



# Minnesota Pollution Control Agency

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CITY OF AFTON

June 24, 2015

TO: INTERESTED PARTIES

RE: City of Afton Wastewater Collection System and Treatment Facility

On June 23, 2015, the Minnesota Pollution Control Agency (MPCA) Citizens' Board voted to approve the Findings of Fact, Conclusions of Law, and Order approving the denial of the request for a contested case hearing and authorized issuance of the State Disposal System Permit MN0070599 for the proposed Afton Wastewater Collection and Treatment Project, located in Washington County, Minnesota. The Findings of Fact, Conclusions of Law, and Order document concludes that the issues raised by the contested case hearing requests do not meet the requirement of Minn. R. 7000.1900 supb. 1.

We appreciate the time and effort of those who submitted comments on the Draft Environmental Assessment Worksheet and State Disposal System Permit.

Sincerely,

A handwritten signature in black ink, appearing to read "John Linc Stine".

John Linc Stine  
Commissioner

JLS:bt

STATE OF MINNESOTA  
MINNESOTA POLLUTION CONTROL AGENCY

IN THE MATTER OF THE DENIAL OF A CONTESTED CASE  
HEARING REQUEST AND ISSUANCE OF A STATE DISPOSAL  
SYSTEM PERMIT NO. MN0070599 FOR THE PROPOSED  
AFTON WASTEWATER TREATMENT FACILITY  
WASHINGTON COUNTY  
AFTON, MINNESOTA

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND ORDER

**FINDINGS OF FACT**

The above-entitled matter came before the Minnesota Pollution Control Agency (“MPCA/Agency”) Citizens’ Board at a regular meeting held in St. Paul, Minnesota on June 23, 2015. Based on MPCA staff review, comments and information received during the comment period, and other information in the record of the Agency, the MPCA hereby makes the following Findings of Fact, Conclusions of Law, and Order:

**Proposed Facility Description**

1. On March 28, 2014, the MPCA received an application from the city of Afton (“City”) for a State Disposal System (“SDS”) permit to construct and operate a wastewater treatment facility.
2. The application indicated that the proposed Afton Wastewater Treatment Facility (Facility) includes a collection system for both residential and commercial connections and a Large Subsurface/Sewage Treatment System (“LSTS”). The Old Village of downtown Afton is included in the proposed collection system and is currently unsewered and meeting wastewater needs with subsurface sewage treatment systems. The proposed LSTS location is in the NW ¼ of Section 14, Township 28 North, Range 20 West, Afton, Washington County, Minnesota.
3. The proposed LSTS consists of primary, secondary, and tertiary treatment of the wastewater prior to final effluent dispersal to the subsurface soil absorption beds (also known as drainfields). The application and plans indicate the LSTS consists of three 38,000 gallon septic tanks for primary treatment. Secondary treatment includes a 38,000-gallon aerated recirculation tank, a 10-cell recirculating gravel filter system with a total treatment area of 15,120 ft<sup>2</sup>, and a 38,000-gallon equalization tank. Tertiary treatment de-nitrification components include two 9,000 gallon attached growth specialty clarifiers with a supplemental carbon additive of acetic acid and a 9,000 gallon MicroFAST® aerobic treatment unit to provide final polishing of effluent prior to soil dispersal. The effluent is dosed from a 12,000 gallon dosing tank to an 8-zone pressurized drainfield with a total infiltrative area of 31,680 ft<sup>2</sup>. This is a Class C Facility, as determined in accordance with Minn. R. 9400.0500.
4. The proposed LSTS is designed for an average wet weather flow of 50,550 gallons per day. The design flow is calculated according to Minn. R. 7080.1860, Minn. R. 7081.0120, Minn. R. 7081.0130 and Minn. R. 7081.0140, as outlined in the MPCA’s *Design Guidance for Large Subsurface*

*Wastewater Treatment Systems* (November 2013). The average wet weather design flow is based on 77 residential connections, 25 commercial connections, and infiltration and inflow considerations.

5. The Facility does not include designed bypass/overflow points in the disposal system and is not authorized to discharge to surface waters of the state.

#### **Procedural History**

6. On May 23, 2014, pursuant to Minn. R. 7001.0100, the MPCA issued a public notice on the preliminary decision to issue the draft SDS Permit MN0070599 ("Permit").
7. The MPCA notified the public of the public notice period by publishing a Notice of Intent in the Stillwater Gazette newspaper. In addition, the Permit and public notice documents were made available for review on the MPCA website at <http://www.pca.state.mn.us/index.php/public-notices/list.html>.
8. The public notice period for the draft Permit began on May 23, 2014, and ended on June 23, 2014. During the 30-day notice period, the MPCA received eight comment letters, two petitions for a contested case hearing and two requests for a public informational meeting. The MPCA also received a petition for the completion of an Environmental Assessment Worksheet ("EAW").
9. On November 19, 2014, the City informed the MPCA that it wished to initiate environmental review through a discretionary EAW pursuant to Minn. R. 4410.1000, subp. 3(D), to determine if the Facility has the potential for significant environmental effects.
10. Due to proposed changes to the Facility design and the submittal of additional well location information, the MPCA decided to public notice the Permit a second time.
11. On February 20, 2015, the MPCA sent a letter to commenters regarding the May 23, 2014, draft Permit, stating that the MPCA received and reviewed all comments, the comments remain part of the record, but the MPCA will not respond to the comments since a second public notice of the updated draft Permit would occur. The letter included the dates for the next public notice period and invited commenters to resubmit comments on the revised draft Permit during the next public notice period.
12. On March 2, 2015, the MPCA issued a second 30-day public notice for the draft Permit. The public notice period began on March 2, 2015, and ended on April 1, 2015. The Permit and public notice documents were made available for review on the MPCA website at <http://www.pca.state.mn.us/index.php/public-notices/list.html>.
13. The MPCA completed an EAW for the Facility. A notice of the EAW was published in the *Environmental Quality Board Monitor* on March 2, 2015 and all EAW documents were made available for review on the MPCA website at <http://www.pca.state.mn.us/index.php/topics/environmental-review/environmental-assessment-worksheets-and-environmental-impact-statements.html>.
14. On March 16, 2015, the MPCA hosted an open house meeting at Afton City Hall to allow citizens a chance to discuss or voice concerns about the Facility. Copies of the draft Permit, EAW, and optional

comment forms were available to those that attended. MPCA staff was available to answer any permitting and environmental review questions.

15. During the 30-day notice period, the MPCA received 18 Permit comment letters, 2 petitions for a contested case hearing and 2 requests for a public informational meeting.
16. Permit comment letters raised such categories of concerns as:
  - Potential impacts to groundwater and water-supply wells in the area
  - Potential impacts to surface waters
  - Potential archaeological impacts
  - Potential impacts to endangered species
  - Regulation of the Facility's commercial users
  - Proper Facility operation and maintenance
  - Alternatives
  - Traffic
  - Odors
  - Environmental Justice
17. The MPCA prepared written responses to all comments received during the March 2, 2015, to April 1, 2015, Permit and EAW public notice periods. All Permit comment letters and petitions received are hereby incorporated by reference as Appendix A to these findings. The MPCA's Responses to Comments are hereby incorporated by reference as Appendix B to these findings.
18. On June 23, 2015, the MPCA Citizens' Board ("Board") voted to issue a negative declaration on the need for an Environmental Impact Statement ("EIS").

#### **EVALUATION OF THE REQUESTS FOR A CONTESTED CASE HEARING**

19. During the March 2, 2015, to April 1, 2015 public notice period for the draft SDS Permit, the MPCA received two separate requests for a contested case hearing. One request is from Clinton Elston, Afton resident and president of Human Endeavors. The second request is from Eckberg Lammers, Attorneys at Law, submitted on behalf of its clients, the city of Lake St. Croix Beach and city of St. Mary's Point ("Opposing Cities").
20. Minn. R. 7000.1800, subp. 2(A) sets out the requirements of a petition for a contested case hearing. A petition must include:
  - (1) A statement of reasons or proposed findings supporting a Board or commissioner decision to hold a contested case hearing pursuant to the criteria in part 7000.1900, subpart 1
  - (2) A statement of the issues proposed to be addressed by a contested case hearing and the specific relief requested or resolution of the matter.
21. Minn. R. 7000.1800, subp. 2(B) states:  
To the extent known by the petitioner, a petition for a contested case hearing may also include the following information:

- (1) A proposed list of prospective witnesses to be called at the hearing, including experts, with a brief description of the testimony they will provide
  - (2) A proposed list of publications, references, or studies that the petitioner would introduce at the hearing
  - (3) An estimate of the time required for the petitioner to present the case at a hearing
22. The MPCA notes that while the information specified in Minn. R. 7000.1800, subp. 2(B) is not required in a contested case hearing petition; it is information that is helpful to the MPCA as it considers whether a hearing will aid the Board or commissioner in making a final decision.
23. The MPCA decision on whether to grant the petition is governed by Minn. R. 7000.1900 subp. 1, which states:

The Board or commissioner must grant the petition to hold a contested case hearing or order upon its own motion that a contested case hearing be held if it finds that:

- A. There is a material issue of fact in dispute concerning the matter pending before the Board or commissioner.
  - B. The Board or commissioner has the jurisdiction to make a determination on the disputed material issue of fact.
  - C. There is a reasonable basis underlying the disputed material issue of fact or facts such that the holding of a contested case hearing would allow the introduction of information that would aid the Board or commissioner in resolving the disputed facts in making a final decision on the matter.
24. In order to satisfy the first criterion, Minn. R. 7000.1900, subp. 1(A), the hearing requester must show there is a material issue of fact in dispute as opposed to a disputed issue of law or policy. A fact is material if its resolution will affect the outcome of the case. *O'Malley v. Ulland Brothers*, 540 N.W.2d 889, 892 (Minn. 1996).
25. In order to satisfy the second criterion, Minn. R. 7000.1900, subp. 1(B), the requester must show that the MPCA has jurisdiction or authority to make a determination on the disputed issues of material fact. "Agencies are not permitted to act outside the jurisdictional boundaries of their enabling act." *Cable Communications Board v. Nor-West Cable*, 356 N.W.2d 658, 668 (Minn. 1984). Therefore, each issue in the contested case request has to be such that it is within the MPCA's authority to resolve.
26. Finally, under Minn. R. 7000.1900, subp. 1(C), "[t]he petitioners for a contested case hearing have the burden of demonstrating the existence of material facts that would aid the [Agency] in making a decision before they are entitled to a contested case hearing." *Matter of Solid Waste Permit for the NSP Red Wing Ash Disposal Facility*, 421 N.W.2d 398, 404 (Minn. Ct. App. 1988). The Minnesota Supreme Court has recognized that to meet this standard, "[i]t is simply not enough to raise questions or pose alternatives without some showing that evidence can be produced which is contrary to the action proposed by the (Agency)." *In the Matter of Amendment No. 4 to Air Emission Facility Permit*, 454 N.W.2d 427, 430 (Minn. 1990).

27. The MPCA evaluated the requests for a contested case hearing by examining each of the issues raised in the two petitions received, to determine if the petitions met each of the three required criteria in Minn. R. 7000.1900, subp. 1.

#### THE MPCA FINDINGS WITH RESPECT TO EACH OF THESE CRITERIA

##### Clinton Elston Petition

28. The MPCA notes that the timely contested case hearing request submitted by Mr. Elston (Petitioner) does not include all the information required by Minn. R. 7000.1800, subp. 2(A). The petition does not state the specific issues that would be addressed at a hearing or the relief sought. On that basis, the petition is deficient and should be denied. Nonetheless, the MPCA has attempted to identify the issues that the Petitioner might raise at a contested case hearing on the proposed Permit and will address each.
29. The Petitioner alleges that his Greywater Total Recycling Technology alternative was not given proper consideration by the city of Afton during the wastewater needs planning process for the proposed Afton Facility.
30. The issue raised is not a material issue of fact in dispute concerning the MPCA's permitting decision, but rather is a concern with regard to the City's wastewater needs planning process. The MPCA does not have jurisdiction to decide what treatment technology the City proposes. If the Petitioner is aggrieved by the process followed by the City, he had the option to pursue that issue with the City at the time the decision was made. The MPCA is the permitting authority. The MPCA does not have jurisdiction to decide the system type or design the City chooses. The MPCA's duty is to ensure that the proposed Facility provides reasonable assurance that the Facility will comply with the regulations and criteria of the MPCA.
31. The MPCA finds that the issue of proper consideration of the Petitioner's technology does not satisfy Minn. R. 7000.1900, subp 1 (A), (B) or (C).
32. The Petitioner alleges that Minn. Stat. §115, 325D, 363A, and 462 contain discriminatory laws that "abuse human rights, restrict trade and are unconstitutional".
33. The MPCA finds that this is not a material issue of fact concerning the matter pending, and the Petitioner raises a concern that is beyond the MPCA's jurisdiction. The MPCA does not have jurisdiction to change Minnesota statutes. Statutory creation is a function of the Minnesota Legislature and not the Agency.
34. The MPCA finds that the Petitioner's discrimination allegation does not satisfy criteria established in Minn. R. 7000.1900, subp. 1 (A), (B) or (C).
35. The Petitioner alleges that Minn. R. 7080 contains rules that are discriminatory toward his business and Greywater Total Recycling Technology.
36. The MPCA has the authority to create and revise its own rules. To the extent that the Petitioner alleges Minn. R. 7080 is discriminatory toward his business, the MPCA finds that this is not a

material issue of fact regarding the permitting of the Afton Wastewater Treatment Facility. If the Petitioner believes Minn. R. 7080 interferes with or impairs his legal rights or privileges, Petitioner has the ability to request judicial review of the MPCA's rule through a declaratory judgment action at the Minnesota Court of Appeals (Minn. Stat. §14.431).

37. The MPCA finds that the Petitioner's discrimination allegation does not satisfy criteria established in Minn. R. 7000.1900, subp. 1 (A) or (C).
38. The Petitioner alleges that the city of Afton's consulting engineers are engaging in fraudulent and dishonest practices.
39. The MPCA finds that this is not a material issue of fact concerning the matter pending and is beyond the MPCA's jurisdiction to resolve. The MPCA does not have jurisdiction over professional engineering licensure complaints. The Petitioner's records indicate he submitted a complaint to the complaints investigator at the Minnesota Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience and Interior Design, which may have authority to resolve the issue. The MPCA does not have jurisdiction over the regulation of ethics and conduct for Professional Engineers in Minnesota.
40. The MPCA finds that the Petitioner's allegation does not satisfy criteria established in Minn. R. 7000.1900, subp. 1 (A), (B) or (C).

#### Opposing Cities Petition

41. The MPCA notes that the contested case hearing petition submitted by Eckberg Lammers, Attorneys at Law, for the Opposing Cities ("Opposing Cities Petition") was timely and included all the information required by Minn. R. 7000.1800, subp. 2(A). Attached to the Opposing Cities Petition was a letter from Stuart Grubb, P.G. at Emmons and Olivier Resources, Inc. (EOR letter), which outlined environmental concerns he had with the proposed Facility. The issues outlined in the Opposing Cities Petition and in the EOR letter will be addressed below.

#### *Groundwater*

42. The Opposing Cities Petition and the EOR letter allege that the Facility may have detrimental impact upon neighboring property owners. The Opposing Cities Petition references impacts "upon neighboring wells, aquifer, and groundwater in the immediately adjacent areas".
43. The MPCA finds that this is a material issue of fact in dispute and the MPCA has jurisdiction to determine whether or not to permit the construction and operation of the proposed Facility, and to determine appropriate conditions to include in the Permit to protect waters of the State, including groundwater.
44. Wastewater undergoes significant treatment in the LSTS before it is dispersed to the soil drainfields. The Permit requires the Facility to comply with effluent limits prior to effluent dispersal to the drainfields. The proposed LSTS is required to meet the MPCA's most stringent permitting requirement to be protective of drinking water supplies by reducing nitrogen to 10 mg/L total nitrogen before treated wastewater is discharged to the soil drainfields. The Permit also requires

the discharge to meet a carbonaceous biochemical oxygen demand ("CBOD") limit of 30 mg/L prior to discharge to the drainfields. This CBOD limit is site specific and more restrictive than the MPCA's current LSTS guidelines require. The CBOD limit was included in the Permit to provide added assurance of the effectiveness and long term treatment capability of the soil drainfields.

45. As with typical soil based wastewater treatment facilities, the drainfields are designed to provide further treatment of pathogens. The *Engineering Design Report* (Wenck Associates, Inc., March 26, 2014) calculated that 37 inches of unsaturated soil is needed for effective pathogen treatment. The City's LSTS site has a minimum of 42 inches of unsaturated soil below the proposed drainfields.
46. The MPCA reviewed the Permit application and supporting documentation which, as summarized in the Responses to Comments (Appendix B), supports the fact that the proposed Facility presents no concerns of detrimental impacts to human health and the environment. The MPCA has determined that the Facility will comply with all applicable state and federal pollution control statutes and rules administered by the MPCA, and conditions of the Permit.
47. The MPCA finds that the Opposing Cities Petition allegation does not satisfy the criterion established in Minn. R. 7000.1900, subp. 1 (C).
48. The Opposing Cities Petition alleges that "Afton's proposed project is in close vicinity to residential neighborhoods not being served by the system, and being served by groundwater wells. Specifically, the system is just over 300 feet from multiple drinking water wells of surrounding residences." The EOR letter alleges that the well setback distances are "arbitrary and not protective of drinking water wells near the proposed system. A single safe setback distance cannot be determined for all wastewater systems and all geologic systems because the treatment capacity of the site soils will vary."
49. As shown in the maps in the draft Permit, the Facility is located near residential homes. Many of the neighboring homes have a municipal water supply connection provided by the city of Lakeland. Several homes have a water-supply well on their property. Water-supply wells require a minimum isolation distance from the proposed LSTS. The Minnesota Department of Health's ("MDH") Minn. R. 4725.4450 and the Minnesota Groundwater Protection Act of 1989 regulate the placement of potential sources of contamination near an existing water-supply well. The MDH has determined that these requirements are designed to protect drinking water supplies and human health.
50. The standard well isolation distance for water-supply wells is 300 feet from LSTS drainfields. If the water-supply well has less than 50 feet of watertight casing, it is considered a sensitive well and requires an isolation distance of 600 feet. Attachment 3 of the Board Packet includes applicable well isolation distance information for the water-supply wells located near the proposed LSTS.
51. The MPCA does not have jurisdiction over MDH rules. The Facility, as proposed by the City and reviewed by the MPCA, has met the appropriate isolation distances from all known water-supply wells to the proposed drainfields. The public had the opportunity to comment on the adoption of the MDH rules relating to well isolation distances when they were public noticed prior to adoption.

52. Because the MPCA does not have jurisdiction over MDH rules and the Opposing Cities Petition and the EOR letter fail to produce evidence supporting their position, the MPCA finds that their allegation does not satisfy the criteria established in Minn. R. 7000.1900, subp. 1 (B) or (C).
53. The EOR letter alleges that “the groundwater flow direction at the site is not adequately understood and characterized” and “groundwater flow direction can vary substantially between seasons of the year”. The EOR letter also alleges that “effluent discharge from the drainfield will alter the direction of the groundwater flow” and “a groundwater mound will develop at the water table below the drainfield”.
54. The MPCA finds that this is a material issue of fact in dispute and the MPCA has jurisdiction to determine whether to permit the construction and operation of the proposed Facility, and to determine appropriate limits, terms, and conditions to include in the Permit to protect waters of the State, including groundwater.
55. Groundwater elevation data was collected from the onsite groundwater monitoring wells located at the proposed LSTS site in October and November 2013 (*Detailed Hydrogeologic Characterization and Evaluation* (Wenck Associates, Inc., January 2014)). This data indicates groundwater flow direction, specific to the LSTS site, is toward the northeast. Additional groundwater elevation data, collected in March 2015 and April 2015, support the conclusion that groundwater flows to the northeast at the LSTS site. Based on consistency of the groundwater monitoring data collected at the proposed LSTS site, the MPCA does not believe that groundwater flow direction will change appreciably because of the hydraulic loading from the LSTS.
56. The on-site monitoring wells were constructed at the proposed LSTS site for several reasons, including: the ability to determine the depth to groundwater, to obtain background nitrate levels, to test the site’s hydraulic capabilities, and to determine groundwater flow direction. The MPCA agrees with the EOR letter comments that additional data collected throughout different seasons would allow for a more detailed evaluation of area groundwater flow directions. The Permit is requiring monitoring and reporting for groundwater elevations in April, July, and October of each calendar year after permit issuance. Should the groundwater flow direction change in the future, the MPCA has the ability to require additional limits and monitoring. However, it is important to note that the Permit effluent limits meet all state requirements for protection of groundwater drinking water sources independent of flow direction.
57. As outlined in the Permit, groundwater elevation monitoring is the only monitoring the MPCA is requiring in the onsite groundwater wells at this time. The MPCA’s *Design Guidance for Large Subsurface Wastewater Treatment Systems* (November 2013) does not require sampling and chemical analysis of groundwater surrounding a LSTS that is designed to meet our most restrictive nitrogen limit (10 mg/L total nitrogen) prior to discharging to the soil drainfields. Should the groundwater flow direction change in the future, the Facility is already required to comply with the most restrictive nitrogen limit in order to protect waters of the State.
58. Groundwater mounding must be assessed at LSTS sites because it can impact local groundwater elevations and if excessive, is a concern for potential human contact and exposure to pathogens. Mounding may occur at LSTS facilities when the loading rate exceeds the soil’s acceptance rate or capacity to infiltrate. The City’s *Engineering Design Report* (Wenck Associates, Inc., March 26, 2014)

utilized the Hantush 1976 equation to calculate a maximum groundwater table mound of 0.761 feet occurring on the water table beneath the LSTS. The MPCA considers this mound height estimate conservative because it is based on assuming that maximum design flow occurs 100% of the time. The system is not expected to operate at the maximum design flow on a consistent basis. MPCA staff reviewed the information provided and concurs with the model results which indicate: (1) groundwater mounding will not significantly change the groundwater elevation beyond the treatment site location and (2) the maximum groundwater elevation will not exceed the ground surface elevation or be a potential human contact concern.

59. The MPCA finds that the EOR letter did not demonstrate a reasonable basis underlying the disputed material issue of fact and therefore does not satisfy the criteria established in Minn. R. 7000.1900, subp. 1 (C).
60. The EOR letter alleges that "the absence of nitrate does not indicate an absence of other contaminants" and "there are many more contaminants of concern that can and will (at some concentration) be entering the groundwater in the area of the drainfield". The EOR letter states that "additional monitoring should be required to protect households from undetected contaminants."
61. The MPCA finds that this is a material issue of fact in dispute and the MPCA has jurisdiction to determine whether to permit the construction and operation of the proposed Facility, and to determine appropriate limits, terms, and conditions to include in the Permit to protect waters of the State, including groundwater.
62. The Facility is designed to collect and treat wastewater from typical residential and commercial users in Afton. The LSTS is designed to remove conventional pollutants consistent with MPCA policy. The Facility is designed to treat sewage which includes wastes from toilets, bathing, laundry, kitchens, and floor drains, including household cleaners, medications, and other constituents in sewage restricted to amounts normally used for domestic purposes. Final standards for contaminants of emerging concern ("CEC") have not been established for groundwater or surface waters of the State. While enhanced treatment technologies may exist, MPCA rules and policy do not require the City to use those technologies at this time. The Facility is subject to the most stringent limitations for LSTS in Minnesota.
63. The term "contaminants of emerging concern" is meant to encompass a large number of chemicals and their byproducts that have typically not been monitored in the past, and the risk to human health and the environment, as well as frequency of occurrence and/or source, may not be known. The MPCA shares the concern about the potential effects of CECs on both groundwater and surface waters. This is a topic being studied on an international basis. Although both the MPCA and MDH have been studying CECs, and MDH has drafted some discharge limits for groundwater, risk-based human health and/or environmental limits have not been finalized for groundwater or surface waters. It is difficult to develop or implement appropriate groundwater and surface monitoring and wastewater treatment technologies without adopted standards in place. As the MPCA develops new standards or limits addressing CECs, the MPCA has authority to modify existing permits. Minn. R. 7001.0170 and Minn. R. 7001.1150, authorize the MPCA to modify permits when the Agency promulgates a new or amended pollution standard, limitation or effluent guideline applicable to wastewater treatment facilities. This authority is also described in Chapter 7 of the Permit. At this

time, the MPCA does not propose to include monitoring or discharge limits for CECs based on the absence of adopted human health and/or environmental standards.

64. The MPCA finds that the EOR letter did not demonstrate a reasonable basis underlying the disputed material issue of fact and therefore does not satisfy the criteria established in Minn. R. 7000.1900, subp. 1 (C).
65. In light of the absence of demonstration that the Opposing Cities Petition and the EOR letter can support the assertion that the Facility will have detrimental impact to groundwater and the neighboring properties, there is no reasonable basis to their assertion. The MPCA finds that criteria established by Minn. R. 7000.1900, subp 1 (A) and (B) are satisfied with respect to the groundwater issues, but criterion (C) is not. The Opposing Cities Petition and the EOR letter have not demonstrated that there is a reasonable basis to their assertion that the proposed Permit will have an impact on the groundwater such that holding a contested case hearing on the issue will help the MPCA reach a final decision.

### *Surface Water*

66. The Opposing Cities Petition alleges that "the Afton septic project may have a detrimental impact upon Valley Creek and its adjoining wetlands".
67. The MPCA finds that this issue is similar in nature to the first issue raised by Opposing Cities Petition and is a material issue of fact in dispute. The MPCA has jurisdiction to determine whether to permit the construction and operation of the proposed Facility and to determine appropriate limits, terms and conditions to include in the Permit to protect waters of the State, including surface waters.
68. Both the MPCA and Minnesota Department of Natural Resources ("MDNR") identify 4.5 miles of Valley Creek as a trout stream with populations of brook, brown and rainbow trout. Valley Creek is a significant resource to the state of Minnesota and the nearby communities. A wetland area (unnamed and not listed as a public water) is located at the southern portion of the 25-acre site and near the unnamed tributary to Valley Creek.
69. The Permit, in Chapter 4, Section 1, prohibits any unauthorized discharge to ground surface or surface waters from this Facility. The Permit only authorizes a subsurface discharge of treated effluent. Minn. Stat. §115.07 and the Permit also require submittal and MPCA approval of Facility design documents prior to construction of the Facility. The City is required to obtain a NPDES/SDS Construction Stormwater Permit which requires the use of best management practices during construction activities to minimize short term environmental impacts.
70. The City must obtain other permits in addition to those issued by the MPCA, in order to construct the Facility. The City is required to obtain the following permits: a MDNR Utility Crossing License; a permit from the Valley Branch Watershed District; a NPDES/SDS Stormwater Construction Permit; as well as a Washington County Utility Crossing permit. These permits allow for additional regulatory oversight to ensure adherence with applicable local, state and federal rules and regulations and to ensure protection of water resources.

71. The City proposes to construct a force main pipe under Valley Creek. The proposed construction activities include measures to protect Valley Creek during installation of the pipe and continuing throughout the long-term operation of the Facility. For example, the force main pipe from the lift station to the LSTS will be constructed of durable high density polyethylene. The force main will cross under Valley Creek in a similar manner to an existing gas main which also crosses under Valley Creek. The pipe will be installed utilizing a construction practice known as horizontal directional drilling (HDD). HDD greatly limits excavation required along the pipe route. The installation and operation of the force main must follow current engineering and construction standards.
72. The MPCA finds that the Opposing Cities Petition did not demonstrate a reasonable basis underlying the disputed material issue of fact and therefore does not satisfy the criteria established in Minn. R. 7000.1900, subp. 1 (C).
73. The Opposing Cities Petition alleges that “nutrients flowing out of the system may have a detrimental impact upon Valley Creek”.
74. Nitrogen is a pollutant that can negatively impact the quality of Minnesota’s water resources, including water used for drinking. Nitrogen is a nutrient that must be monitored and regulated by this Facility. Prior to dispersal in the drainfields, a 10 mg/L total nitrogen limit must be met by the Facility in order to protect the groundwater in the area. The 10 mg/L total nitrogen limit at the point of dispersal to the drainfields is the MPCA’s most restrictive nitrogen limit for LSTS facilities.
75. Another nutrient that may be present in wastewater effluent is phosphorus. Phosphorous is a concern for surface waters because it is associated with increased plant growth such as algae. The MPCA typically requires a phosphorus work plan (as outlined in the MPCA’s *Design Guidance for Large Subsurface Wastewater Treatment Systems* (November 2013)) and phosphorus monitoring if a facility is within 500 feet of a surface water with a phosphorus limit or a TMDL for phosphorus. For this Facility, the MPCA is not requiring a phosphorus work plan or phosphorus monitoring for the Facility because groundwater elevation data suggests groundwater flows to the northeast, which is away from the southern wetland. Although not expected, if future Facility groundwater monitoring data, which is required by the Permit, shows a change to groundwater flow direction, the MPCA may amend the Permit to require a phosphorus work plan and phosphorus monitoring. Additionally, it should be noted that on-site soil and plants can be effective in reducing phosphorus movement from the LSTS site.
76. The MPCA finds that the Opposing Cities Petition did not demonstrate a reasonable basis underlying the disputed material issue of fact and therefore does not satisfy the criteria established in Minn. R. 7000.1900, subp. 1 (C).
77. Due to the absence of a demonstration that the Opposing Cities Petition can support the assertion that the Facility or nutrients flowing from the Facility will have a detrimental impact on Valley Creek and adjoining wetlands, there is no reasonable basis to the their assertion. The MPCA finds that the criteria established in of Minn. R. 7000.1900, subp. 1 (A) and (B) are satisfied with respect to this surface water issue, but criterion (C) is not. The Opposing Cities Petition has not demonstrated that there is a reasonable basis to their assertion that the proposed permit will have detrimental impact upon Valley Creek and the adjoining wetlands such that holding a contested case hearing on the issue will help the MPCA reach a final decision.

### *Alternatives*

78. The Opposing Cities Petition states that "Afton should be required locate its proposed facility in a location to the south or west that is not immediately adjacent to numerous residences, drinking wells, and a protected trout stream".
79. The MPCA finds that this is not a material issue of fact concerning the matter pending. The Facility location does not violate MPCA wastewater regulations with regard to site location, and the Opposing Cities Petition does not allege any facts that suggest that the Facility does not meet site location criteria. To the extent that the Opposing Cities wish the City to consider another location, the MPCA lacks jurisdiction to resolve this issue. The MPCA's duty is to make permitting decisions on the Facility and site location proposed by the City.
80. The MPCA also finds that the City completed a review of alternative sites in order to meet funding requirements in Minn. R. 7077. Based on their evaluation, the City selected the option of constructing a LSTS and the property located at 2318 St. Croix Trail South was the most favorable location.
81. Because the siting of the Facility complies with State rules and the MPCA lacks jurisdiction over local zoning issues, the MPCA finds that this issue fails to meet the criteria for granting a contested case hearing under Minn. R. 7001.0190, subp. 1 (A), (B) or (C).
82. The Opposing Cities Petition states that "Afton should more appropriately connect its system to an existing MUSA line". The MUSA line is a reference to the Metropolitan Council Environmental Services sewer line.
83. The MPCA finds that this is not a material issue of fact concerning the matter pending and the MPCA lacks jurisdiction to resolve this issue. The City is the authority on deciding how best to meet the sewer needs of its community. The City completed an alternatives review, which including an analysis of connecting to the nearest Metropolitan Council sewer line. The MPCA's duty is to make permitting decisions on the Facility and site location as proposed by the City.
84. The MPCA also finds that under the provisions of Minn. Stat. §115.49, the MPCA has the authority to order municipalities to cooperate with each other by contract if it determines that such cooperation is feasible and necessary to provide for area wide waste management and treatment in accordance with the Federal Water Pollution Control Act (Clean Water Act). The MPCA has not determined that forced cooperation is necessary for management of wastewater needs for the proposed Facility.
85. The MPCA lacks jurisdiction to decide how best to meet the sewer needs of the City and therefore finds that this issue fails to meet the criteria for granting a contested case hearing under Minn. R. 7001.0190, subp. 1 (A), (B) or (C).

### *Additional Concerns*

86. The Opposing Cities Petition alleges that the EAW is insufficient to analyze the environmental impact of the Facility and an EIS should be conducted.

87. The MPCA finds that this raises an issue with the EAW, not the Permit. The rules of the Environmental Quality Board and environmental review do not provide for contested case hearings on the adequacy of EAWs. Instead, if the Opposing Cities are aggrieved by the MPCA's decision on the sufficiency of an EAW and the negative declaration on the need for an EIS, they have the option of appealing that decision to the Minnesota Court of Appeals, in accordance with Minn. Stat. §116D.04, subd. 10.
88. Further, as noted in Minn. R. 4410.4400, a mandatory EAW is not required by this Facility. Pursuant to Minn. R. 4410.200, subp. 3(B), the city of Afton volunteered to initiate a discretionary EAW to address the environmental concerns voiced by citizens. The MPCA finds that environmental review through the EAW is adequate to address the concerns expressed by the Opposing Cities Petition. The potential impacts and concerns were addressed during the review process and the proposed permit has conditions that prevent or minimize the potential impacts. The Facility is required to meet all Permit requirements and conditions.
89. The MPCA finds that the EAW issue does not satisfy criteria established in Minn. R. 7000.1900, subp. 1 (A) or (B).
90. The Opposing Cities Petition alleges that "the SDS project is proposed to be built in an area that is known to be susceptible to karst geological formations in the bedrock".
91. The MPCA finds that this is a material issue of fact in dispute and the MPCA has jurisdiction to determine whether or not to permit the construction and operation of the proposed Facility.
92. Karst topography refers to a landscape created by groundwater dissolving sedimentary rock such as limestone, often creating land forms such as shafts, tunnels, caves, and sinkholes. There are no known geologic site hazards (i.e., sinkholes, shallow limestone formations or karst conditions) in the proposed LSTS area. Actual site geologic conditions were evaluated through an investigation ending in October 2013 and reported in the *Detailed Hydrogeologic Characterization and Evaluation* (Wenck Associates, Inc., January 2014).
93. Based on the most current information available, the MPCA has determined that while caves and sinkhole features (karst features) may be common in the carbonate bedrock formations within Washington County, such karst features are very unlikely to exist or develop in the immediate vicinity of the proposed Facility due to the absence of carbonate bedrock. Based on information about the geological conditions of the surface and subsurface areas of the LSTS site, the MPCA does not expect the treated wastewater going through the LSTS drainfields to cause geologic site hazards beneath the LSTS.
94. The MPCA finds that the Opposing Cities Petition did not demonstrate a reasonable basis underlying the disputed material issue of fact and therefore does not satisfy the criteria established in Minn. R. 7000.1900, subp. 1 (C).
95. The Opposing Cities Petition alleges that "raw sewage does have the potential for serious and harmful adverse health effects to humans, particularly when ingested and allege that sewage can be labeled as hazardous waste and would therefore require a mandatory completion of an EIS for the Facility.

96. The MPCA finds that this is not a material issue of fact concerning the matter pending. The MPCA considers the proposed Facility appropriately classified as a domestic wastewater treatment facility, permitted in accordance with Minn. R. 7001, 7049, 7050, 7053, and 7060. Minn. R. 7045.0120, subp. 1.B. "exempts sewage and any mixture of untreated sanitary sewage and other wastes formed by the combination of untreated sanitary sewage and one or more other wastes discharged through a sewage system to a publicly owned treatment works for treatment, except that this exemption does not include any of the individual wastes which form the composite wastewater". MPCA staff concur with the Opposing Cities statement that ingesting raw wastewater at any domestic wastewater treatment facility has the potential for serious and harmful adverse health effects, but the Facility is appropriately regulated under the MPCA's municipal wastewater permit program, which has longtime and substantial technical design, operation and permit requirements in place for all types of domestic wastewater treatment facilities.
97. The MPCA finds that this allegation does not satisfy criteria established in Minn. R. 7000.1900, subp. 1 (A).
98. Furthermore, the MPCA finds that this raises an issue with the EAW, not the Permit. The rules of the Environmental Quality Board and environmental review do not provide for contested case hearings on the adequacy of EAWs. Instead, if the Opposing Cities are aggrieved by the MPCA's decision on the sufficiency of an EAW and the negative declaration on the need for an EIS, they have the option of appealing that decision to the Minnesota Court of Appeals, in accordance with Minn. Stat. §116D.04, subd. 10. The MPCA finds that the EAW issue does not satisfy criteria established in Minn. R. 7000.1900, subp. 1 (B).
99. The Opposing Cities Petition alleges that "the project violates and offends principles of Environmental Justice" and "places a disproportionate share of the negative environmental consequences resulting from wastewater disposal onto well owners in Lake St. Croix Beach and St. Mary's Point".
100. This Facility will have regional benefits due to reducing the economic and environmental damages from flooding and from poorly performing existing wastewater treatment systems in the area. Currently, during flooding events and high groundwater periods, inadequately treated wastewater from noncompliant wastewater treatment systems within the Old Village District of Afton potentially exposes the public to infectious diseases caused by pathogenic organisms. The proposed Facility would replace noncompliant wastewater systems and prevent potential contamination from levee-associated flooding events. In addition, the elimination of individual wastewater systems currently located within the levee would allow for necessary levee improvements. This would reduce potential flood damage and reduce the financial, health and sanitation impacts not only to the City but nearby residents, businesses, and the general public. Residents outside the City limits will benefit from reductions in economic and environmental damage caused by flooding from a levee that does not meet Federal Emergency Management Agency accreditation and with deficiencies identified by U.S. Army Corps of Engineers inspections. These floods caused considerable damage and financial impacts not only in the City and its Old Village, but its residents and other businesses.

101. As this Facility does not place a disproportionate share of negative environmental consequences on any group of people, the MPCA does not find that this Facility raises environmental justice concerns. The MPCA finds that this allegation does not satisfy criteria established in Minn. R. 7000.1900, subp. 1 (C).
102. The EOR letter alleges that “the proposed system lacks a spill and leak response plan” and “a permit should not be issued until a spill and leak response plan is filed with the MPCA”.
103. As outlined in Chapter 1 of the draft SDS permit, the City is required to submit a detailed operations and maintenance (“O&M”) manual or O&M manual certificate of completion to the MPCA prior to initiation of operation of the proposed Facility. This O&M manual contains items such as identifying and responding to spills and leaks at the Facility.
104. The MPCA finds that this is not a disputed material issue of fact and does not meet the criteria for granting a contested case hearing under Minn. R. 7001.0190, subp. 1 (A) or (C).
105. The EOR letter states that “the permit should prohibit trucked-in waste or other waste brought to the treatment plan facility”.
106. The Permit does not specifically prohibit trucked-in wastes from entering the Facility. However, the Facility design does not include a receiving station for sewer pumpers to empty their trucks and the system is not designed with additional capacity to be able to store septage outside of the waste produced by the system users. Further, the City has indicated to the MPCA that it does not plan to accept trucked-in wastes now or in the future. MPCA review and approval is required before any trucked-in wastes are accepted. According to Chapter 6, Section 2 of the Permit, the City is required to ensure sanitary sewer users do not introduce waste that could inhibit treatment.
107. This is not a disputed material issue of fact and therefore does not meet the criteria for granting a contested case hearing under Minn. R. 7001.0190, subp. 1 (A) or (C).
108. The EOR letter states that “the permit should state that in the event of a bypass or overflow, groundwater monitoring should be required”. The EOR letter also states specific monitoring that should occur in the event of a bypass or overflow, including sampling frequency, location and parameters to analyze.
109. Chapter 7, Section 1.33 of the Permit prohibits unauthorized releases of wastewater. In the unlikely event of a release, Chapter 7, Sections 1.34 & 1.35 of the Permit also include steps for immediately responding to the unauthorized releases and unanticipated bypasses, such as taking actions to immediately end the bypass, notifying the State Duty Officer of the release, and taking all actions necessary to minimize or abate pollution. The Permit also contains minimum sampling requirements to be followed during a release. As noted in the Permit Chapter 7, the MPCA may require additional sampling or other actions depending on the circumstances of the release or bypass. The MPCA evaluates the need for additional sampling or action on a case by case basis.
110. This is not a disputed material issue of fact and therefore fails to meet the criteria for granting a contested case hearing under Minn. R. 7001.0190, subp. 1 (A) or (C).

### FINAL DETERMINATION ON ISSUANCE OF THE PERMIT

111. The MPCA's decision to issue the Permit is governed by its permit rule, Minn. R. 7001.0140, subp. 1., which states:

Except as provided in subpart 2, the agency shall issue, reissue, revoke and reissue, or modify a permit if the agency determines that the proposed permittee or permittees will, with respect to the facility or activity to be permitted, comply or will undertake a schedule of compliance to achieve compliance with all applicable state and federal pollution control statutes and rules administered by the agency, and conditions of the permit and that all applicable requirements of Minnesota Statutes, chapter 116D, and the rules adopted under Minnesota Statutes, chapter 116D, have been fulfilled.

112. Minn. R. 7001.0140, subp 2., states:

The following findings by the agency constitute justification for the agency to refuse to issue a new or modified permit, to refuse permit reissuance, or to revoke a permit without reissuance:

- A. that with respect to the facility or activity to be permitted, the proposed permittee or permittees will not comply with all applicable state and federal pollution control statutes and rules administered by the agency, or conditions of the permit
- B. that there exists at the facility to be permitted unresolved noncompliance with applicable state and federal pollution control statutes and rules administered by the agency, or conditions of the permit and that the permittee will not undertake a schedule of compliance to resolve the noncompliance
- C. that the permittee has failed to disclose fully all facts relevant to the facility or activity to be permitted, or that the permittee has submitted false or misleading information to the agency or to the commissioner;
- D. that the permitted facility or activity endangers human health or the environment and that the danger cannot be removed by a modification of the conditions of the permit;
- E. that all applicable requirements of Minn. Stat. ch. 116D and the rules adopted under Minn. Stat. ch. 116D has not been fulfilled;
- F. that with respect to the facility or activity to be permitted, the proposed permittee has not complied with any requirement under parts 7002.0210 to 7002.0310 or chapter 7046 to pay fees;
- G. that with respect to the facility or activity to be permitted, the proposed permittee has failed to pay a penalty owed under Minn. Stat. § 116.072

113. The MPCA finds that the proposed SDS permit (March 2, 2015, public notice date) meets the requirements of Minn. R. 7001.0140. The MPCA has reasonable assurance based on the information submitted that proper operation of the Facility, compliance with the requirements of the permit and completion of all required monitoring in accordance with the conditions of the permit issued by this order will achieve compliance with all applicable state and federal pollution control statutes and rules, and the conditions of the permit and will not pose a danger to human health or the environment.

114. The Permittee has submitted a complete application. This application has been reviewed and preliminarily approved by MPCA staff and demonstrates that all environmental protection standards will be satisfied.

#### CONCLUSIONS OF LAW

115. The MPCA has jurisdiction over the decision whether to issue the SDS Permit for the Afton Facility.
116. The MPCA has jurisdiction over the decision whether to grant or deny the petitions for a contested case hearing on the Afton Facility permit application.
117. For the reasons set forth in this document, the requirements of Minn. R. 7001.1900, subp. 1 (A)-(C) have not been met with respect to the issues raised by the petitioners in the petitions for a contested case hearing on the proposed SDS Permit. Therefore, the petitions for a contested case hearing are denied.
118. Due, adequate, and timely public notice of the proposed SDS Permit was given in accordance with Minn. R. 7001.0100.
119. The requirements set forth in Minn. R. 7001.0140 for issuance of the SDS Permit are satisfied and the SDS Permit should be issued.
120. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

#### ORDER

The Minnesota Pollution Control Agency determines that the issues raised by the contested case hearing requests do not meet the requirements of Minn. R. 7000.0190, subp. 1 for granting a contested case hearing. The Minnesota Pollution Control Agency denies the requests for a contested case hearing.

The Minnesota Pollution Control Agency approves and authorizes issuance of the State Disposal System Permit No. MN0070599 for the city of Afton Wastewater Treatment Facility on the condition that any recommendations received from the State Archaeologist, the State Historic Preservation Office and the Indian Affairs Council be considered in the issuance of the permit.

#### IT IS SO ORDERED

  
\_\_\_\_\_  
Commissioner John Linc Stine  
Chair, Citizens' Board  
Minnesota Pollution Control Agency

6/24/15  
\_\_\_\_\_  
Date