

# FEDERAL TRANSIT ADMINISTRATION COMPLIANCE REVIEW MIDWEST PARATRANSIT SERVICES

*Program Evaluation and Audit*

*PER MINN. STAT. § 13.392, SUBD. 1: DATA, NOTES AND PRELIMINARY DRAFTS OF REPORTS CREATED, COLLECTED AND MAINTAINED BY THE METROPOLITAN COUNCIL'S PROGRAM EVALUATION AND AUDIT DIVISION ARE CONFIDENTIAL UNTIL THE FINAL REPORT IS RELEASED OR ACTIVITY ON THE PROJECT IS DISCONTINUED. PLEASE DO NOT CIRCULATE THIS DRAFT TO ANYONE BEYOND THOSE DIRECTLY INVOLVED IN DEVELOPING THE MANAGEMENT RESPONSE.*

DRAFT



June 19, 2019

# INTRODUCTION

## Background

Midwest Paratransit Services, Inc. (MPS) is a Metropolitan Council contractor. MPS was established in its current format in 1997 to concentrate efforts on public transit. MPS operates the Dakota County and Hennepin County Transit Link contracts, as well as MyRide and fixed route services for the City of Maple Grove, and the SmartLink service for Scott and Carver Counties. MPS has more than 100 employees and operates out of four garages in Cologne, Inver Grove Heights, Maple Grove, and Shakopee.

## Purpose

As a direct recipient of federal funds from the Federal Transit Administration (FTA), the Metropolitan Council is required to conduct oversight of its contractors and ensure that they comply with federal requirements. The Council is also responsible for ensuring that its contract terms are followed and enforced. Program Evaluation and Audit reviews contractors on a periodic basis to help fulfill the Council's obligations as a direct recipient.

## Objective

The objective of the Audit is to determine MPS's compliance with federal requirements in eight (8) areas and contractual requirements.

## Scope

This review covers activities conducted during the last three years. However, coverage was expanded to earlier periods if necessary. It covers the MPS activities conducted as part of Operations Agreements 14P010 (Dakota County Transit Link), 15P016 (Hennepin County Transit Link), or for a Council subrecipient (Scott County or Maple Grove). It also covers activities and services conducted with FTA or Metropolitan Council funded vehicles subject to the Master Lease Agreement.

## Methodology

Audit conducted its review from July 2018 through April 2019. Audit conducted a desk review of MPS' policies, procedures, and practices for compliance using the FTA's *Comprehensive Review Guide for Triennial and State Management Reviews Fiscal Year 2018*, the two Operations Agreements, and the Master Lease Agreement. Once the desk review was complete, an onsite interview was held with MPS management. Audit also reviewed 12 vehicles across three garages for a maintenance review. Five vehicles were reviewed at the Maple Grove and Shakopee garages, and two were reviewed at the Inver Grove Heights garage.

Prior to the report's issuance, Audit met with Metropolitan Transportation Services (MTS) and Office of Equal Opportunity (OEO) staff to discuss the findings. Audit also held an exit conference with MPS prior to the presentation to Audit Committee.

# FINDINGS AND RESPONSES

## 1. Americans with Disabilities Act (ADA)

Basic Requirement: Recipients must track, resolve, and respond to ADA-related complaints and advertise this process to the public in an easily accessible format for individuals with disabilities. Contractors must not discriminate on the basis of disability.

During this review of MPS, no deficiencies were found with the FTA requirements for the Americans with Disability Act.

## 2. Charter Service

Basic Requirement: Except under limited exceptions, recipients and contractors may not use FTA assistance to operate or maintain charter bus service.

During this review of MPS, no deficiencies were found with the FTA requirements for Charter Service.

## 3. Drug and Alcohol

Basic Requirement: Contractors and lessees with safety-sensitive employees must administer their drug and alcohol programs in accordance with the requirements of 49 Code of Federal Regulations (CFR) parts 40 and 655.

During this Triennial Review of MPS, **one (1) contract violation and one (1) deficiency was found with the FTA requirements for Drug and Alcohol.**

1. FTA Finding DA2-1: 49 CFR 655.14(b) requires that all covered employees must receive at least 60 minutes of training on the effects of drug and alcohol. MPS did not properly ensure that covered employees completed the training in LITMOS. (**DEFICIENCY CODE DA2-1:** Employee training not provided/insufficient.)

MPS Corrective Action(s) and Schedule: By July 10, 2019, MPS must develop a policy or procedure to ensure new that are designated as “covered” have completed required training prior to engaging in safety-sensitive activities. MPS must submit proof that all covered employees have completed the required training or an explanation as to why they have not.

*Management Response: MPS Drug and Alcohol Policy and Procedure will be updated to ensure all “covered” employees take required trainings and submit proof by July 10, 2019.*

*Status: Open*

2. Finding Contract Clause 3.04 “Alcohol Misuse and Prohibited Drug Use Testing Program”: Operations Agreements 14P010 (Dakota) and 15P016 (Hennepin) require the MPS to agree to establish, implement, and maintain a drug and alcohol testing program that complies with 49 CFR 655 and 49 CFR 40. MPS allows operators to finish their routes prior to heading to the facility when notified that they have been randomly selected. Additionally, operators are not given a set timeframe to report to the drug testing facility.

MPS Corrective Action(s) and Schedule: By July 10, 2019, MPS must submit to the Metropolitan Council an updated drug and alcohol policy that requires safety sensitive employees to immediately head to the testing facility and report within a specified timeframe.

*Management Response: MPS will be updating the drug and alcohol policy to improve the oversight and provide specific procedures that requires safety sensitive employees to head immediately to the testing facility.*

*Status: Open*

#### 4. Equal Employment Opportunity (EEO)

Basic Requirement: Contractors that meet a monetary and number of transit-related employee threshold have an EEO Program.

Contractors are required to submit a full or abbreviated EEO Program based on the number of its transit-related employees and whether it reaches a monetary threshold. MPS has 108 employees, meets the FTA threshold and is required by the vehicle Master Lease Agreement to complete a full EEO Program.

During this Triennial Review of MPS, **eight (8) deficiencies were found with the FTA requirements for EEO.**

1. FTA Finding EEO1-1: FTA Circular 47041.A. Ch. 2.2. EEO Program Elements requires and EEO Program to contain seven required elements. MPS is missing several elements and sub-elements including. In its policy statement, MPS has not identified all protected classes, a statement about the right to file complaints, or a designation the EEO Officer. Furthermore, MPS does not have a complete Utilization or Employment Practices Analyses. MPS has not stated EEO goals or developed a plan for monitoring and reporting upon the Program's progress. (**DEFICIENCY CODE: EEO1-1.** Full EEO Program not prepared, maintained, and/or submitted):

MPS Corrective Action(s) and Schedule: By July 10, 2019, MPS must make the required updates to their EEO Program and policy statement.

*Management Response: MPS is rewriting its Policy Statement to include all seven elements of the EEO program.*

*Status: Open*

2. FTA Finding EEO3-1: FTA Circular 47041.A. Ch. 2.2.3 "Designation of Personnel Responsibility" requires MPS to establish a direct reporting structure from the EEO officer to the CEO/GM. MPS's organizational chart does not reflect the required structure. (**DEFICIENCY CODE: EEO3-1.** Inadequate designation of EEO Officer)

MPS Corrective Action(s) and Schedule: By July 10, 2019, MPS must update their organization chart and procedures to indicate that the EEO Officer has a direct, independent reporting relationship to the CEO/GM.

*Management Response:* MPS will update its organizational chart to reflect the EEO Officer's reporting duties directly to the General Manager, independent of other departments and managers/supervisors.

*Status: Open*

3. FTA Finding EEO3-2: FTA Circular 47041.A, Ch. 2.2.3 "Designation of Personnel Responsibility" requires specific elements to be included in the description of the EEO Officer's Program responsibilities and for the Officer to carry out those state responsibilities. The FTA Circular also requires agencies and senior management to support the EEO officer to carry out the EEO program. The MPS EEO Officer's missing responsibilities include:

- Responsibilities related to the hiring and promotion process.
- Periodically review employment and EEO policies, procedures, performance evaluations, and union agreements.
- Report at least semiannually to the CEO/GM on each department's progress in relation to the agency's goals.

Additionally, MPS could not provide sufficient evidence of management support for the EEO Officer and program implementation. (**DEFICIENCY CODE: EEO3-2.** Inadequate designation EEO officials, supervisors and managers)

MPS Corrective Action(s) and Schedule: By July 10, 2019, MPS must submit an updated description of EEO Officer's Program responsibilities and a policy describing how management will support the EEO Officer in the fulfillment of the Program.

*Management Response:* MPS will update the description of the EEO Officer's responsibilities and how management will support the EEO Officer in the updated EEO Program.

*Status: Open*

4. FTA Finding EEO4-1: FTA C 4704. 1A, Ch. 2.2.2 requires MPS to conduct an initial EEO training within 90 days for managers, periodic EEO trainings for employees and managers, and to post official EEO materials in employee common spaces. MPS could not provide evidence of initial or periodic trainings either online or in-person. EEO Policy Statement posters were missing from employee common spaces at MPS's office and at least one garage. (**DEFICIENCY CODE EEO4-1:** Deficiencies in publicizing and disseminating the EEO Policy Statement.)

MPS Corrective Action(s) and Schedule: By July 10, 2019, MPS must implement EEO trainings via in-person or LITMOS online trainings, must hang EEO posters in employee common spaces, and document and submit evidence that corrective actions were taken.

*Management Response:* MPS will provide EEO training for all new supervisors and managers within 90 days of appointment, add a dedicated Litmos learning module on

EEO separate from the Orientation module, and has already posted EEO materials in designated common areas throughout the company.

*Status: Open*

5. FTA Finding EEO4-2: FTA C 4704.1A, Ch. 2.2.6 requires MPS to submit a completed narrative and statistical employment practices analysis. MPS is required to narratively review their practices of recruitment and selection, testing, promotions and transfers, seniority, training, compensation and benefits, discipline, and termination. Entities are required to statistically review their hiring, promotion/transfer, discipline, terminations, and training practices by race, gender, and EEO-4 job category. While MPS submitted a Minnesota Department of Human Rights (MDHR) workforce analysis, it does not cover every FTA category. (**DEFICIENCY CODE EEO4-2**: Employment practices analyses deficiencies.)

MPS Corrective Action(s) and Schedule: By August 14, 2019, MPS must submit to the Council a detailed narrative and statistical assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. MPS must submit a plan to routinely conduct this assessment in conjunction with evaluating short-term and long-range goals. MPS must complete an employment practices chart that provides all the statistical data in FTA Circular 4704.1A Attachment 4.

*Management Response*: MPS will use the Federal FTA Employment Practices and Utilization Analysis Charts provided in Attachment 4 of the FTA Circular. MPS will document employment practices in both a detailed narrative and statistical analysis to identify trends and employment barriers to include but not limited to testing, promotions and transfers, seniority practices, training, compensation and benefits, disciplinary procedures and termination practices.

*Status: Open*

6. FTA Finding EEO4-3: FTA C 4704.1A, Ch. 2.2.7 requires agencies to monitor and report on the progress of their EEO Program. An effective monitoring plan allows the agency to assess the results of action plans, the status of the EEO Program, and produce documentation that supports the EEO Program's implementation. MPS does not have a monitoring program in place. MPS could not produce documentation that the EEO Program's progress is reported on. (**DEFICIENCY CODE EEO4-3**: EEO reporting and/or monitoring system deficiencies.)

MPS Corrective Action(s) and Schedule: By July 10, 2019, MPS must create a monitoring and reporting system that:

- Monitors the implementation of the dissemination plan, utilization analysis, statistical employment practices, goal timeframes, and all identified barriers and the progress of the Program and addressing barriers.

- Holds and documents meetings between the CEO/President/GM and EEO Officer to discuss the EEO Program's progress and the results of monitoring activities.
- Documents the EEO-related meetings held between the EEO Officer and management
- Holds and documents meetings between the EEO Officer, human resources, and hiring officials to review current EEO goals, statistics, and policies.

*MPS Response:* MPS will implement Agency Monitoring to include methods to monitor required EEO Program components.

*Status: Open*

FTA Finding EEO4-4: FTA C 4704.1A, Ch. 2.2.4 requires agencies to complete and submit a utilization analysis that analyzes current employment by race, sex, and EEO-4 job category. MPS submitted a MDHR workforce analysis. However, the MDHR workforce analysis does not meet FTA requirements. (**DEFICIENCY CODE EEO4-4:** Utilization incomplete or not completed.)

MPS Corrective Action(s) and Schedule: By August 14, 2019, MPS must complete and submit a utilization analysis that is compliant with FTA C 4704.1A.

*MPS Response:* MPS will adopt the Federal FTA Employment Practices and Utilization Analysis Charts provided in Attachment 4 of the FTA Circular, separate from the one required by the State.

*Status: Open*

7. FTA Finding EEO4-5: FTA C 4704.1A, Ch. 2.2.5 requires agencies to submit short and long-term goals for their EEO Program, as well as analyze and explain why the agency failed to meet previous EEO Program goals. MPS did not set any EEO goals. (**DEFICIENCY CODE EEO4-5:** EEO goals deficiencies.)

MPS Corrective Action(s) and Schedule: By August 14<sup>th</sup>, 2019, MPS must submit long-term goals for two or more years, as percentages, for addressing underutilizations or concentrations. MPS must also submit short-term goals, as numbers and percentages, for the next year for addressing underutilizations or concentrations and to meet long-term goals. Goals must be based upon the results of the utilization and employment analyses.

*MPS Response:* MPS will submit long-term goals (two or more years) and short-term goals (using the Utilization Analysis and other data) as part of the EEO Plan.

*Status: Open*

## 5. Legal

**Basic Requirement:** Contractors must promptly notify the FTA of any current or prospective legal matters that may affect the Federal government.

During this review of MPS, no deficiencies were found with the FTA requirements for Legal.

## 6. Maintenance

**Basic Requirement:** Contractors must keep federally funded vehicles, equipment, and facilities in good operating condition. Contractors must keep Americans with Disabilities Act (ADA) accessibility features on all vehicles, equipment, and facilities in good operating order.

During this Triennial Review of MPS, **two (2) contract violations and were found for Maintenance.**

1. Finding Contract Clause 4.04 “Vehicle Cleanliness”: Operations Agreements Nos. 14P010 (Dakota) and 15P016 (Hennepin) require the Contractor to maintain vehicles in a “neat and clean” appearance. The contractor is expected to adhere to the contract’s cleaning schedule and spot clean as needed. During onsite reviews of 12 vehicles, 4 vehicle exteriors and 8 interiors were described as “dirty” by Audit staff. Decals and DOT identifications were frequently scratched, faded, or removed. One Scott County vehicle is suspected to have been the home of a small animal due to the presence of fur and the vehicle’s scent. (Figures 1-4, 7).

Corrective Action(s) and Schedule: By July 10, 2019, MPS must make adjustments to improve the cleanliness of the vehicles and communicate these adjustments to the Project Administrator.

*Management Response: MPS will make adjustments to improve the cleanliness of vehicles at the relevant facilities and communicate adjustments to the Project Administrator.*

*Status: Open*

2. Finding Contract Clause 5.03 “Maintenance Facility Requirements”: Operations Agreements Nos. 14P010 (Dakota) and 15P016 (Hennepin) require the Contractor to agree to have “a pit or an operable vehicle lift appropriate for under-vehicle service,” and “an oil-water separator for all shop drains.” Only MPS’ Maple Grove facility has a set of lifts, while the other facilities have jacks. MPS’ Maple Grove facility does not have a garage drain, and as such cannot have an oil-water separator.

Corrective Action(s) and Schedule: By July 10, 2019, MPS must submit to the Council proof of purchase for lifts at the Inver Grove Heights and Shakopee facilities, or a plan for performing maintenance at a properly equipped facility.

By July 10, 2019 MPS must submit to the Council a written plan for the disposal of all liquids at the Maple Grove facility. This plan should include, but is not limited to, how MPS will remove oil, water, soap, or other cleaning agents.



*MPS Response: MPS will purchase lifts for the Weston Court MPS recycles all liquids at the Justen Circle facility. MPS will provide a written plan by July 10th, 2019.*

*Status: Open*

## 7. Satisfactory Continuing Control

**Basic Requirement:** Contractors must maintain adequate property records and submit annual reports on the status of real property in which the Federal Government retains interest.

During this review of MPS, **two (2) deficiencies were found with the FTA requirements for Satisfactory Continuing Control.**

1. **FTA Finding SCC7-5:** During a Maintenance Review of the Shakopee facility, Audit discovered that vehicles used for Scott County's SmartLink and Metropolitan Council's Transit Link services were stored outside the garage, unlocked, and with the keys inside the vehicle. One of the vehicles had a flat tire. Vehicles should be secured at all times, regardless of the surrounding conditions. MPS has hindered the Council's ability to maintain control of the vehicles. Furthermore, MPS has violated the Master Lease Agreement, its operations agreements, and 2 CFR 200.313(d). (**DEFICIENCY CODE SCC7-5: Inadequate property control system.**)

**MPS Corrective Action(s) and Schedule:** MPS must immediately secure the vehicles located at the Shakopee Transit Center. By July 10, 2019, MPS must submit to the Council a written plan for how they intend to prevent the loss, theft, or damage of FTA-funded assets.

*MPS Response: MPS has immediately changed procedure and oversight to ensure all buses are locked.*

*Status: Open*

2. **FTA Finding SCC12-1:** During a Maintenance Review of the Shakopee facility, Audit discovered that a vehicle used for the Council's Transit Link service was used to transport MPS property. Specifically, the vehicle was used to transport a sandblaster (Figures 5 and 6). The vehicle was reportedly out of service for a month. Council and FTA-funded property must be used for public transit services. MPS has violated section 3.02 of the Master Lease Agreement, section 4.02 of the operations agreements, and 2 CFR 200.313(c). (**DEFICIENCY CODE SCC12-1: Inadequate control of equipment.**)

**MPS Corrective Action(s) and Schedule:** MPS must immediately cease any non-project use of FTA and Council-funded vehicles. By July 10<sup>th</sup>, MPS must submit a written plan for how they will ensure that vehicles are used for project purposes.

*MPS Response: MPS has ceased any use of vehicles not authorized. MPS will submit a written plan by July 10, 2019.*

*Status: Open*

**Council Corrective Action and Schedule:** MTS staff should consider if financial compensation for mileage and other expenses incurred is required. MTS staff should consider requiring the contractor to perform a State DOT inspection at its own cost

before the vehicle reenters service.

MTS staff should review the global positioning system (GPS) data for the vehicle from March 1 to April 12, 2019 to determine the extent of the improper use.

*Management Response:* MTS is reviewing the GPS data available in conjunction with contract language to determine whether financial compensation for improper use is appropriate. In addition, a DOT licensed inspector will inspect the vehicle prior to re-entering revenue service.

*Status: Open*

## 8. Title VI

**Basic Requirement:** Recipients are required to have a Title VI plan. Contractors are required to implement the Title VI programs of the agencies that they contract with. Contractors are required to conduct their services without regard to race, color, or national origin.

During this review of MPS, no deficiencies were found with the FTA requirements for Title VI.

### Audit Clauses

**Basic Requirement:** Contractors are contractually required to maintain data pertaining to the activities it provides. Contractors must make this data readily available for the purposes of inspection, audit, or copying in a timely manner.

During this review, two (2) contract violations were documented.

1. **Finding Contract Clause 6.05 "Access to Data and Other Information":** Operations Agreements Nos. 14P010 (Dakota) and 15P016 (Hennepin) require the Contractor to agree to provide requested data in a timely fashion. MPS repeatedly failed to turnover documentation (EEO documentation, audited financial statements, employee handbook, oil invoices) within the requested timeframe. Follow-up documentation for the audit was frequently submitted after stated deadlines. MPS never asked for an extension.

**Council Corrective Action(s) and Schedule:** By July 10, 2019, MTS staff should create an enforcement mechanism noting responsibilities and accountabilities for MPS staff to ensure compliance with Metropolitan Council requests.

*Management Response:* MTS staff has been in communication with MPS' Certified Public Accountant (CPA) through coordination with MPS' owner. The most recent agreement made by the CPA firm was to send the 2016-2018 audited financial statements by June 12<sup>th</sup>. The audited financial statements have not been received by the Council as June 14<sup>th</sup>. The Council's ultimate recourse is to terminate agreements for default per section 8.03 of the contract.

2. **Finding Contract Clause 6.06 "Audits":** Operations Agreements Nos. 14P010 (Dakota) and 15P016 (Hennepin) require the Contractor to agree to provide copies of requested financial or operational audits within thirty (30) days of their completion. MPS has not turned over their most recent audited financial statements to Audit or MTS Grant Management staff. Audit has requested the documentation five (5) times since

February 8, 2019. MTS Grant Management staff have requested the audited financial statements four (4) times since January 18, 2019. MPS claimed that statements would be available within a couple weeks of February 1, 2019. MPS is still claiming that their audit has not been completed.

MPS Corrective Action(s) and Schedule: By May 31, 2019, MPS must submit the last three years (2016, 2017 and 2018) of audited financial statements to the Council.

*Management Response: The Financial Audit for 2017 will be submitted when it is completed. The Financial Audit for 2018 will start in June 2019 and will be submitted once it is completed.*

DRAFT

## Photos



Figure 1: Vehicle 64041's exterior displayed signs of disrepair. Decals are faded, as if the vehicle had sat in direct sunlight for years. The vehicle has been out of service since at least 2016, which was its last DOT inspection.



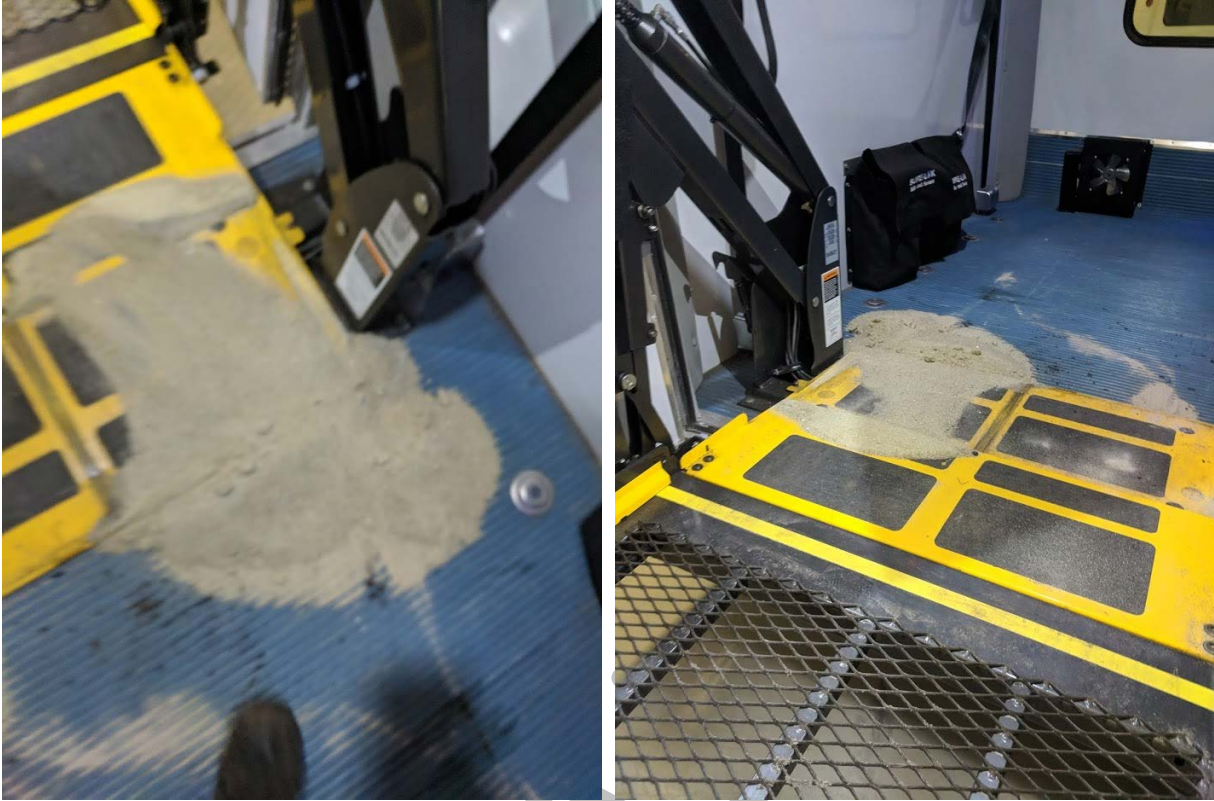
Figure 2: Vehicle 64041's interior smelled of defecation. As pictured, MPS staff were attempting to clean the vehicle, but without success.



Figures 3: The back of a Council vehicle operated out of the Maple Grove facility. This condition was typical of vehicles at the facility.



Figure 4: The steps of a vehicle at the Inver Grove Heights facility. Despite a notice directing drivers to clean the vehicles due to the audit, interiors were commonly found in the above condition.



Figures 5 and 6: A pile of sand was found in the interior of Vehicle 64297 that was left out of service for a month. MPS had been using the vehicle to transport a sandblaster between Maple Grove and Shakopee. Oil has stained the flooring, and an unknown substance was on one of the restraint bags.





Figure 7: In Vehicle 64297, an unknown substance, a crayon, and a broom were present on one of the seats. The vehicle has been out of service for a month.

DRAFT



390 Robert Street North  
Saint Paul, MN 55101-1805

651.602.1000  
TTY 651.291.0904  
[public.info@metc.state.mn.us](mailto:public.info@metc.state.mn.us)  
[metro council.org](http://metro council.org)