion Council, 1994.

Patrick J. Mulloy, "New EPA Air Quality Standards Could Impact the Aggregate Ready-Mix Industry," in *Conveyor Belt,* April 1997.

Patrick J. Mulloy, "Risk Management Plans and Printers," *Graphics Arts,* Printing Industries of Michigan, 1997.

Patrick J. Mulloy, "Shop Towels Are Heating Up," *Graphics Arts,* Printing Industries of Michigan, 1996

Patrick J. Mulloy, "Clean Air Act Impacts Printers," *Graphics Arts,* Printing Industries of Michigan, October, 1994.

Patrick J. Mulloy, "Clean Air Act - Upcoming Rule Changes and Real Life Impacts," presented at Minnesota Institute of Legal Education Clean Air Act Seminar, 1993

Patrick J. Mulloy, John B. Erdmann, Norman C. Wenck, and Mark S. Miller, "An Unexpected Source of Phosphorus in the Clearwater River Chain of Lakes Project," published in the *Proceedings of the Fourth Annual Conference of the North American Lake Management Society.*

Patrick J. Mulloy, Gaylen F. Reetz, Timothy Bjork, et. al., "Developing Nonpoint Source Strategies for Big Stone Lake: Two Approaches," published in the *Perspectives on Nonpoint Source Pollution,* U.S. Environmental Protection Agency, 1985.

Patrick J. Mulloy, John B. Erdmann, Norman C. Wenck, and Stephen Heiskary, "Identification and Abatement of Nonpoint Source Pollution in

the Clearwater River Watershed," published in the *Proceedings of the Fifth Annual Conference of the North American Lake Management Society.* 1984

Patrick J. Mulloy, *Energy Savings,* Ramsey Action Programs, Inc., August, 1985.

Patrick J. Mulloy, Beth Ellerby, Stephen Heiskary, et. al., *A Citizen's Guide to Lake Protection,* published by the Minnesota Pollution Control Agency.

Patrick J. Mulloy, *Energy Audit,* Fleet Supply and Machine, December 30, 1983.

Patrick J. Mulloy, "Energy Business Development," *Energy Guide for Community Development,* City Venture Corporation, 1982.

Patrick J. Mulloy, *St. Paul Energy Park Jobs Through Energy Program,* Control Data Corporation, 1982.

Patrick J. Mulloy, *Impact of Farm Labor Legislation on the Michigan Farm Economy,* University of Toronto, 1976.

Draeger, Kathryn J., Johnathan W. Pundsack, Michael D. Jorgenson, and Patrick J. Mulloy, **Watershed Effercts of Biosolids Land Application - Literature Review**, Water Environment Research Foundation, Alexandria, VA, 1999

Designed, wrote and edited several newsletters and fact sheets on environmental issues (1992 - present).

Designed, wrote and edited several nationally-distributed books, pamphlets, training materials and slide presentations on energy auditing. (1979-1982).

Moss & Barnett
A Professional Association

September 21, 2010

Members of the Roseville City Council
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Re: Bituminous Roadways Proposed Asphalt Plant
Our File No.: 51429.2

Dear Members of the City Council:

We represent Gladstone Commercial Corporation and its affiliate, UC06 Roseville MN LLC, the owner of the office building at 2501 Walnut Street (also 2470 Highcrest) in Roseville (the Unisys building). Gladstone's building is directly across the Walnut and Terminal intersection from the asphalt plant proposed by Bituminous Roadways. Gladstone, like other businesses and residents in the area, opposes the project.

Recognizing that the quality of the technical analysis for the EAW is critical to a determination as to the potential public health and environmental impact, Gladstone hired an environmental consultant to complete a technical review of the EAW and proposed air permit. The consultant identified fundamental concerns with the EAW and proposed permit, and Gladstone submitted to the MPCA the enclosed August 11, 2010 letter. When the MPCA extended the EAW comment period, Gladstone had its consultant examine the MPCA's file. The consultant's technical analysis caused us to submit to the MPCA the enclosed September 10, 2010 letter. The letter describes at length the technical grounds for Gladstone's request that the MPCA require an EIS.

In short, the technical review determined that there are too many uncertainties and too much missing information and incomplete study for the MPCA to conclude (a) that there will not be public health effects and adverse environmental impacts, and (b) that the proposed air permit's operating conditions will adequately protect the public health and the environment. This letter is to draw your attention to the items in the consultant analysis that we consider absolutely critical, each of which is consistent with City of Roseville concerns regarding the potential for adverse effects on the community. Specifically, please note the following:

1. The proposed emission control technology essential for limiting the environmental impact is untested. The EAW does not provide an adequate analysis establishing that it will work.

2. The carbon bed filter proposed for controlling emissions and protecting public health and the environment may not be as efficient and effective as assumed in the EAW. Excess emissions could result. The analysis is incomplete.

3. The EAW modeling of emissions, including odor (hydrogen sulfide), is incomplete. The modeling fails to take into account air intakes and roof vents on Gladstone's building, and similar issues with respect to other buildings and uses in the immediate area. The modeling needs to be redone and recalculated.

4. The effects of nuisance dust and odor are essential for evaluating the proposed plant, but the MPCA does not regulate nuisance dust, and the existing standards for hydrogen sulfide (odor) are inadequate. Many uses in the area are sensitive to dust and odor and the EAW does not resolve the issue.

5. The EAW relies on test results from other settings, but there is too much uncertainty about the data to be able to extrapolate it to the Roseville proposal.

Gladstone greatly appreciates the City having requested that the MPCA order an EIS. With or without an EIS, an MPCA decision favorable to the project will not resolve the land use issues. The City has not finished consideration of the conditional use application. There is more relevant information available now than when the Planning Commission reviewed the project in 2009. Therefore, if the project returns for City consideration, the City should conduct additional public hearings. Gladstone will not burden you at this time with its legal and factual analysis regarding the zoning issues, except to say that there are open issues and that Gladstone intends to participate in the City process to the fullest extent possible.

Thank you for your concern about the effect the proposed project would have on its neighbors.

Respectfully submitted,

Paul B. Zisla
Attorney At Law
P: (612) 877-5328
ZislaP@moss-barnett.com

PBZ/cag
Enclosures
cc: Mr. Bill Malinen, City Manager
Mr. Chris Massey
1659854v1

UC06 ROSEVILLE MN LLC
c/o Gladstone Commercial Corporation

VIA ELECTRONIC MAIL

August 11, 2010

Mr. Kevin Kain
Planner Principal
Environmental Review and Feedlot Section
Regional Division – 4th Floor
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155-4194

Re: Bituminous Roadways Roseville Asphalt Plant
Environmental Assessment Worksheet

Dear Mr. Kain:

UC06 Roseville MN LLC and its affiliates, including Gladstone Commercial Corporation (collectively "Gladstone") own and manage a 360,000 square foot two-story office building located at 2470 Highcrest Road, Roseville, MN, constructed in 1964. Distances from our property to various activities on the proposed Bituminous Roadways asphalt plant range from 300 feet to 970 feet. The air intakes on our building which are located on the roof and are at approximately the same height as the piles and other air discharge points at the proposed Bituminous Roadways Plant. Our tenants use the building for offices, IT services, laboratory services, data centers, research, training, and various computer services. These activities are all sensitive to noise, odors, dust, and air toxics.

We have retained an environmental consultant to conduct a review of the Environmental Assessment Worksheet (EAW) for this proposed project. Based on our consultant's review we have concluded that:

1. The EAW does not provide enough information on certain issues for the public to evaluate whether or not an Environmental Impact Statement should be required.
2. The EAW's incorrect assumptions about the nature of the neighborhood impact its findings and should be addressed prior to approval or disapproval of the EAW.
3. The EAW does not consider the environmental impacts of all activities on the site.
4. The EAW refers to odor, noise and air pollution standards that are not sufficiently protective of Gladstone and other nearby users.
5. The EAW does not adequately address background levels of noise, air and water pollution and does not consider the impact of the proposed facility on these background levels.

Therefore, the EAW should be revised and Gladstone and other affected parties should be provided a chance for review and comment on any such revisions.

Draft EAW Comments

The Bituminous Roadways site is in an area zoned industrial by the City of Roseville. The EAW assumes that all of the properties in the area adjacent to and nearby the proposed asphalt plant are industrial, but our property is an office use and is not industrial. Other adjacent and nearby properties are also more appropriately classified as commercial.

A warehouse facility with offices is located directly to the north of the proposed asphalt plant site. Distances from the warehouse to various activities on the proposed asphalt plant site range from 165 feet to 816 feet.

An International Paper Corrugated Container Plant is located on Terminal Road directly to the east of the Walnut Street Warehouse and directly north of the proposed asphalt plant site. This building is currently used as office and warehouse. Distances from the International Paper property to various activities on the proposed asphalt plant site range from 165 feet to 816 feet.

Old Dutch Foods is located on 2375 Terminal Road directly east of International Paper and north of the proposed Bituminous Roadways site. This building is used for food processing and production. Distances from Old Dutch Foods to various activities on the proposed asphalt plant site range from 320 feet to 973 feet.

Northstar is located on 2341 St. Croix Street directly east of the proposed Bituminous Roadways site. Northstar is a systems-oriented solutions provider for the financial and security document market. Distances from the Northstar property to various activities on the proposed asphalt plant site range from 77 feet to 694 feet.

Bonestroo Rosene Anderlik Inc is located at 2335 Highway 36 W directly east of the Northstar property. Bonestroo is a full service engineering, planning and environmental science firm serving the municipal, agency, private, energy and industrial markets. Distances from the Bonestroo Rosene Anderlik property to various activities on the proposed asphalt plant site range from 268 feet to 964 feet.

The facts that much of the property adjacent and close by to the proposed Bituminous Roadways site is used for commercial rather industrial uses and that Old Dutch , an existing industrial facility, produces food products, have important implications for the EAW and the conclusions it reaches. The MPCA needs to consider the fact that the majority of the uses surrounding the proposed asphalt plant site are particularly sensitive to odors, noise, dust, and air toxics.

General EAW Comments

The EAW does not provide enough information for the public and affected property owners to fully evaluate the proposed facility.

Specifically, it would be helpful to see a maps or figures accurately identifying where the residential, commercial and industrial receptors are in the odor, noise and modeling analysis and in the Air Emissions Risk Assessment (AERA).

Public comments by Bituminous Roadways and information in the EAW indicate that crushing operations will be limited to between 6 AM and 8 PM. Public documents contain references to operations between 7 AM to 7 PM. Will other operations also be limited to this time period or will the facility operate 24 hours per day? Likewise, Bituminous Roadways notes that its operations are seasonal and not year round. The restrictions on daily operations and annual operations have the effect of concentrating emissions. The EAW states that the proposed facility is restricted to less than or equal to 589,231 tons of hot mix asphalt (HMA) on an annual basis. Whereas 589,231 tons per year spread over 8760 hours is 67.26 tons per hour, using 16 hours per day from April through November results in an average of 153.45 tons per hour. This concentration of activity has over twice the hourly impact of the scenario that assumes that there are not seasonal fluctuations. Was this considered in the EAW, the AERA and the air permit? Does the permit have limits on hourly operations?

Newspaper reports on the recent public meeting state that the MPCA staff indicated that Agency staff would conduct inspections of the plant to ensure compliance with all set guidelines. How often will MPCA staff be conducting inspections? Will these inspections include inspections of hours of operation, odors, noise, and other operational permit terms and conditions. What equipment will the MPCA utilize to conduct these inspections?

Noise

The failure of the EAW to consider the actual uses of the property adjacent to and nearby the proposed asphalt plant site has significant impacts on the EAW noise analysis. The EAW estimates noise levels off the project site at nearby "industrial properties" to be 72.5 dB(A) which is within the MPCA standards for industrial areas.

We believe that the agency should use the commercial noise standard for adjacent property rather than the industrial standard:

Minnesota Pollution Control Agency
State Noise Standards

Land Use	Code	Day (7:00 a.m. - 10:00 p.m.) dBA		Night (10:00 p.m. - 7:00 a.m.) dBA	
Residential	NAC-1	L10 of 65	L50 of 60	L10 of 55	L50 of 50
Commercial	NAC-2	L10 of 70	L50 of 65	L10 of 70	L50 of 65
Industrial	NAC-3	L10 of 80	L50 of 75	L10 of 80	L50 of 75

The EAW Noise analysis uses test data from one crusher and the location of that crusher on the site is unclear. From reading the EAW and the air permit, crushing may occur at any location on the proposed

site and more than one crusher may operate at a time. The EAW noise analysis does not appear to consider this.

We have calculated the distances from the various activities on the proposed Bituminous Roadways site and adjacent property. We calculated the impacts of one, two three and four crushers on the adjacent properties using the following formula:

$$dB(A) = 10 \times Log_{10}(10^{\frac{A1}{10}} + 10^{\frac{A2}{10}} + \cdots 10^{\frac{An}{10}})dB$$

The EAW did not provide a site plan for the proposed Bituminous Roadways site. To determine potential crusher locations we used a preliminary site plan presented at a May 6, 2009 Roseville Planning Commission meeting (Attached). We assumed the crushers could be located near any activity on the proposed site because the permit does not prescribe where the crushers can be located. We measured the distance from the potential crusher locations to our property, our building and the center of the building. We made similar measurements for other nearby properties. To calculate the noise levels for one crusher, we used the equation provided in the EAW:

$$dB(a)_2 = dB(A)_1 - 20\log_{10}(D_2/D_1)$$

Our calculations assume 82 dB(A) at a distance of 50 feet from the crusher. For two crushers we used the formula for summing dB(A) levels and added the crusher from the site indicated with the average dB(A) level for all crusher noise impacts at that location. The three crusher sum includes the high and low crusher while the four crusher sum includes the crusher indicated and the high, average and low crusher values to estimate the impacts of several crushers located at proposed site. Attachment 2 provides our results.

One crusher located at the asphalt rubble pile violates the L50 noise standard for commercial property at our property line. Three and four crushers operating simultaneously would violate the L50 standard at our building, even though our analysis does not consider the impacts of other equipment operating simultaneously with the crushers such as conveyor belts, front end loaders, trucks, dust collector fans and dryers. Our analysis shows violations of the commercial L50 standard at the Walnut Street Warehouse, International Paper, Old Dutch Foods, and Bonestroo Rosene Anderlik.

The EAW did not consider the noise impacts from truck and rail traffic which can be significant. Typical noise levels from heavy duty trucks at 50 feet can range from 76 dB(A) at 10 miles per hour to over 86 dB(A) at 50 miles per hour.

The most recent 2009 Minnesota Department of Transportation (MNDOT) average daily traffic volume numbers show 3,700 vehicles per day on Terminal Road and 3,000 vehicles per day on Walnut Street. The increased truck traffic from the proposed Bituminous Roadways plant will increase traffic on Terminal Road by 15% and on Walnut Street by 18%. A 10% increase in traffic volume increases noise levels by 0.5 dB and a 20% increase in traffic volume increases noise levels by 1.0 dB. Noise levels will

probably be significantly higher because heavy duty trucks have higher noise levels than cars – a car at 10 miles per hour produces 61 dB compared with 76 dB for a truck.

The EAW did not consider the impacts of background noise which, in this area, can be significant, especially from Interstate 35W and Highway 36. Walnut Street and Terminal Road which all experience significant truck traffic. Ambient background noise from road transportation may range from 45 to 65 dB(A). Noise levels from major highways with higher traffic speeds can be significantly higher.

Likewise, the EAW does not address the noise impacts of increased rail traffic, which can also be significant.

We believe that the EAW needs a more thorough noise analysis that considers the actual use of the adjacent properties, the additive effects of all activities in the area of the proposed site, noise impacts from traffic and background noise levels.

Following a more complete noise analysis, the air permit needs to consider mitigative measures to reduce noise pollution, such as limiting the number of crushers and other equipment brought in from offsite allowed to operate at the same time, limiting areas where the equipment can operate, identifying possible structural changes to mitigate noise pollution, and limiting times of day when the equipment can operate.

A newspaper report of the July 29th public hearing quotes Bituminous Roadways as indicating that the crushers would operate from 6:00 AM through 8:00 PM while the EAW indicates the crushers will operate from 7:00 AM to 7:00 PM. Which is correct? Does the permit include limits for the crusher hours of operation?

Particulate Matter

We are concerned about particulate emissions from the proposed project. The air intakes on the roof of our building are close to the height of the storage piles and other emissions sources at the proposed asphalt plant site.

Bituminous Roadways (BR) Emission Source	Distance from SE Corner of property (ft)	Distance from SE Corner of Bldg (ft)	Distance from Center of Bldg	Elevation	Distance from Nearest Air Intake to BR Source	Air Intake Elevation
Asphalt rubble pile	300	539	874	988	714	976
RAP pile	372	618	973	993	784	976
Tanks	948	1160	1434	950	1334	976
Asphalt millings pile	502	754	1091	994	916	976

Asphalt plant	516	752	1115	956	907	976
Sand pile	665	906	1265	991	1066	976
Asphalt shingles pile	569	816	1175	970	979	976
Concrete rubble pile	876	1118	1425	973	1297	976
Crushed concrete pile	606	1125	1177	990	1019	976
Rail car Loading/unloading	970	1215	1485	937	1406	976
Aggregate pile	886	1126	1463	967	1304	976

Modeling discussed in the EAW shows maximum predicted 24 hour average $PM_{2.5}$ impacts within 0.1 $\mu g/m^3$ of the National Ambient Air Quality Standard (NAAQS). The maximum predicted PM_{10} impacts are 70% of the annual average NAAQS. Were receptors such as the air intakes on our roof and the air intakes on the roofs of other adjacent buildings considered in the air modeling?

A review of the Miscellaneous Emissions Factors n AP 42 13.24-4 indicates that total particulate emissions from the storage piles, haul roads, crushers, and other activities will be significantly higher than the maximum predicted $PM_{2.5}$ and PM_{10} emissions. Although there is not a NAAQS for dust particles larger than 10 microns, shouldn't the EAW consider the impacts of nuisance dust on properties adjacent to the proposed project?

The EAW indicates that all traffic areas will be paved in order to reduce dust from truck traffic. We request that the air permit also include requirements to sweep the roadways and other paved areas.

Air Emissions Risk Assessment

Asphalt is considered a potential carcinogen due to the fact that it typically may contain many carcinogenic compounds, including many PAHs. Asphalt plants emit chemicals like hexane, phenol, polycylic organic matter, formaldehyde and toluene. Concerns have been raised at asphalt plants over benzene and various metals such as chromium, cadmium and arsenic. Given the serious public concern the MPCA should conduct a careful and thorough review of the Bituminous Roadways proposal.

Did the Air Emissions Risk Assessment (AERA) consider background concentrations from traffic on Interstate 35W, Highway 36, local truck traffic on Walnut Street and Terminal Road and from the nearby tank farms? This is important as many of the constituents of vehicle emissions are the same as the emissions from the proposed asphalt plant.

The AERA does not include tail pipe emissions from truck traffic moving on the property nor from increased truck traffic on local streets as a result of this project. Increased truck traffic could have a significant impact the AERA results.

The AERA assumes that the whole area is heavy industrial based on the zoning and does not consider the mixed use. The AERA needs to consider the activities that are actually being conducted in the buildings adjacent to the proposed asphalt site.

Odors

Hydrogen sulfide (H_2S) is the primary chemical of concern for evaluating odors from the proposed Bituminous Roadways project. Sensitivity to H_2S is highly subjective. H_2S odor nuisance thresholds can range from 0.5 parts per billion (ppb) (0.7 $\mu g/m^3$) to 30 ppb (42 $\mu g/m^3$) based on the individual who is exposed. Typically, an individual's odor threshold will increase over time as they are exposed. The State of Minnesota has a health based ambient air quality standard for H_2S of 30 parts per billion (ppb). In the EAW odor analysis an odor detection threshold level of 8 ppb (11 $\mu g/m^3$) and an odor nuisance level of 40 ppb (56 $\mu g/m^3$) were used. These are too high and fail to protect occupants of our building and surrounding buildings, workers at nearby loading docks, parking lots and other sensitive users near the asphalt plant site.

The odor nuisance level in the EAW is higher than Minnesota's health based standard. The odor detection threshold level is higher than the lowest odor detection level and health based standards used in other states. Other states health based standards are lower than the Minnesota standard and the standard that is referenced in the EAW. For example, Maine has a 1 ppb (2 $\mu g/m^3$) chronic 1 year averaging time standard for H_2S, Michigan's 24 hour standard for H_2S is 2 $\mu g/m^3$ and the Wisconsin 1 hour standard is 14 $\mu g/m^3$.

If we are evaluating odor which is subjective and lower than the health based standards, the MPCA should, at a minimum, use lower more protective health based standards to evaluate odor impacts. The EAW odor analysis found the one hour maximum concentration of 21.54 $\mu g/m^3$ at the northeast corner of the property, 3.63 $\mu g/m^3$at the golf course and 2.95 $\mu g/m^3$ at the nearest residence. Assuming the MPCA applies a protective odor standard for H_2S is 2 $\mu g/m$, this recommended standard will be exceeded for our building and other adjacent and nearby commercial buildings. Odor limits would also be exceeded in nearby residential areas and on the public golf course.

Based on our review, the EAW should use an odor standard for H_2S is 2 $\mu g/m^3$. The odor analysis results suggests that significant parts of our building and other adjacent buildings may exceed the Wisconsin 1 hour standard, the low range of the odor threshold and the Michigan 24 hour standard for H_2S. We believe that the EAW should take a closer look at the odor and other H_2S impacts on adjacent property.

The odor analysis considered H_2S emissions from HMA/Warm Mix Asphalt (WMA) production and liquid asphalt cement (LAC) storage. It does not consider H_2S emissions from trucks hauling asphalt and railcars hauling LAC. We believe that the EAW should consider all H_2S sources on site and should also consider background concentrations.

The H_2S emissions estimates rely on emissions testing performed by the State of North Carolina and the National Asphalt Pavement Association. This equipment may not be the same as that proposed by Bituminous Roadways for this site and does not rely upon the same emission controls. Bituminous Roadways presumably has equipment similar to equipment at the proposed new plant. Due to uncertainties regarding the H_2S data, we request that Bituminous Roadways test existing equipment to verify H_2S emission rates prior to EAW approval and permit issuance. The MPCA should closely monitor this testing and as appropriate collect independent samples to verify the results.

A fabric filter will control air emissions from the asphalt drum/dryer/mixer. Air emissions from the drum consist of burner combustion products, dust and particles from aggregates, and some volatile gases from the liquid asphalt cement. Fabric filters do a good job controlling particulate matter, but they do not do a very good job controlling for odors and volatile hazardous air pollutants.

The Tank Farm will store LAC. Tank farm storage will vent to a carbon bed filter to control H_2S emissions. The EAW does not discuss the effectiveness of carbon bed filters in controlling H_2S emissions. Carbon bed filter operation and maintenance can have significant impacts on its effectiveness. The EAW should discuss this issue. Appropriate terms and conditions related to carbon bed filter operation and maintenance should be included in the air permit.

The HMA/WMA plant will control H_2S emissions with a fiber bed filter. The EAW should discuss the effectiveness of these filters for controlling H_2S emissions and discuss any potential issues with their effectiveness.

The EAW indicates that the tank farm will store LAC for the proposed site and for other asphalt plants. The EAW and the air permit do not specify the annual LAC throughput through the tank farm. This could have significant impacts on air emissions because tank farm throughput determines the air emission rate and truck traffic. Was the potential LAC tank throughput considered in the EAW AERA and odor analysis and the air permit?

Stormwater

Several activities on the proposed project site will impact stormwater. Several potential stormwater pollutants are associated with the asphalt industry. The proposed facility's stormwater permit should require monitoring of discharges to surface water for total suspended solids, total dissolved solids, oil and grease, chemical oxygen demand, surfactants, benzene, metals and for substances used to prevent asphalt from adhering to metal surfaces. All storm water detention basins should be equipped with oil skimmers.

This proposed project will use steam to heat railway cars prior to unloading. Will the water from steaming rail cars be discharged to the sanitary sewer or to the stormwater ponds?

This project will use Asphalt Release to prevent asphalt from adhering to metal surfaces such as truck beds. What is the environmental impact of the over-spray of Asphalt Release and what are the impacts if this is discharged to stormwater?

Will vehicle and equipment washing occur on site and where will that water be discharged? a determination should be made as to whether these waters may be discharged to a stormwater pond or whether trucks should be washed on concrete pads with a means for collection of the water and appropriate off-site management. In addition, the stormwater permit should require that wash water be recycled.

Warm Mix Asphalt

The EAW mentions that Bituminous Roadways eventually intends to change this facility from a hot mix asphalt plant to a warm mix asphalt plant. There is no indication of the timing of this conversion. The EAW does not appear to address the environmental impacts of warm mix asphalt.

Cumulative Potential Effects

The cumulative potential effects analysis in the EAW should be revised based on the actual use of the adjacent buildings rather than simply assuming industrial use. We also request that the potential cumulative inhalation health risk estimates from Bituminous Roadways and monitored data include the impacts on the office and warehouse workers in the buildings adjacent to the proposed project.

Conclusion

The EAW is deficient in that it does not provide enough information for Gladstone, and other members of the public, to evaluate whether an Environmental Impact Statement should be required. The EAW makes incorrect assumptions about uses in the neighborhood and fails to take into account sensitive uses at Gladstone's building and those at nearby commercial locations. The EAW fails to consider the environmental impacts of all activities at the Bituminous Roadways site on Gladstone's building and surrounding properties. Bituminous Roadways has not addressed background levels of noise, air and water pollution and has not considered the impact of the proposed facility on these background levels.

The proposed Bituminous Roadways facility's impacts on noise, odor, particulate matter emissions, stormwater and the cumulative effects have not been adequately evaluated. The proposed standards referenced in the EAW are inadequate and do not protect the public health and the environment. Based on these deficiencies, the EAW should be revised and Gladstone and other affected parties should be provided a chance for review and comment on any such revisions.

Sincerely,

UC06 Roseville MN LLC

By: _____
Chris Massey
Its Vice President

cc: Tarik Hanafy, MPCA, Air Quality Permits Section
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A Professional Association

September 10, 2010

VIA ELECTRONIC MAIL

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Re: Environmental Assessment Worksheet
Proposed Air Emission Permit No. 12300758-001
Bituminous Roadways, Inc.
2280 Walnut Street
Roseville, MN

Dear Messrs. Kain and Hanafy:

We represent UC06 Roseville MN LLC and its affiliates, including Gladstone Commercial Corporation (collectively "Gladstone"). Gladstone owns and manages a 360,000 square foot office building located at 2470 Highcrest Road, Roseville, MN, constructed in 1964. Gladstone's initial comments on the proposed Bituminous Roadways asphalt plant and permit referred to above are contained in correspondence dated August 11, 2010. This letter provides supplemental comments.

Distances from Gladstone's property to various activities on the proposed Bituminous Roadways site range from 300 feet to 970 feet. The air intakes on Gladstone's building are located on the roof and are at approximately the same height as the storage piles and other air discharge points at the proposed asphalt plant. Gladstone's tenants include IT services, laboratory services, data centers, research, training, and various computer services. These activities are all sensitive to noise, odors, dust, and air toxics.

Gladstone engaged an environmental consultant to review the proposed project. On August 16, 2010 we submitted a comprehensive file review request on behalf of Gladstone for information in the Minnesota Pollution Control Agency's (MPCA's) environmental review and air quality permit files related to the project. We received some information, determined that materials were missing and filed two subsequent requests for materials. We did not receive the last set

of documents until September 8th. Consequently, we have not had adequate time to review the file documents.

Based on our consultant's review of the proposed permit, Environmental Assessment Worksheet (EAW), applications, and related documents from MPCA files, we have concerns about the effect of the proposed Bituminous Roadways asphalt plant on Gladstone's building, tenants and adjacent properties. The emissions from the proposed plant need more study. Our review of the material has identified several areas of uncertainty that may significantly affect the environmental impacts of the proposed project. Because we have serious concerns about the effectiveness of the control technology, the impact of background emissions, and the needs and interests of the project's neighbors, Gladstone asks the MPCA to deny the permit application and order an Environmental Impact Statement (EIS). An EIS is required to protect the public health and the environment.

To be certain that we have communicated to you the specific items of concern, we draw your attention to the following summary of the technical discussion of this letter. That discussion shows that the analysis to date is not adequate for the MPCA to make a decision other than to pursue further study of the project through an EIS. The MPCA needs to consider all of the items listed below in addition to the comments we previously made and those from other interested members of the community. We summarize the remainder of this comment letter as follows:

(a) the emissions from the asphalt plant are of critical concern and the estimates regarding the impact are uncertain;

(b) the AP-42 Factor analysis relies on test results where the wide variation in the underlying factors is relevant to those results and there is inadequate analysis for extrapolating those results to the analysis of the project;

(c) the carbon bed/carbon filter technology proposed for the project is critical for the controlling the environmental impact but the technical analysis of the technology is incomplete and needs additional examination before making a decision whether the technology is adequate;

(d) the asphalt plant will rely on a fiber bed filter to reduce VOC's and condensable PM but the calculations regarding the efficacy of the equipment need to be reworked;

(e) the modeling of non-criteria and criteria pollutant emissions is incomplete and inadequate when considered with respect to an accurate and complete analysis of the relevant conditions including the uses and receptors in the area of the project;

(f) the analysis of nuisance dust suffers from the same problems as the modeling of the emissions; and

(g) the analysis of hydrogen sulfide relies on test data that we conclude may not be adequate for extrapolation to this facility and also fails to consider the specific features and nature of the nearby receptors, including our building and other uses, that are sensitive to the hydrogen

sulfide all of which makes the technical analysis incomplete and the assessment most likely erroneous; and

(h) the dust and particulate mitigation measures related to the air permit require undertaking new modeling to account for the actual efficiencies in the mitigation methods.

It is clear that the MPCA lacks adequate background information on both nuisance pollutants and pollutants that endanger the public health that are generated by these types of projects. An EIS could collect this information. The MPCA's Air Emission Risk Assessment (AERA) process has made significant progress in addressing public risk from pollutants that are not on the U.S. Environmental Protection Agency's (EPA's) list of hazardous air pollutants. Unfortunately, because these pollutants are not on the EPA's list, these pollutants often lack monitoring data to determine their ambient levels and emissions data to determine the emission rates of these pollutants from various sources. An EIS could address this issue.

With so many technical issues and uncertainties as to the air quality and pollution factors relating to the project, it is not possible for the MPCA to make a determination regarding the lack of adverse environmental effects, or the effectiveness of the control technology.

Gladstone also believes that an EIS is also required to determine the appropriateness of locating an asphalt plant in an urban area with already high background levels of noise, odors and air pollution. The fact of industrial zoning does not resolve the environmental issues. This is particularly true for the proposed site due to the proximity of office buildings, food processors, commercial buildings, child care centers, residences and various recreational amenities. For the reasons that the technical analysis is incomplete and full of material uncertainties, we ask the MPCA to deny the permit application and order an Environmental Impact Statement (EIS). An EIS is required to protect the public health and the environment.

Asphalt Emissions

Asphalt plants generate dust from traffic, material handling, processing and storage piles. Material processing generates emissions from combustion used to generate process heat, from traffic and equipment operation, and material handling, processing and storage. These emissions include both criteria pollutants (sulfur dioxide, particulate matter, volatile organic compounds, nitrogen oxides, carbon monoxide and lead) and various non-criteria pollutants (hazardous air pollutants and other chemicals of concern such as hydrogen sulfide).

Asphalt is a complex mixture derived from petroleum. By weight, it is composed of roughly 80% by Carbon, 10% Hydrogen, up to 6% Sulfur, along with small amounts of Oxygen and Nitrogen and trace amounts of metals such as Barium, Arsenic, Chromium, Nickel, and Zinc. The Carbon and Hydrogen in the asphalt are combined with other elements to produce a variety of polyaromatic hydrocarbons and other organic compounds, including many hazardous air pollutants. To keep asphalt from solidifying during transport, storage and use, it must be kept at temperatures between 400° and 550°F. These elevated temperatures drive off the light-ends of the hydrocarbons as odorous vapors, most of which quickly condense when the organic vapor/air mixture cools by contacting the surrounding ambient air. This condensed vapor

creates extremely fine aerosol particles which results in a visible plume often referred to as 'blue haze' or 'blue smoke.' This condensed aerosol is hazardous when inhaled, coats nearby equipment and machinery, can create a fire hazard and often has an unpleasant odor. This phenomenon occurs in several asphalt production, storage and transport applications, including tank and tanker loading and unloading, blending, processing and storage tanks, which will be employed by Bituminous Roadways at this site.

Gladstone is particularly concerned about the levels of particulate matter, nitrogen oxides, carbon monoxide, hazardous air pollutants and pollutants of concern such as hydrogen sulfide generated by the proposed Bituminous Roadways Roseville project. Hydrogen sulfide is of particular concern due its low odor threshold and due to a growing body of evidence showing long term chronic effects at low exposure levels.

In addition to the environmental impacts of the proposed asphalt plant and storage terminal, Gladstone believes that the EAW does not adequately address the potential of odors, noise and pollution from trucks transporting asphalt and other materials to and from the proposed site.

The emissions from the proposed facility are also of concern due to high levels of background concentrations from road traffic – especially on Interstate 35W and Trunk Highway 36, other nearby sources that emit similar pollutants (Magellan and Nu Star Tank Farms), and generally high background concentrations of hazardous pollutants found in the Twin Cities Metropolitan area.

The users of the Gladstone building will be as sensitive to the emissions as any others in the community. As we previously noted, the actual users in the area of the project are also generally and in some instances highly sensitive to these matters. It is not possible to gloss over the specific details of the area by broadly categorizing the area as industrial, and therefore relatively insensitive to matters such as hydrogen sulfide and particulates. The fact that there are uses in the area that might be less sensitive or even sources themselves does not allow anyone to conclude that the entire area is like that.

We believe for these reasons, and uncertainties regarding estimates of the impact of the proposed Bituminous Roadways Project, that this project warrants an Environmental Impact Statement (EIS).

AP-42 Factors

The EAW's conclusions about air pollution emission factors at the proposed plant rely on test data from other facilities that cannot be reliably extrapolated to the project without closer analysis of the multitude of factors relevant to the test data results and their application to the proposed plant.

The EPA compiles representative air pollution emission factors to allow estimation of the amount of pollution released to the air by an activity or process. These factors allow predicting a process' emissions by multiplying the process throughput by the published emission factor.

The EPA has compiled emission factors for a wide variety of processes including asphalt plants such as the proposed Roseville Bituminous Roadways Plant.

Current AP-42 factors for asphalt plants are based on tests from approximately 275 emission test reports. Many of these tests involve multiple test runs at the same facility (usually 3). Tests at a single facility may vary by several percent and test results between facilities may vary by orders of magnitude. Averaging together multiple test results from several facilities can provide a reasonable estimate of emissions from various processes.

The EPA rates emission factors from A (Excellent) to E (Poor). For criteria pollutants the emission factor ratings at asphalt plant sources ranged from A to C. Emission factor ratings for non-criteria pollutants at asphalt plant sources ranged from C to E.

None of the asphalt plant processes tested for development of the AP-42 emissions factors used carbon beds or fiber bed filters to control emissions. None of the AP-42 tests tested for hydrogen sulfide so there are not EPA approved emissions factors for hydrogen sulfide emissions from asphalt plants. To estimate emissions from these processes and to estimate hydrogen sulfide emissions from the proposed Bituminous Roadways Roseville Plant, Bituminous Roadways relies on tests conducted by the National Asphalt Pavement Association and the North Carolina Department of Environment and Natural Resources Division of Air Quality.

The wide variation in test results between different tests and between different asphalt plants and asphalt plant processes make it very difficult to generalize tests from one facility to another facility and from one process to another process. Several factors may contribute to this variance. Composition of the asphalt cement, fuel type, plant mixing temperature, moisture content of recycled asphalt pavement (RAP) and aggregates, use of materials containing coal tar, use of slag aggregate, shingles, crumb rubber mixtures, products from construction and demolition waste, calibration of sensors, tuning of the burner, pollution control equipment maintenance, and ambient conditions. Data may also vary due to use of different test methods.

Besides various operating conditions, the composition of asphalt can vary considerably. We reviewed several Material Safety Data Sheets (MSDSs) for asphalt from around the country. The listed hydrogen sulfide content ranges from negligible to 0.5% and the sulfur content in the asphalt ranges from 0 to 7%. A high sulfur asphalt will have higher levels of hydrogen sulfide and could produce up to five times as much hydrogen sulfide emissions as a low sulfur asphalt. This difference could materially affect the odor and health impacts of the proposed asphalt plant project.

Without knowing the sulfur and hydrogen sulfide content of the asphalt in North Carolina and the asphalt used by Bituminous Roadways, it is hard to see how the data from one site can be used to reliably predict emissions from another site without knowing all of the significant variables. We also do not know the percentages of other materials such as RAP, shingles, and construction waste (and their moisture content) used during the North Carolina tests and how this compares with the proposed Bituminous Roadways Roseville facility.

An EIS is required to address the differences in operating conditions between the proposed Bituminous Roseville Plant and the plants in North Carolina used to generate emissions factors for hydrogen sulfide and the carbon bed used to control hydrogen sulfide emissions and filter bed used to control volatile organic compound and particulate emission.

Carbon Bed/Carbon Filter – CE004

There is a lack of sufficient information for making the conclusion that the proposed air pollution control technology will work in the manner necessary to support the conclusion that the plant will not have an adverse environmental impact.

Bituminous Roadways proposes to vent asphalt storage tank emissions, loading and unloading to a carbon bed filter to reduce volatile organic compound (VOC) and condensable particulate matter (PM) emissions. The targeted pollutant is hydrogen sulfide, which presents a disagreeable odor at very low concentrations. Carbon bed filters remove low-concentration gases and vapors from an exhaust stream by adhering pollutants to the surface of porous solids. To a large extent the character of the material targeted for adsorption determines the applicability of carbon bed filters for pollution control. Key factors are a material's molecular weight, vapor pressure and polarity.

The Bituminous Roadways permit application uses 90% as the destruction/control efficiency for hydrogen sulfide for the carbon bed. This percentage calculation is critical because it reflects the effectiveness of the air pollution control technology. Variation by a few percent can have a significant impact on ambient concentrations of the targeted pollutant. For example, if destruction/control efficiency for hydrogen sulfide were reduced from 90% to 70%, concentrations on and around our building would exceed the hydrogen sulfide odor thresholds and hydrogen sulfide standards for New York, Kentucky and New Mexico.

We reviewed manufacturers' data from several carbon bed manufacturers. One manufacturer rated materials on a four point scale: "Excellent" with one pound of carbon adsorbing 25% of its own weigh of the material; "Good" with one pound of carbon adsorbing 15% of its own weight; "Poor" with carbon adsorbing 5% of the material by weight and none. This manufacturer rated the ability of carbon to adsorb hydrogen sulfide as "Poor." Other manufacturers rated the ability of carbon to adsorb hydrogen sulfide as "Satisfactory" (10%-20%), another rated it "Good" (16.6%), and another manufacturer rated the ability of carbon to adsorb hydrogen sulfide as "Excellent." This manufacturers data is available upon request. The divergence of carbon bed manufacturer opinion on the ability of carbon to adsorb hydrogen sulfide raises material questions as to the effectiveness of the control technology. The absence of manufacturer data in the permit application is an unacceptable and glaring omission. With such a divergence of opinion and inherent uncertainty, it is imperative for the Agency and the public to be able to evaluate the manufacturer's data for this control technology.

The manufacturers' carbon bed data also show that carbon adsorbs many of the other constituents of the waste stream (such as benzene) much better than it does hydrogen sulfide. This suggests that while the carbon bed may initially adequately control hydrogen sulfide emissions, its ability to do so may degrade rapidly over time as other waste stream constituents

populate the available adsorption sites. This is critically important because the capture rate of hydrogen sulfide may decrease markedly.

Actual operating conditions also play an important role in carbon filter bed effectiveness. Obtaining high removal efficiencies from carbon bed adsorbers requires low baseline effluent concentration (less than 10 ppm), containment of breakthrough emissions by avoiding premature breakthrough or sending material emitted from a breakthrough to another on-line adsorber. It is unclear from the material provided by Bituminous Roadways if there is more than one on-line adsorber in this system to address the breakthrough issue. Efficient operation also requires efficient recovery of the desorbed organics which is usually done by condensing the vapors and recycling the noncondensibles form the condenser back into the on-line adsorber and there must be some method of containment of organics during the cooling and drying cycle which prepares the carbon bed for renewed service. Neither the permit application nor EAW documents for the proposed Bituminous Roadways facility address this aspect of carbon bed system operations.

Heating asphalt produces significant condensable particulates in the exhaust stream. Many of these are long chain hydrocarbons which are either liquid or solid at ambient temperatures and which will rapidly condense in the carbon bed filter. This can cause an excessively high pressure drop across the filters and eventually blind them or render them ineffective. High concentrations of these aerosols can also produce an excessive temperature rise across the bed due to heat adsorption. Many applications remove these droplets or aerosols upstream of the adsorbers. Because the permit application and the EAW do not address the specific equipment, it is difficult to determine how he proposed system will address these issues. This operational data deficiency needs to be addressed.

To a large extent it is difficult to satisfactorily and accurately predict the performance of carbon bed adsorption systems from theory. Similarly, it is difficult to extrapolate performance of a specific system based on very limited test data. Gladstone believes that the prediction of hydrogen sulfide emissions and the control efficiency of the proposed equipment should be buttressed by a more thorough analysis of the North Carolina tests, including the specific operating conditions and the composition of the material tested. A comparison of the North Carolina test results with various operating parameters of the proposed Bituminous Roadways Roseville plant, including material composition, would provide further basis for comparison. Bituminous Roadways could support this with either bench scale tests of their materials or tests of the proposed technology at one of their other facilities.

The air permit should be revised to include operating parameters for the proposed carbon bed adsorber(s) based on actual design data for the proposed system. The public can not evaluate the adequacy of these permit conditions without any manufacturer's data and without any manufacturer's performance guarantee.

Bituminous Roadways has proposed the carbon bed to treat emissions from the asphalt storage facility proposed for this project. Bituminous Roadways has not yet designed the asphalt storage facility and has not selected a vendor for the control equipment because they do not expect to build the asphalt storage facility for a couple of years. An incremental approach does

not work as it begs this critical issue and allows the asphalt plant to become established with a tacit understanding regarding the efficacy of the control technology. The entire undertaking ultimately relies on conclusions that pollution effects can be dealt with, but there needs to be a direct showing that this in fact can be done and will be done. The permitting process and environmental study should be complete before there is any forward movement with the project.

Fiberbed – CE002

The project contemplates using a fiber bed filter to handle VOC and condensable PM. The analysis of the efficacy of the technology requires further work.

The hot mix asphalt plant silo emissions will be routed to a fiber bed filter to reduce VOC and condensable PM. Bituminous Roadways also proposes to use a hood to capture hot mix asphalt load-out emissions and route them to the fiber bed. These filter beds are designed to control 'blue smoke' from asphalt operations and thus reduce the opacity of the exhaust from asphalt plant processes.

Fiber bed filter mist collectors are used to trap, collect and remove liquids and soluble particulate suspended in a gas stream. They are also used to collect insoluble solids.

The emissions calculations used in the modeling and the AERA assume a 60% capture efficiency for the hood. The permit application documents do not indicate how this capture efficiency was derived. A small difference in capture efficiency can make a significant difference in air emissions.

The calculations for the filter bed assume 95% control for all pollutants except for carbon monoxide, bromomethane, carbon disulfide, chloromethane, formaldehyde, methane, acetone, ethylene, and hydrogen sulfide. Several factors determine actual filter bed effectiveness and efficiency, including characteristics of the filter media and the adsorbate, the conditions under which they react, ambient temperatures, process temperatures, effluent concentrations, containment of breakthrough emissions, particle size, recovery of desorbed organics, etc. The polarity of the filter media and the adsorbate influence efficiency as does the molecular weight, vapor pressure, and condensation temperature of the adsorbate. Bituminous Roadways has provided an example manufacturer's data for a filter bed that includes a list of chemicals that the filter bed can control at operating temperatures, may control at filter bed temperatures, and will not control at filter bed temperatures. The molecular weights, condensation temperatures and vapor density of the chemicals listed that the filter bed can control vary significantly. This variability should be accounted for in the emissions calculations, the modeling and the AERA.

In addition, the calculations assume a 95% control for phenanthrene, carbon disulfide, methylene chloride, and trichloromethane. The manufacturer lists these as chemicals that may condense at filter bed operating temperatures, but does not indicate at what rate. These should be either changed to 0% control in the calculations or Bituminous Roadways should use a lower efficiency rate based on test data provided.

The calculations also assume 95% control for the categories total organic compounds, total hazardous air pollutants (HAPS), and total non volatile organic compound (VOC)/non-HAP. Each of these categories include chemicals that the manufacturer has identified as either not condensing at filter bed operating temperatures or may not condense at filter bed operating temperatures. The calculations and any modeling and toxics analysis based on these calculations should be revised to reflect the actual control efficiencies or these categories.

Modeling

Gladstone's concerns with the modeling involve the use of background data and the implications of the modeling results on the AERA. The modeling is at best incomplete. It does not consider all the relevant pollutants and background conditions. Additionally, and critically for the location of the proposed plant, it fails to consider features of the Gladstone building and the complete and detailed consideration of the other uses and improvements in the immediate area. Additional work is required before the modeling can be relied on for the MPCA to issue the air permit or for the project to proceed.

Non-criteria Pollutant Emissions

The modeling uses MPCA defaults for background concentrations and assumes that background data should account for emissions for non-criteria pollutants because emissions from petroleum handling and combustion are ubiquitous. These assumptions provide the basis for the risk calculations in the AERA. Emissions from the nearby facilities, in particular the Magellan Pipeline (a major VOC source) and the Valero tank farms (a state regulated air emission source), should be added to assumed background levels. In addition, the modeling and the AERA should account for emissions from other nearby combustion sources, existing traffic emissions on local streets and Interstate 35W and Trunk Highway 36, and emissions from increased traffic due to the proposed project.

The table below lists several non-criteria pollutants emitted by the proposed Bituminous Roadways project and indicates if they are also expected to be emitted from natural gas combustion, petrochemical storage, gasoline engine operation or diesel engine operation. As the table shows, there is considerable overlap.

CAS	Non- Criteria Pollutant Emissions from Bituminous Roadways Plant	Natural Gas Combustion	Petrochemical Storage	Gasoline Engine	Diesel Engine
91-57-6	2-Methylnaphthalene	X			
83-32-9	Acenaphthene	X		X	
208-96-8	Acenaphthylene	X		X	
534-15-6	Acetaldehyde		X	X	X
67-64-1	Acetone		X		
107-02-8	Acrolien			X	X
120-12-7	Anthracene	X		X	

	Arsenic	X			
	Barium	X			
71-43-2	Benzene		X	X	X
56-55-3	Benzo(a)anthracene	X		X	
50-32-8	Benzo(a)pyrene			X	
205-99-2	Benzo(b)flouranthene	X			
192-97-2	Benzo(e)pyrene				
191-24-2	Benzo(g,h,i)perylene	X		X	
	Beryllium	X			X
	Cadmium	X			X
75-15-0	Carbon Disulfide		X		
	Chromium	X			X
	Cobalt	X			
	Copper	X			
92-82-8	Cumene		X		
53-70-3	Dibenz(a,h)anthracene	X			
25321-22-6	Dichlorobenzene	X			
74-84-0	Ethane	X			
100-41-4	Ethylbenzene				X
206-44-0	Fluoranthene	X			
86-73-7	Fluorene	X		X	
50-00-0	Formaldehyde	X			X
142-82-5	Heptane		X		
100-54-3	Hexane	X	X		X
193-39-5	Indeno(1,2,3-cd)pyrene	X		X	
540-84-1	Isooctane (2,2,4-trimethylpentane)		X		
	Manganese	X			X
	Mercury	X			
74-82-8	Methane				X
71-55-6	Methyl chloroform (1,1,1-Trichloroethane)		X		
	Molybdenum	X			
91-20-3	Naphthalene	X	X	X	X
	Nickel	X			X
109-66-0	n-Pentane		X		
95-47-6	o-xylene				
99-66-0	Pentane	X			

198-55-0	Perylene				
85-01-8	Phenanthrene	X			
	Phenol		X		
	POM/PAH HAPS				X
74-98-6	Propane	X			
	Propylene			X	
129-00-0	Pyrene			X	
	Selenium				X
100-42-5	Styrene		X		X
108-88-3	Toluene	X	X	X	X
79-01-6	Trichloroethene		X		
75-69-4	Trichlorofluoromethane		X		
	Vanadium	X			
1330-20-7	Xylene (m/p)		X		X
	Zinc	X			

Because Bituminous Roadways' proposed operations will emit these pollutants, a detailed review of the effect of these emissions should be conducted for this site. An EIS for the proposed project should include the impacts of the proposed Bituminous Roadways project on existing background levels of air pollution.

Criteria Pollutant Emissions

The table below is taken from the modeling report submitted in support of the proposed Bituminous Roadways project. The table shows that although the project does not exceed National Ambient Air Quality Standards (NAAQS), the concentrations produced by the proposed project are very close to the NAAQS for $PM_{2.5}$ and NO_x, and are significant for PM_{10} and CO.

Pollutant	Averaging Time	Modeled Impacts ($\mu g/m^3$)	Background Value ($\mu g/m^3$)	Total Predicted Impacts ($\mu g/m^3$)	NAAQS (MAAQS) ($\mu g/m^3$)	% of NAAQS (MAAQS)	MPCA Modeling Language Tier
PM_{10}	*24-hr*	26.5	47	73.5	150	**49.0%**	Tier 1
	Annual	8.4	27	35.4	(50)	**70.9%**	

$PM_{2.5}$	*24-hr*	8.8	26	34.8	35	**99.6%**	Tier 3
	Annual	2.6	10	12.6	15	**84.2%**	
NO_x	*1-hr*	103.3	83	186.3	188	**99.1%**	Tier 3
	Annual	15.1	17	32.1	100	**32.1%**	
CO	*1-hr*	1,044.5	3,565	4,609.5	40,000 (35,000)	**11.5% (13.2%)**	Tier 1
	8-hr	373.4	2,760	3,133.4	10,000	**31.33%**	

Vehicle traffic can be a significant source of these four criteria pollutants. Based on our review of the permit materials we cannot determine whether the modeling consider existing traffic emissions on local streets and Interstate 35W and Trunk Highway 36, and emissions from increased traffic due to the proposed project. We request that the proposed facility be remodeled to include emissions from traffic.

Although we requested the modeling report on August 16, 2010, we did not get the report until September 8, 2010 and have not had time to fully evaluate it. If, as we suspect, the modeling did not consider the air intakes on our roof and on other nearby buildings as receptors, the modeling must be revised. We are concerned that the concentrations of these pollutants may be higher on the roof of our building and other nearby buildings. It is critical to account for air intakes on the roofs of nearby buildings to determine the impacts of the proposed project on building occupants.

Meteorological Data

The modeling uses meteorological data from the 1986-1990 period. We understand that more recent meteorological data is available. This data should also be reviewed and incorporated in emissions modeling for the proposed plant.

Nuisance Dust

For fugitive dust emissions from wind erosion the Bituminous Roadways permit application uses a Total Suspended Particulate emissions calculation for asphalt roofing from 1983. Gladstone believes that the most recent emissions factors should be used especially when considering the high particulate concentrations that are revealed in the modeling.

The MPCA regulates fine particulate (PM_{10}) and particulate known to cause respiratory and cardiovascular disease ($PM_{2.5}$). The emissions calculations suggest that proposed facility will also create a significant quantity of larger particulate matter which will settle out of the air a short distance from the proposed facility. These fugitive emissions are a nuisance and create

serious public health concerns for certain populations. The permit application shows potential emissions of 39.16 tons of particulate matter with approximately half of this composed of larger particulate matter. How much of this material will settle on our building, building air intakes, vehicles in parking lots and on the buildings, air intakes and parking lots of our neighbors? The modeling overlooks these specific physical features of the area. It fails to consider in a detailed way the nuisance and public health concerns relating to the proposed project and the site. A proper analysis would not gloss over the specifics of the area by making broad assumptions of the nature of the uses and improvements in the immediate area, including the Gladstone building and others. An EIS is required to gather more data and more effectively evaluate the impacts of dust on the area near the proposed asphalt plant.

Hydrogen Sulfide

The AERA shows significant hydrogen sulfide impacts at the property line. We have two concerns with this. First, as discussed above, we are not comfortable with using North Carolina test data to predict emissions for a facility that may or may not share design, material specification and operating parameters which can influence hydrogen sulfide emissions and control technology efficiency. This uncertainty needs to be addressed. Changes in control efficiency of a few percent can significantly extend the area where hydrogen sulfide concentrations exceed odor thresholds. Given the proximity of our building, within several hundred feet, of hydrogen sulfide sources, direct impacts are a strong possibility. Second, we are concerned about the hydrogen sulfide concentrations from the proposed facility on our roof where our air intakes are located.

The analysis of hydrogen sulfide impacts also does not consider background concentrations. Background levels of hydrogen sulfide are unknown in Minnesota. According to the Maine Department of Health & Human Services, the amounts of hydrogen sulfide found naturally in the air ranges from 0.11-.033 ppb (0.15-0.46 ug/m3).

The Minnesota Environmental Quality Board's *Generic Environmental Impact Statement (GEIS) Air Quality and Odor Impacts,* noted that : "...ambient monitoring data would be helpful in establishing proper "background" levels of hydrogen sulfide." For example:

> "Considerable effort has been devoted to measuring hydrogen sulfide concentrations downwind of animal agriculture facilities; however, collection of ambient hydrogen sulfide concentration data in a variety of locations would help to establish a 'background' level and help determine the contribution of feedlots to that background level."

This issue should be explored in greater detail in an EIS. Prior to permitting asphalt plants in a dense commercial and residential areas such as this, the MPCA should consider monitoring of the ambient air in the immediate vicinity of the proposed asphalt plant to determine background levels of hydrogen sulfide.

Gladstone is one of several users near the proposed facility that will be directly effected by hydrogen sulfide emissions. The EAW analysis fails to consider those effects in detail or with specificity. It again assumes that the receptors are of a type that are intended to tolerate nuisance odor levels, which evidences an incomplete analysis. Coupled with uncertainty regarding the application of the test results from other settings and the uncertainty as to the meaning and appropriateness of odor and hydrogen sulfide standards, more study is needed.

Permit Issues

The air permit includes ten different operating scenarios based on different combinations of raw material handling (crushing), number of aggregate trucks, crushing dust mitigation, and asphalt production. The scenarios involve different sweeping/flushing requirements on 14 roadway segments and different crusher dust mitigation requirements. We find these scenarios confusing and believe that they will be difficult to monitor, track and enforce. Much of the large particulate, depending on wind speed, will settle on the site. Trucks will track material onto and off the site. Wind and storm water runoff will also deposit particulate on the site and on the haul roads. We estimate that there are 0.4 miles of roads on the proposed Bituminous Roadways site. Elgin, a major street sweeper manufacturer recommends a street sweeper speed of 5 miles per hour. At the recommended speed, it would take a relatively short period of time to sweep all of the roadways.

Tests conducted by the United States Geological Service (USGS) found that the efficiency of street sweepers range from 20% to 31% for mechanical sweepers and from 60% to 92% for vacuum sweepers. Tests conducted by Elgin, a major street sweeper manufacturer, on its vacuum sweepers found they achieved efficiencies ranging from 81% to 97.5% depending on the type of sweeper. The type of sweeper obviously makes a big difference. The permit should specify a type of sweeper and sweeper efficiency. The modeling and emissions calculations should be revised to reflect actual levels of efficiency of the equipment.

Certain mechanical sweepers can generate significant air emissions. If Bituminous Roadways intends to use a mechanical sweeper, the emissions calculations should reflect the lower efficiencies of mechanical sweepers and account for the air emissions caused by mechanical sweeping.

The permit does not specify water sprays for the portable crushing equipment. Due to the fact that particulate concentrations from the proposed project are extremely close to the NAAQS, the permit should specify the most stringent particulate controls on the crushing equipment.

The permit application states that the City of Roseville will restrict crusher operation to a maximum of two 3-week periods per year separated by a minimum of 120 days. The permit should include this requirement.

Moss & Barnett

Conclusion

Gladstone completed a critical review of the technical information underlying the EAW and proposed air permit. As detailed in the analysis provided in this letter there is too much uncertainty to reach a conclusion that the air permit and the project can proceed. The MPCA should deny issuance of the air emissions permit for the proposed Bituminous Roadways operation and should require preparation of an Environmental Impact Statement.

Sincerely,

Joseph G. Maternowski
Moss & Barnett, A Professional Association
On behalf of UC06 Roseville MN LLC

cc: Chris Massey
Patrick Mulloy

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RESOLUTION No. _____

A RESOLUTION DENYING A CONDITIONAL USE PERMIT FOR BITUMINOUS ROADWAYS, INC. FOR THE OUTDOOR STORAGE OF AGGREGATES

WHEREAS, an Application was submitted by Bituminous Roadways, Inc. ("Bituminous Roadways") for consideration of a Conditional Use Permit to allow for the outdoor storage of aggregates in connection with the operation of an Asphalt Plant; and

WHEREAS, the Application is for property located at 2280 Walnut Street in Roseville, Minnesota, legally described as follows:

See attached Exhibit A; and

WHEREAS, after due notice the Roseville Planning Commission held a public hearing on May 6, 2009, regarding the Conditional Use Application in accordance with state law and city ordinance, at which time oral and written testimony was presented by the Bituminous Roadways, its agents, residents, and other interested persons; and

WHEREAS, following the Planning Commission meeting the City has received additional documents, reports, correspondence and other evidence from interested parties pertaining to the Conditional Use Permit Application, all of which is included in the record on this matter and incorporated herein by reference; and

WHEREAS, the City Council at a special meeting held on November 29, 2010, received the Planning Commission's recommendation, the City staff report and further written and oral testimony from Bituminous Roadways and other interested persons; and

WHEREAS, the City Council upon consideration of the Application, the staff report, and all other information received from interested parties constituting the record on this Application, and upon further deliberation, makes the findings in this Resolution as a contemporaneous record of the Council's decision;

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Roseville, Minnesota, that it adopts the following findings regarding the subject Application for a Conditional Use Permit:

1. Bituminous Roadways has submitted a Conditional Use Application to the City stating that it intends to construct an Asphalt Plant on the subject property with outdoor storage of aggregates. The Asphalt Plant will include the manufacture and distribution of asphalt; the outdoor storage of aggregates; the storage of finished asphalt and asphalt cement (a binder material in asphalt production) in sealed tanks; a

building for a laboratory, equipment maintenance, storage and offices; and crushing operations.

2. The property which is the subject matter of the Bituminous Roadways Application is zoned I-2 General Industrial District ("I-2 Zoned District"). At the time the Bituminous Roadways Application was filed with the City, Section 1007.015 of the Roseville City Code allowed laboratories for research and quality control and physical sciences and heavy manufacturing and repair as permitted uses in an I-2 Zoned District ("Original Ordinance"). Asphalt Plants are not designated as a permitted use in an I-2 Zoned District in Section 1007.015 of the Original Ordinance. The storage of enclosed or screened materials and the storage and distribution of chemicals required a Conditional Use Permit under Section 1007.015 of the Original Ordinance. Crushing operations are not an allowed use in an I-2 District under Section 1007.015.

3. In addition to the general requirements set forth in Roseville City Code Section 1007.015, Roseville City Code Section 1007.01 provides that certain minimum requirements shall apply to all buildings that may be erected, converted or structurally altered in industrial districts and the development of industrial land, including certain performance standards set forth in Section 1007.01D.

4. Section 1014.01 of the Roseville City Code provides that the Planning Commission and City Council should consider the following criteria in determining whether to grant a Conditional Use Permit:

   A. Impact on traffic.
   B. Impact on parks, streets and other public facilities.
   C. Compatibility of the Site Plan, internal traffic circulation, landscaping and structures with contiguous properties.
   D. Impact of the use on the market value of contiguous properties.
   E. Impact on the general public health, safety and welfare.
   F. Compatibility with the City's comprehensive plan.

5. On October 11, 2010, the Roseville City Council amended Section 1007.015 of the Roseville City Code by, among other things, specifying that an Asphalt Plant was a non-permitted use in an I-2 Zoned District ("Amended Ordinance"). The Amended Ordinance was published on October 19, 2010, at which time it became effective.

6. The use of the subject property for an Asphalt Plant is not allowed under Section 1007.015 of the Amended Ordinance.

7. The Asphalt Plant proposed by Bituminous Roadways consists of several components, including the manufacturing of asphalt, the outdoor storage of aggregates, the storage of chemicals and material in sealed tanks and crushing operations. While some components of the Asphalt Plant proposed by Bituminous Roadways may be allowed as a permitted use under Section 1007.015 of the Original

Ordinance, the outdoor storage of aggregates, the storage of materials in enclosed tanks and crushing operation activities are not permitted uses. Consequently, the Asphalt Plant proposed by Bituminous Roadways is not a permitted use in an I-2 Zoned District under Section 1007.015 of the Original Ordinance.

8. The use of the subject property for an Asphalt Plant is not a permitted use under the Performance Standards stated in Section 1007.01D of the Roseville City Code for the following reasons:

A. The proposed crushing operation as part of the asphalt plant proposal will create noise to a level constituting a nuisance to the surrounding area prohibited under 1007.01(D)(1) of the Roseville City Code, specifically at 2501 Walnut Street, a commercial office building, where the decibel levels will exceed the commercial daytime standards for noise under the State of Minnesota Pollution Control Agency noise standards, and at 2431 St. Croix Street, an industrial use, where the decibel levels of the alternative crusher will exceed the daytime industrial standards under the State of Minnesota Pollution Control Agency noise standards.(Source: Letter dated August 11, 2010 from Chris Massey, Vice President , UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville; pgs. 3-5 and attachments).

B. The proposed asphalt plant proposal will emit particulate matter in such a manner that will constitute a nuisance to the surrounding area prohibited by Section 1007.01(D)(2) of the Roseville City Code. The draft air quality permit shows a potential emissions of 39.16 tons with half of these emissions being larger particulate matter that have the potential of settling on nearby surrounding properties and air intakes creating a nuisance for the building owner and tenants . (Source: Letter dated September 10, 2010 from Joseph Maternowski, Moss and Barnet, representing UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville, pg 12-13).

C. The proposed asphalt plant proposal will emit particulate matter in a manner that will constitute a nuisance to the surrounding area prohibited under 1007.01(D)(2) of the Roseville City Code. Specifically, particulate matter known to cause respiratory and cardiovascular disease will be at the maximum emission level allowed under the National Ambient Air Quality Standards (NAAQS) as measured over a 24-hour period. These emissions cause serious public health concerns for certain populations. Source: Letter dated September 10, 2010 from Joseph Maternowski, Moss and Barnet, representing UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville (pg. 11-13).

D. The proposed asphalt plant proposal will emit particulate matter in a manner that will constitute a nuisance to the surrounding area prohibited under 1007.01(D)(2) of the Roseville City Code, as evidenced by the Draft Environmental Assessment Worksheet dated July 8, 2010. Specifically, Old Dutch Foods, 2375 Terminal Road, Roseville states

"...the process used by Old Dutch Foods in creating potato chips would be highly susceptible to absorption of particulates emitted by this asphalt plant, particularly including hydrogen sulfide.
(Source: Letter from Francis Rondini, Chestnut and Cambrone, attorney representing Old Dutch Foods, 2375 Terminal Road, Roseville, dated September 10, 2010; pg. 2; and Draft Environmental Assessment Worksheet dated July 9, 2010, pg 19-22).

E. The proposed asphalt plant proposal will emit particulate matter in a manner that will constitute a nuisance to the surrounding area prohibited under 1007.01(D)(2) of the Roseville City Code. Specifically, Old Dutch Foods states that

"...through the windows and air intakes at Old Dutch Foods, particulate matter from the rubble pile, the asphalt millings pile, asphalt shingles, concrete rubble pile, and the aggregate pile, are well within the distance whereby these particulates will be easily incorporated into the ambient air at Old Dutch Foods plant, and accordingly, absorbed into and become part of their food product.
(Source: Letter from Francis Rondini, Chestnut and Cambrone, attorney representing Old Dutch Foods, 2375 Terminal Road, Roseville, dated September 10, 2010; pg. 3).

F. The proposed asphalt plant proposal will emit toxic and noxious materials in a manner that will constitute a nuisance to the surrounding area prohibited under 1007.01(D)(3) of the Roseville City Code. Specifically, asphalt plants emit carcinogenic compounds such as hexan, phenol, polycylic organic matter, formaldehyde, and toluene. (Source: Letter dated August 11, 2010 from Chris Massey, Vice President , UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville, pg. 6).

G. The proposed asphalt plant proposal will emit toxic and noxious materials in a manner that will constitute a nuisance to the surrounding area prohibited under 1007.01(D)(3) of the Roseville City Code. Specifically, the use of a fiber bed filter to reduce emissions of violatle organic compounds and particulate matters may not be effective due to the characteristics of the actual filter bed material, the ambient and process temperatures, effluent concentrations, containment of breakthrough emissions, particle size, and recovery desorbed organics. (Source: Letter dated August 11, 2010 from

Chris Massey, Vice President , UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville, pg. 8)

H. The proposed asphalt plant proposal will emit toxic and noxious materials in a manner that will constitute a nuisance to the surrounding area prohibited under 1007.01(D)(3) of the Roseville City Code. Specifically, incomplete combustion and asphalt paving generate polycyclic aromatic hydrocarbons (PAHs) a significant concern for storm water ponds. (Source: Letter from Neighbors Against the Asphalt Plant-Strategies Committee dated September 9, 2010, pg. 8).

I. The proposed asphalt plant proposal will emit toxic and noxious materials in a manner that will constitute a nuisance to the surrounding area prohibited under 1007.01(D)(3) of the Roseville City Code. Specifically, the emissions of the materials generated by the production of asphalt will affect up to 94 people who have asthma or other chronic respiratory illnesses. (Source: Letter from Megan Dushin dated September 10, 2010, pg. 2).

J. The proposed asphalt plant proposal will emit odors in a manner that will constitute a nuisance to the surrounding area prohibited under 1007.01(D)(4) of the Roseville City Code. Specifically, the City has heard repeated testimony and been provided written correspondence indicating that smells from the industrial area north of Hwy. 36 are detected in the residential area south of Highway 36 (Source: Comments submitted to PCA in response to Draft EAW).

K. The proposed asphalt plant proposal will emit odors in a manner that will constitute a nuisance to the surrounding area prohibited under 1007.01(D)(4) of the Roseville City Code. Specifically, it has been modeled that the quantity of H_2S [Hydrogen Sulfide], will be at a quantity that is detectable by surrounding properties, specifically 2501 Walnut Street, a commercial office building as well as the Gross Golf Course, and the residential area south of Hwy. 36. (Source: Letter dated August 11, 2010 from Chris Massey, Vice President, UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville; pgs. 7-8).

L. The proposed asphalt plant proposal will emit odors in a manner that will constitute a nuisance to the surrounding area prohibited under 1007.01(D)(4) of the Roseville City Code. Specifically, the presence in air of unidentified odorous compounds responsible for the perception of the "asphalt odor" will lead to contamination of food products manufactured by Old Dutch Foods. (Sources: Report from Pedro A. Rodriguez, Ph. D dated October 15, 2010 and

Report by Sensory Analysis Center, Kansas State University dated September 10, 2010).

M. The proposed asphalt plant proposal will emit odors in a manner that will constitute a nuisance to the surrounding area prohibited under 1007.01(D)(4) of the Roseville City Code. Specifically, Old Dutch Foods sates that:

Ambient odors alone making their way in Old Dutch Foods potato chips constitutes a significant risk of a catastrophic event for the company. Ambient odors alone in the product could not only significantly damage sales, but would almost certainly result in a significant recall of the product, causing substantial financial losses to Old Dutch Foods, and even more importantly, to the Old Dutch Foods brand."
(Source: Letter from Francis Rondini, Chestnut and Cambrone, attorney representing Old Dutch Foods, 2375Terminal Road, Roseville, dated September 10, 2010; pg. 3).

N. The proposed asphalt plant proposal will emit odors in a manner that will constitute a nuisance to the surrounding area prohibited under 1007.01(D)(4) of the Roseville City Code. Specifically, the use of many carbon filters, as proposed to be used by Bituminous Roadways, is rated by several manufactures of carbon filters to be ineffective in absorbing hydrogen sulfide, the chemical compound that creates the "rotten egg" smell and actual operating conditions of the asphalt plant can degrade the carbon filters over time. (Source: Letter dated September 10, 2010 from Joseph Maternowski, Moss and Barnet, representing UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville, pg. 6-8).

9. The Asphalt Plant proposed by Bituminous Roadways is not permitted under Section 1007.015 of the Original and Amended Ordinance since it will involve chemicals that are noxious as defined under City Ordinances and involve chemicals that are in danger from fire or explosives.

10. The Asphalt Plant is the principal use which Bituminous Roadways intends for the subject property. The outdoor storage of aggregates for which the Conditional Use is being requested by Bituminous Roadways is a component of, and subordinate and incidental to, the construction and operation of the Asphalt Plant. The subordinate and incidental use of outdoor storage of aggregates is not allowable where the principal use is prohibited.

11. The City Council finds the following with respect to the Conditional Use Permit Application:

a. **Impact on traffic:** A review of the traffic impact by the City of Roseville Engineering Department has indicated that the surrounding road network has the capacity to handle the additional truck traffic. However, the safety at

nearby intersections will be negatively impacted by the new truck traffic resulting from this conditional use (Staff Report).

b. **Impact on parks, streets and other public facilities:** The proposed outdoor storage of materials will negatively impact the nearby Gross Golf Course operated by the Three Rivers Park District due to the quantity and type of particulate matter emissions that will originate from the various outdoor storage piles of rubble, asphalt millings, asphalt shingles, concrete rubble, and aggregate as the emissions will impair a user's ability to enjoy the golf course. (Sources: Letter dated August 11, 2010 from Chris Massey, Vice President , UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville; Letter from Francis Rondini, Chestnut and Cambrone, attorney representing Old Dutch Foods, 2375 Terminal Road, Roseville, dated September 10, 2010; Letter dated September 10, 2010 from Joseph Maternowski, Moss and Barnet, representing UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville and Letter from Three Rivers Park System; and testimony from interested parties).

c. **Compatibility of site planning, internal traffic circulation, landscaping, and structures with contiguous properties.** The proposed outdoor storage of aggregate materials will not be compatible with contiguous properties due to the quantity and type of particulate matter emissions that will originate from the various outdoor storage piles of rubble, the asphalt millings, asphalt shingles, concrete rubble, and aggregate piles as the emissions will be harmful to nearby businesses which require clean air as part of their operations. (Sources: Letter dated August 11, 2010 from Chris Massey, Vice President , UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville; Letter from Francis Rondini, Chestnut and Cambrone, attorney representing Old Dutch Foods, 2375 Terminal Road, Roseville, dated September 10, 2010; Letter dated September 10, 2010 from Joseph Maternowski, Moss and Barnet, representing UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville; and testimony from interested parties).

d. **Impact of the use on the market value of contiguous properties:** The proposed outdoor storage of materials will negatively impact the property values of the surrounding businesses due to the quantity and type of particulate matter emissions that will originate from the various outdoor storage piles of rubble, asphalt millings, asphalt shingles, concrete rubble, and aggregate as the emissions will be harmful to nearby properties and make the properties less desirable for future purchasers. (Sources : Letter dated August 11, 2010 from Chris Massey, Vice President , UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville; Letter from Francis Rondini, Chestnut and Cambrone, attorney representing Old Dutch Foods, 2375 Terminal Road, Roseville, dated September 10, 2010; Letter dated September 10, 2010 from Joseph Maternowski, Moss and Barnet, representing UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville; and testimony of other adjacent property owners).

e. **Impact on the general public health, safety, and welfare:** The proposed outdoor storage of materials will negatively impact the general public, safety, and welfare of the public due to the quantity and type of particulate matter emissions that will originate from the various outdoor storage piles of rubble, asphalt millings, asphalt shingles, concrete rubble, and aggregate as the emissions will spread materials known to be carcinogenic to users of surrounding properties. (Sources : Letter dated August 11, 2010 from Chris Massey, Vice President , UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville; Letter from Francis Rondini, Chestnut and Cambrone, attorney representing Old Dutch Foods, 2375 Terminal Road, Roseville, dated September 10, 2010; Letter dated September 10, 2010 from Joseph Maternowski, Moss and Barnet, representing UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville; and testimony of other interested parties).

f. **Compatibility with the City's Comprehensive Plan:** The proposed outdoor storage of materials will not be compatible with the City's Comprehensive Plan due to the quantity and type of particulate matter emissions that will originate from the various outdoor storage piles of rubble, asphalt millings, asphalt shingles, concrete rubble, and aggregate as allowing these emissions will not be consistent with the following goals as established by the 2030 Comprehensive Plan for the City of Roseville:

i. **Land Use Goal #4.** Protect, improve, and expand the community's natural amenities and environmental quality.

ii. **Economic Development and Redevelopment Goal #6.** Integrate environmental stewardship practices to commercial development.

iii. **Environmental Protection Goal #1.** Protect, preserve, and enhance Roseville's water, land, air, and wildlife resources for current and future generations.

iv. **Environmental Protection Goal #5.** Ensure the City takes a leadership role in environmentally friendly property development, redevelopment, and maintenance practices.

(Sources: Letter dated August 11, 2010 from Chris Massey, Vice President , UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville; Letter from Francis Rondini, Chestnut and Cambrone, attorney representing Old Dutch Foods, 2375 Terminal Road, Roseville, dated September 10, 2010; Letter dated September 10, 2010 from Joseph Maternowski, Moss and Barnet, representing UC06 Roseville MN LLC, property owner of 2501 Walnut Street, Roseville; and 2030 Comprehensive Plan for the City of Roseville; and testimony of interested parties).

12. The use of the subject property proposed by Bituminous Roadways and the outdoor storage of aggregates will adversely affect the public health, safety, comfort and general welfare of the community, negatively affect the character of the neighborhood

due to the nature of the said uses, and is incompatible with nearby commercial and residential neighbors, in contradiction of Section 1001.01 of the Roseville City Code.

13. The Roseville City Council further finds as follows:

A. _____

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B. _____

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C. _____

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D. _____

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E. _____

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F. _____

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G. _____

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H. _____

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I. _____

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J. _____

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NOW IT THEREFORE BE IT FURTHER RESOLVED by the City Council of the City of Roseville, Minnesota, that the Application to issue a Conditional Use Permit to Bituminous Roadways, Inc. to allow the outdoor storage of aggregates at 2280 Walnut Street, in Roseville, Minnesota, is hereby denied.

WHEREUPON, said Resolution was declared duly past and adopted on the _____ day of _____, 2010.

CITY OF ROSEVILLE

By: _____
Mayor

ATTEST:

_____
City Manager