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June 8, 2009

Gregg Downing
Environmental Review Coordinator
Environmental Quality Board
658 Cedar Street
St. Paul, MN 55155


RE: Environmental review of a residential subdivision and wastewater treatment plan

Dear Mr. Downing:

Chairman DeWayne Severson of La Crescent Township has forwarded to my office your correspondence dated May 15, 2009. The middle of the correspondence indicates that an Environmental Assessment Worksheet (EAW) has been initiated by La Crescent Township. As of writing this, the La Crescent Township Chair has indicated that to his knowledge the Township has not initiated an EAW. Because an EAW has not been prepared by La Crescent Township we cannot provide information requested in your correspondence. Hopefully this answers any questions that you may have. If you wish to discuss this further, please do not hesitate to give me a call.

Very truly yours,

WIESER LAW OFFICE, P.L.L.P.


Skip Wieser

SW:kb

cc: DeWayne Severson, La Crescent Township Chair
Karen Schuldt, La Crescent Township Clerk

May 7, 2009

Gregg Downing, Director of Environmental Review
Minnesota Environmental Quality Board
658 Cedar Street
St. Paul, MN 55155

**Re: City of La Crescent Petition for Environmental Review of La Crescent Township
Homeowner's Association Proposed Wastewater Treatment Facility,
Draft Issued NPDES/SDS Permit No. MN0069248**

Dear Mr. Downing:

Enclosed herewith for filing please find a petition for environmental review of the above-referenced proposed wastewater treatment facility, with the requisite 25 signatures pursuant to Minn. R. 4410.1100. Please note in reviewing, reading and construing this petition for environmental review that all mailing addresses of the respective signatories to the attached signature pages to this petition for environmental review as contained in Appendix B thereto, with the exceptions of signatories Steven Welke, Dillon Dombrowski, and Donald Borcharding, are all located within and have their respective mailing addresses as the City of La Crescent, Minnesota, 55947. The signature pages in Appendix B with respect to the mailing addresses of each signatory thereto shall be read and construed accordingly with respect to all signatories with the exception of the three noted above herein. Please note further that in determining the requisite 25 signatures, Steven Welke's name and signature on the attached petition for environmental review should not be considered or counted and such signature pages should be read and construed accordingly. Please note finally that the petitioners further petition that the Environmental Quality Board designate the Minnesota Pollution Control Agency to be the Responsible Governmental Unit in this matter.

By copy of this letter, service is made upon the project proposer, the La Crescent Township Homeowner's Association. If you have any questions, please contact me at 651-225-8840. Thank you for your consideration.

Very truly yours,

FLAHERTY & HOOD, P.A.



Christopher M. Hood,
Attorney for Petitioners

CMH/bo

Enclosure

cc: Richard Barbour, La Crescent Township Homeowner's Association

STATE OF MINNESOTA
ENVIRONMENTAL QUALITY BOARD

In the Matter of the La Crescent Township)	
Homeowner’s Association Wastewater)	
Treatment Facility,)	CITY OF LA CRESCENT PETITION
)	FOR ENVIRONMENTAL REVIEW
NPDES/SDS Permit No. MN0069248)	
)	

TO: THE MINNESOTA ENVIRONMENTAL QUALITY BOARD AND ITS CHAIR,
GENE HUGOSON, 625 NORTH ROBERT STREET, SAINT PAUL, MINNESOTA
55155; AND RICHARD BARBOUR, LA CRESCENT TOWNSHIP HOMEOWNER’S
ASSOCIATION, N2882 STATE HIGHWAY 16, LACROSSE, WISCONSIN 54601

PETITION FOR ENVIRONMENTAL REVIEW

Pursuant to Minnesota Statutes, Section 116D.04 and Minnesota Rules Part 4410.1100, the City of La Crescent hereby requests preparation of an Environmental Assessment Worksheet (“EAW”) in relation to the above-referenced NPDES permit to determine whether the proposed wastewater treatment facility and corresponding 80 unit residential development because of its nature or location may have the potential for significant environmental effects. The City of La Crescent (“City”) further requests that the Minnesota Pollution Control Agency (“MPCA”) be designated as the Responsible Governmental Unit (“RGU”) for this environmental review.

A. Description of the Proposed Project

The proposed project is a wastewater treatment facility (“WWTF”) and 80-unit residential development proposed for construction in Section 9 of La Crescent Township, Houston County, Minnesota.

The proposed Class C WWTF would feature a bar screen, aeration basin, two secondary clarifiers, ultraviolet disinfection, and a biosolids holding tank. The WWTF would be designed

to treat an average wet-weather flow of 50,000 gallons per day with an influent 5-day carbonaceous biochemical oxygen demand (CBOD₅) of 240 mg/L. According to staff at the MPCA, a WWTF of the size proposed in the draft NPDES permit could serve approximately a population of 500 people, which would be able to serve the proposed new 80-unit residential development and most of the compact suburban developed portion of Crescent Valley located in La Crescent Township (“Township”), which area is adjacent to the proposed new 80-unit development and was allowed to develop by the Township using individual septic systems and private wells on small lots of one acre or less. The NPDES permit applicant and the Township intend that the proposed WWTF serve the new 80-unit residential development and other already developed portions of Crescent Valley.

The draft NPDES permit is for a new point source discharger with the outfall for and discharge of effluent from the proposed new WWTF to Pine Creek. Pine Creek runs generally along the southwestern and southern boundaries of the City and Township. The WWTF would discharge to Pine Creek, classified as a 2B water. Upper portions of Pine Creek are a designated trout stream. The location of the proposed WWTF and its relation to the City and corresponding development and infrastructure is shown on the map attached hereto as Appendix A.

B. Proposer of the Project/Permit Applicant

Mr. Richard Barbour
La Crescent Township Homeowner’s Association
N2882 State Road 16
LaCrosse, WI 54601

C. Representative of the Petitioners/Attorney for City of La Crescent

Christopher M. Hood
Flaherty & Hood, P.A.
525 Park Street, Suite 470
St. Paul, MN 55103
651-225-8840

D. Material Evidence of the Potential for Significant Environmental Effects

1. Nature of the Existing City Discharge and the Proposed Discharge

The City is located in Houston County and has a population of just over 5,000. The City has developed and maintained a sanitary sewer collection system, and has operated a Class B wastewater treatment facility (NPDES/SDS Permit Number MN0020621) with a wet weather design flow of 626,000 gallons per day. This facility is no longer in use as the City now pipes its municipal wastewater to the city of La Crosse, Wisconsin for a higher level of treatment than the City's facility could provide. The City and the city of La Crosse have an intergovernmental agreement for this purpose. Although the City's decommissioned WWTF is not now being used, the City's NPDES permit was placed on public notice on March 26, 2009, the same date as the above-referenced draft NPDES permit and corresponding residential development at issue here.

La Crescent Township (herein the "Township") is adjacent to the western border of the City. Without notice to or any communication with the City, the La Crescent Township Homeowner's Association with the apparent cooperation and support of the Township filed an application for the above-referenced NPDES permit for a new WWTF.

The proposed location of the new point source WWTF is in close proximity to the City's corporate limits and is in close proximity to the City's existing sanitary sewer collection and conveyance system. In fact, the proposed and potential service area for the new point source WWTF is located directly adjacent to the existing City sanitary sewer collection and conveyance system. The City's existing sanitary sewer collection and conveyance system has been planned, constructed and sized to serve the same area that would be served by the proposed duplicative new point source WWTF. The proposed WWTF will be a chemical treatment plant with

continuous effluent discharge to Pine Creek, which discharge will then drain into Target Lake, which is part of the Upper Mississippi River National Wildlife and Fish Refuge.

The MPCA has conducted no environmental review on the proposed WWTF or existing and proposed development sought to be served by the proposed WWTF. Environmental review is mandatory and warranted in this case since the proposed WWTF and corresponding development meets the applicable threshold for review and has the potential for significant environmental effects.¹ Even if for sake of argument an EAW was not mandatorily required for the proposed WWTF or the proposed 80 unit residential development, a discretionary EAW would nonetheless be warranted in this case for either component of the proposed project.

There is further a clear alternative to the proposed project, but prudent and feasible alternatives including but not limited to extending the City's existing wastewater collection system to serve the proposed new development and existing developed areas of the Township have never been analyzed even though the proposed project will significantly and materially degrade the environment in violation of applicable law.²

¹ Minn. R. 4410.4300, Subp. 19. provides in part that: "An EAW is required for residential development if the total number of units that may ultimately be developed on all contiguous land owned or under an option to purchase by the proposer, except land identified by an applicable comprehensive plan, ordinance, resolution, or agreement of a local governmental unit for a future use other than residential development, equals or exceeds a threshold of this subpart. In counting the total number of ultimate units, the RGU shall include the number of units in any plans of the proposer; for land for which the proposer has not yet prepared plans, the RGU shall use as the number of units the product of the number of acres multiplied by the maximum number of units per acre allowable under the applicable zoning ordinance or, if the maximum number of units allowable per acre is not specified in an applicable zoning ordinance, by the overall average number of units per acre indicated in the plans of the proposer for those lands for which plans exist. If the total project requires review but future phases are uncertain, the RGU may review the ultimate project sequentially in accordance with part 4410.1000, subpart 4.

If a project consists of mixed unattached and attached units, an EAW must be prepared if the sum of the quotient obtained by dividing the number of unattached units by the applicable unattached unit threshold, plus the quotient obtained by dividing the number of attached units by the applicable attached unit threshold, equals or exceeds one.

The local governmental unit is the RGU for construction of a permanent or potentially permanent residential development of: A. 50 or more unattached or 75 or more attached units in an unsewered unincorporated area or 100 unattached units or 150 attached units in a sewerred unincorporated area; ..."

² The Minnesota Environmental Policy Act ("MEPA"), Minn. Stat. § 116D.04, subd. 6, provides in part that: "No state action significantly affecting the quality of the environment shall be allowed, nor shall any permit for natural resources management and development be granted, where such action or permit has caused or is likely to

Following the meeting of the La Crescent City Council on March 19, 2009, the City requested documentation and information from the MPCA, the Township, and the Permit Applicant regarding all environmental and financial data in their possession, respectively. To date, the Township responded that they have no such data, and the Permit Applicant has not responded to the City's request for information. A review of the MPCA's files further revealed little or no such data. As a result, there has been very little analysis done to evaluate the environmental effects of the proposed WWTF, the proposed 80 unit development or the cumulative potential effects of additional new development or the plan to connect such existing unsewered development located in the Township to the proposed new point source WWTF with discharge of effluent to Pine Creek.

The MPCA has not conducted the requisite analysis mandated by law to make a reasoned decision on the issuance of the draft NPDES permit. With the discharge of effluent to Pine Creek being a new point source to a watershed that has never had any such discharges, making a decision to issue the draft NPDES permit without conducting environmental review is unconscionable in particular when there is a clear, more environmentally protective alternative to the proposed project.

The proposed WWTF would in fact be unnecessary if a clear, more environmentally protective alternative exists to the proposed project thereby negating the need for the draft NPDES permit. In this case, there is such a clear alternative, but alternatives including but not limited to extension of the City's existing wastewater collection system were never discussed with the City and have not been considered by the Permit Applicant or the MPCA even though

cause pollution, impairment, or destruction of the air, water, land or other natural resources located within the state, so long as there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its air, water, land and other natural resources from pollution, impairment, or destruction. Economic considerations alone shall not justify such conduct."

the project has the potential for significant environmental effects and such consideration is required by MEPA.

The proposed project raises numerous questions, which remain entirely unanswered following our review of the MPCA's files. Some of the more pertinent unanswered questions regarding the project for the proposed WWTF and 80-unit residential development relating to the potential for significant environmental effects, include but are not limited to the following:

- a. Has the MPCA requested and independently reviewed and analyzed the financing for the proposed WWTF and its ability to sustain itself in terms of the WWTF's future operation and maintenance in order to protect the environment? In reviewing the MPCA's files, we found no such documentation or analysis. Clearly, improper operation and maintenance has the potential for significant environmental effects and requires environmental review.
- b. Has the MPCA requested and independently reviewed and analyzed all documentation of environmental analyses, studies and reports completed or in draft form regarding environmental effects of the proposed WWTF discharge and corresponding 80 unit residential development based on its nature or location upon Pine Creek and downstream waters thereof? In reviewing the MPCA's files, we found no such documentation or analysis.
- c. Has the MPCA requested and independently reviewed and analyzed all documentation of comparative environmental and cost-benefit analyses, studies and reports regarding prudent and feasible alternatives to the proposed WWTF and corresponding sanitary sewer collection and conveyance system? In

reviewing the MPCA's files, we found no such documentation or analysis. Yet Minn. Stat. § 116D.04, Subd. 6, requires such analysis.

- d. Has the MPCA requested and independently reviewed and analyzed all plans, analyses, studies, growth projections and reports regarding existing, proposed or anticipated development or zoning for development for which wastewater will be or is anticipated to be discharged to the proposed WWTF and corresponding sanitary sewer collection and conveyance system? In reviewing the MPCA's files, we found no such documentation or analysis.
- e. Has the MPCA requested and independently reviewed and analyzed all plans, analyses, studies, growth projections and reports regarding the cumulative potential effects of existing, proposed or anticipated development or zoning for development for which wastewater will be discharged to the proposed WWTF and corresponding sanitary sewer collection and conveyance system? In reviewing the MPCA's files, we found no such documentation or analysis.
- f. Has the MPCA requested and independently reviewed and analyzed all cost estimates, analyses, studies and reports prepared regarding the proposed WWTF and corresponding sanitary sewer collection and conveyance system? In reviewing the MPCA's files, we found no such documentation or analysis.
- g. Has the MPCA requested and independently reviewed and analyzed all plans, analyses, studies and reports for financing and cost estimates for the construction of the WWTF and corresponding sanitary sewer collection and conveyance system? In reviewing the MPCA's files, we found no such documentation or analysis.

- h. Has the MPCA requested and independently reviewed and analyzed all plans, analyses, studies and reports for financing and cost estimates for the operation and maintenance of the WWTF and corresponding sanitary sewer collection and conveyance system? In reviewing the MPCA's files, we found no such documentation or analysis.
- i. Has the MPCA requested and independently reviewed and analyzed the costs for the WWTF to employ a full-time Class C operator including wages and benefits or other contractual arrangements as contemplated in the draft NPDES permit? In reviewing the MPCA's files, we found no such documentation or analysis.
- j. Has the MPCA independently reviewed and analyzed the prudent and feasible alternative of extension of the City's existing wastewater system to the service area contemplated by the draft NPDES permit in comparison to the proposed WWTF regarding environmental protection, environmental effects, reliability, capital costs, operation and maintenance costs, upgrade costs, and repair costs? In reviewing the MPCA's files, we found no such documentation or analysis.
- k. Has the MPCA independently reviewed and analyzed the reliability, safety and back up systems for the proposed WWTF in the event of an unanticipated rainfall event such as that which occurred in 2008 in Crescent Valley causing Pine Creek to extensively flood? In reviewing the MPCA's files, we found no such documentation or analysis.
- l. Has the MPCA independently reviewed and analyzed what happens in the event the proposed WWTF must bypass? What is the impact on Pine Creek and Target

Lake? In reviewing the MPCA's files, we found no such documentation or analysis.

- m. Has the MPCA independently reviewed and analyzed the environmental effects from the proposed WWTF should it entirely fail or be in noncompliance for failure to be properly operated and maintained, repaired or upgraded? The MPCA cannot simply decommission the WWTF. Who is responsible for the failure or noncompliance? Who is responsible for the environmental degradation and costs of clean-up? In reviewing the MPCA's files, we found no such documentation or analysis.
- n. Has the MPCA independently reviewed and analyzed the environmental effects from the proposed WWTF on other natural resources, including ground water, wildlife and the effect on the scenic and aesthetic beauty of the area? In reviewing the MPCA's files, we found no such documentation or analysis.

There is a clear alternative to the proposed project such that the above questions would not need to be asked if the alternative was selected instead of the proposed project, but prudent and feasible alternatives, contrary to MEPA, have never been analyzed even though the proposed project has the potential for significant environmental effects.

2. Sensitive Resources in Pine Creek

A May 13, 2008 MPCA memorandum from Steven Weiss to Gbolahan Gbadamosi noted that the proposed facility's receiving water, Pine Creek, drains a watershed of approximately 57 square miles and flows into Target Lake, a shallow lake that is part of the Upper Mississippi River National Wildlife and Fish Refuge. The discharge would be 2.41 miles upstream of the lake. As noted on page 2 of that memorandum, watershed land uses consist primarily of forests

(50.7%), grasslands and pasture (33.1%) and agriculture (13.4%). The proposed WWTF would be the first NPDES-permitted discharge in the watershed.

Notably, according to this same memorandum, MPCA staff recommended against the proposed project as follows:

I first recommend that the La Crescent Township Homeowner's Association explore options to avoid discharging any wastewater to Pine Creek. Options may include sending wastewater to the City of La Crescent and thereto the La Crosse, Wisconsin WWTP.³

Data collected by the MPCA in 2004 and available online on its Environmental Data Access (EDA) database provides slightly different information. The EDA identifies the Pine Creek watershed as only 38.8 square miles and allocates the land uses to forests, range and agriculture as 45.9%, 45.1%, and 4.6%, respectively. The assessment conducted on August 24 of that year identified three brown trout along with specimens of seven other fish species. Most significantly, the EDA contains no information on either fish or invertebrate indices of biological integrity (IBI) for the creek.

It can be presumed that Pine Creek is fished for trout on a fairly regular basis and provides a significant wildlife habitat given the wooded nature of the creek upstream of and below the proposed WWTF. Although receiving relatively low angling pressure compared to other area streams in the area, the cluster of streams that included Garvin Brook as well as Rush, Pine, Big Springs, Pickwick, and Little Pickwick Creek yielded a total catch of 17,498 fish during an April 1 – September 30 fishing season in 2005, over half of them brown (17.3%) and rainbow trout (34.4%).⁴

³ Memorandum from Steven Weiss, Environmental Outcomes and Analysis Division, MPCA, to Gbolahan Gbadamosi, Environmental Outcomes and Analysis Division, MPCA, dated May 13, 2008.

⁴ Snook, Vaughn A. and Douglas J. Dieterman, "A Roving Creel Survey of Selected Southeast Minnesota Trout Streams – 2005" (Minnesota DNR July 2006).

In addition to game fish, a 2000 stream survey noted the presence of the mud darter (*Etheostoma asprigene*) and weed shiner (*Notropis texanus*) in Pine Creek, as well as a specimen of a blue crayfish.⁵ The species of the blue crayfish could not be determined. Most significantly, the survey noted the 1997 capture of a bluntnose darter in Pine Creek, the first occurrence of this species in Minnesota in 52 years.

Further, the draft NPDES permit application identifies at Question 36 the presence of a federally endangered species, the Higgins eye mussel. A note to this observation states “Endangered species not issue of concern based on previous correspondence on the City of La Crescent.” The correspondence referred to is not included in the permit file and there is no other explanation why the apparent presence of this mussel is not an issue. If the reference is to the City’s NPDES permit, it should be noted that the City’s facility discharges to Blue Lake, not Pine Creek and the City’s facility has been decommissioned. Thus, the presence of the Higgins eye mussel is of significant concern and will not be adequately protected by the draft NPDES permit.

The following publications, references, and studies are material evidence indicating that, because of the nature and location of the proposed WWTF and corresponding 80-unit residential development, there may be the potential for significant environmental effects upon Pine Creek and its downstream waters, wildlife and aesthetic beauty such that preparation of an environmental assessment worksheet is necessary:

1. Site maps (2) of proposed 80-unit residential development and WWTF. (See Appendix C attached hereto)
2. Minnesota Pollution Control Agency. March 31, 2009. Environmental Assessment Database Biological Stream Information for Pine Creek, Assessment Unit 07040006-504, Station ID 04LM061. 2004. (See Appendix C attached hereto)

⁵ Schmidt, Konrad, “Stream Survey Results for the Gravel Chub (*Erimystax x-punctatus*), Slender Madtom (*Noturus exilis*), and Bluntnose Darter (*Etheostoma chlorosomum*) in Southeastern Minnesota” (Minnesota DNR April 25, 2000).

3. MPCA Effluent Limitations Summary and Review Checklist, dated May 12, 2008. (See Appendix C attached hereto)
4. Memorandum from Steven Weiss, Environmental Outcomes and Analysis Division, MPCA, to Gbolahan Gbadamosi, Environmental Outcomes and Analysis Division, MPCA (May 13, 2008). (See Appendix C attached hereto)
5. Schmidt, Konrad. April 25, 2000. Stream Survey Results for the Gravel Chub (*Erimystax x-punctatus*), Slender Madtom (*Noturus exilis*), and Bluntnose Darter (*Etheostoma chlorosomum*) in Southeastern Minnesota. Minnesota Department of Natural Resources. (See Appendix C attached hereto)
6. Snook, Vaughn A. and Douglas J. Dieterman. July 2006. A Roving Creel Survey of Selected Southeast Minnesota Trout Streams – 2005. Minnesota Department of Natural Resources. (See Appendix C attached hereto)
7. City of La Crescent NPDES Permit Comments, dated April 23, 2009. (See Appendix C attached hereto)
8. U.S. Geological Survey Water Reports.
9. Minnesota Natural Heritage System Data.
10. Pine Creek Houston County Fish Survey Data.

The City has additionally made inquiries to the Permit Applicant, the Township, the MPCA, and the Minnesota DNR for additional information about the proposed WWTF and resources in the area around the proposed discharge. The City hereby reserves the right to submit additional information and evidence when this information becomes available.

Based on the foregoing, there are sensitive ecological resources that will be significantly and negatively effected by the proposed WWTF that are not adequately protected by the draft NPDES permit. Environmental review is required in this case on the proposed WWTF and 80-unit residential development.

In addition to the likely presence of the above resources, a number of plans published by Houston County and the City of La Crescent identify a clear preference for preserving natural habitat in the region, particularly trout streams and the Pine Creek Valley, even in areas deemed unsuitable for agriculture and therefore likely to experience more rapid population growth.

3. Houston County Comprehensive Land Use Plan (1998)

The County plan (adopted December 18, 1998) identifies trout streams as a key natural feature: “Some of the streams represent environmentally sensitive areas in that they are classified as trout streams. The Mississippi River including a number of major sloughs run along the eastern border of the County and serve[] as a source of recreation as well as river commerce.” The plan identifies most urban growth as taking place around the city of Caledonia, the county seat, and city of La Crescent. General goals of the plan include:

Subd. 2. Protection of Environmentally Sensitive Natural Resources. Houston County has also determined that it is important to protect the environmentally sensitive areas such as ... water resources from scattered urban growth to minimize pollution to the ground water supply, to minimize soil erosion and to preserve the wildlife habitat.

The Houston County plan makes clear that urban development should take place in or adjacent to cities on land that is not suitable for agriculture; particularly in the northeast portion of the County where the City is located. Objectives are stated for zoning ordinances and density control measures to protect wetlands, sloughs, and streams and minimize pollution problems. The plan’s Unincorporated Community Policies states the following:

Policy 2. Community Sewer System Required for New Development. Require all new urban density development in the unincorporated communities to install a Community Sewer System that meets the Minnesota Pollution Control Agency requirements, and the Houston County Sanitation Ordinance requirements. Urban densities are those identified in the Houston County Ordinance.

The plan’s Public Facilities Development Policies includes the following policy, which clearly contemplates interconnection with existing municipal infrastructure for new development:

Policy 4. Concentrate Major Land Uses Near Cities. Concentrate major residential, commercial and industrial land uses near cities which have City sewer routes and water systems.

The overall theme of the County plan is to focus on the County's strengths of agriculture, forested bluffs, trout streams and the channel and backwaters of the Mississippi River. Urban development is contemplated in areas not suitable to these uses, and the plan states clear preferences that such development makes use of existing infrastructure as well as other efficiencies that come from locating urban development in or adjacent to cities where a full range of municipal services can be provided including municipal sewer and water service. The draft NPDES permit is not consistent with such plan and will not adequately protect the resources sought for protection in the plan.

4. City of La Crescent Comprehensive Plan

The City's plan, adopted in May 1999, projects city population growth trending from 5,160 in 2000 to 5,882 in 2010, to 6,499 by the year 2020. Data from the Minnesota State Demographer's office from 2007 gives similar projections for the City, with population projected at 5,369 in 2010 and 5,816 by 2020. The 2007 data also projects population growth in La Crescent Township from 1,425 in 2006 to 1,456 in 2010, to 1,515 in 2020. The City plan goes on to state that to support this projected growth, the City will need to expand its area from a 1996 baseline of 428 acres to 611 acres by 2020.

In terms of future land use, the plan identifies twelve distinct categories. Among these is "Conservation," which the plan describes as follows:

The conservation category includes environmentally sensitive low-lying lands that are prone to seasonal flooding. **This conservation area covers portions of the Pine Creek basin and its tributaries.** Non-intensive activities such as agriculture and open spaces are intended for this category. [Emphasis added.]

The Conservation category comprises only 305 of the 13,317 acres of future land use areas identified in Table 13 of the plan.

Contained within the City's plan are objectives for the water system, sanitary sewer, and stormwater management. The draft NPDES permit does not address these collective service needs to realistically protect the environment based on the proposed new suburban development. The plan specifically provides that residential development in Pine Creek Valley will be expected to connect to the sewer system:

The sanitary sewer system will need to expand to serve a growing La Crescent population. The plan advocates that if residential development occurs in Pine Creek Valley, sanitary sewer facilities should be installed. City policy should require that all new development be required to hook-up to sanitary sewer facilities.

Utility expansion areas into La Crescent Township are specifically identified on page 45 of the plan, and encompass a wide variety of riparian wetland areas identified on page 55. Since the City has for a long time anticipated providing utility services to Township areas and has prepared the infrastructure to do so, a permit for a new duplicative WWTF is simply unnecessary when superior treatment facilities are already available. The draft NPDES permit is therefore not consistent with such plan and will not adequately protect the resources sought for protection in the plan including the City's investment in planning and infrastructure and the more comprehensive and environmentally protective approach to servicing suburban development with municipal water and stormwater service as well as sanitary sewer service. Based on the foregoing the proposed project has the potential for significant environmental effects such that environmental review is required.

5. Houston County Comprehensive Water Plan 2007 - 2017

The Houston County water plan calls attention to the high rate of growth in the La Crescent watershed compared to other areas of the County. Aside from centralized wastewater treatment, the plan cites concerns with other impacts of development:

Non-farm rural residential growth in the area is under separate zoning governed by the township. Land use changes away from agriculture to rural non-farm dwellings have increased[,] adding potential issues with individual onsite sewage treatment systems, building site erosion control, and rural water supplies.

...
Houston County recognizes the need to address the potential sedimentation into local rivers and streams from new building sites. If good planning in terms of erosion control on new building sites and protection of vulnerable sites is not taken into consideration, a profound negative impact on surface waters is the result.

If, for example, the proposed new development were required to connect to the existing City of La Crescent wastewater collection system, a new WWTF would not be needed at all thereby negating all of the material degradation to the environment that will be caused by a new point source discharge WWTF to Pine Creek and its downstream waters and the superior environmental protection provided by the city's holistic approach to services including stormwater and drinking water.

At a minimum, concerns with erosion and sedimentation dictate extensive environmental review in and of themselves to consider whether the proposed WWTF, and the additional development this WWTF will engender, will have additional negative effects on Pine Creek and the surrounding area. These threshold environmental review questions should have preceded any consideration of the draft NPDES permit, but no environmental review has been completed to date.

The draft NPDES permit fails to adequately protect the environment since it is inconsistent with the above requirements contained in applicable local comprehensive plans and will not adequately protect surface or groundwater resources based upon the nature and location of the proposed WWTF and corresponding residential development.

CONCLUSION

Pine Creek is located in a portion of Houston County deemed unsuitable for agriculture, and most likely appropriate for conservation and suburban growth as is now proposed through the draft NPDES permit for a proposed new point source discharge WWTF and corresponding 80-unit residential development. Rare species have been identified in Pine Creek and downstream waters that will be significantly and negatively impacted by the proposed WWTF and issuance of the draft NPDES permit. Local governments in the area have further expressed a clear preference for protecting the water quality of this trout stream from erosion, sedimentation, and other hazards. These hazards and environmental degradation to Pine Creek and downstream waters could be avoided completely if the proposed development simply connected with the City of La Crescent's wastewater collection and treatment system, which sends sewage to La Crosse for an advanced tertiary treatment process. Information made available from MPCA files and written requests to the Permit Applicant and Township establish that prudent and feasible alternatives to the proposed project have not been given any serious consideration even though the proposed project will materially and negatively affect the environment.

Based on the foregoing, the City of La Crescent respectfully requests that the Environmental Quality Board designate the MPCA as the responsible governmental unit ("RGU"). The RGU to perform the EAW should be the MPCA and not La Crescent Township since only the MPCA has the expertise to adequately evaluate the environmental issues with the proposed WWTF and development project and prudent and feasible alternatives thereto.⁶

The City further request that if designated as the RGU the MPCA order the preparation of an EAW for the above-referenced project. Pursuant to Minnesota Rules Part 4410.3100, the

⁶ Minn. R. 4410.0500, Subp. 6. **Exception.** Notwithstanding subparts 1 to 5, the EQB may designate, within five days of receipt of the completed data portions of the EAW, a different RGU for the project if the EQB determines the designee has greater expertise in analyzing the potential impacts of the project.

MPCA may not grant a permit for the new WWTF until it or the designated RGU has first ruled on the need for environmental review.

In accordance with Minn. R. 4410.1100, attached hereto as Appendix B are the requisite signatures and mailing addresses of at least 25 individuals supporting this petition for an EAW.⁷

Respectfully submitted,

FLAHERTY & HOOD, P.A.

Dated: May 7, 2009



Christopher M. Hood
525 Park Street, Suite 470
St. Paul, MN 55103
Phone (651) 225-8840
Fax (651) 225-9088

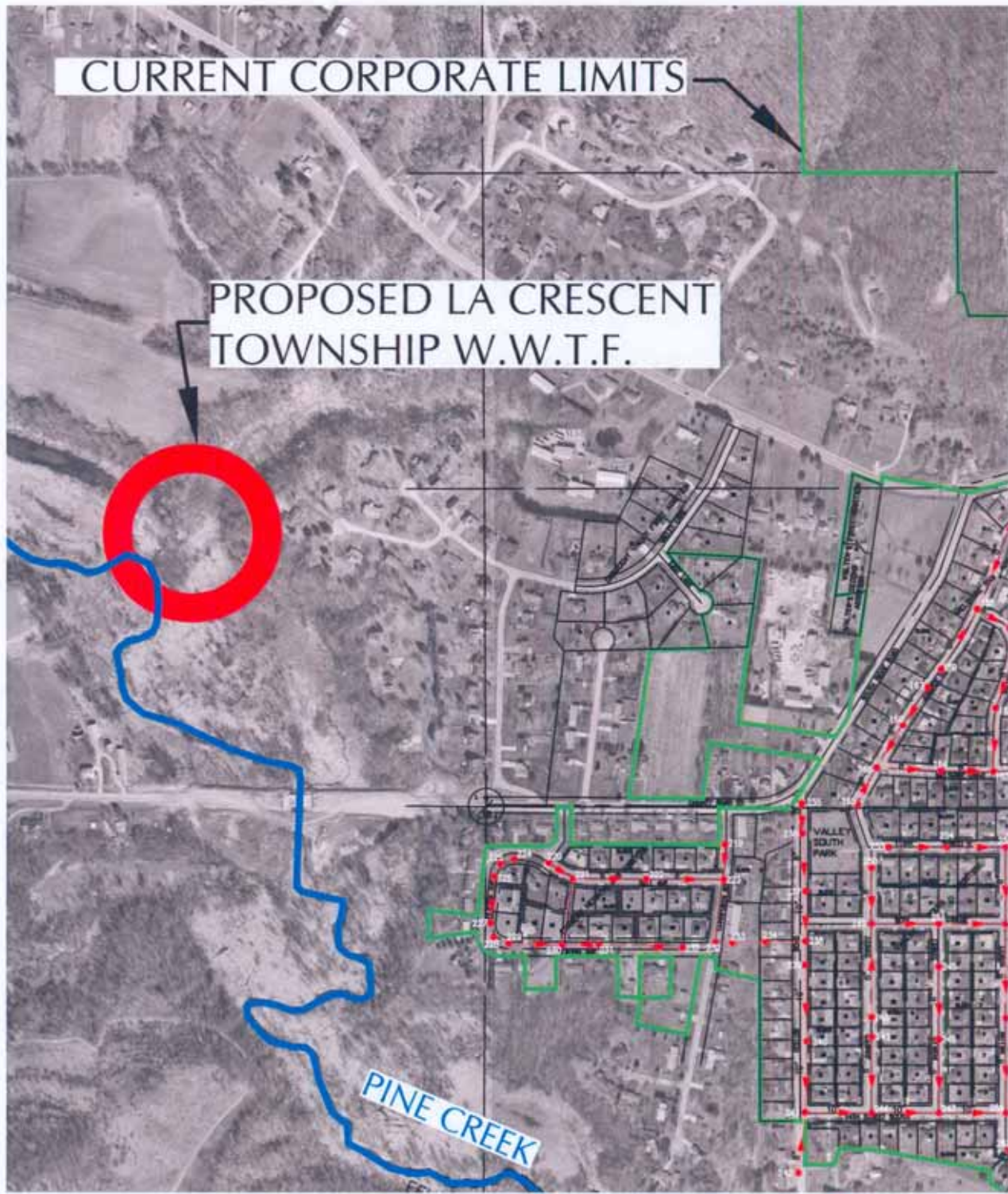
REPRESENTATIVE OF PETITIONERS AND
ATTORNEY FOR CITY OF LA CRESCENT

⁷ Minn. R. 4410.1100, Subp. 1. Subpart 1. "Any person may request the preparation of an EAW on a project by filing a petition that contains the signatures and mailing addresses of at least 25 individuals."

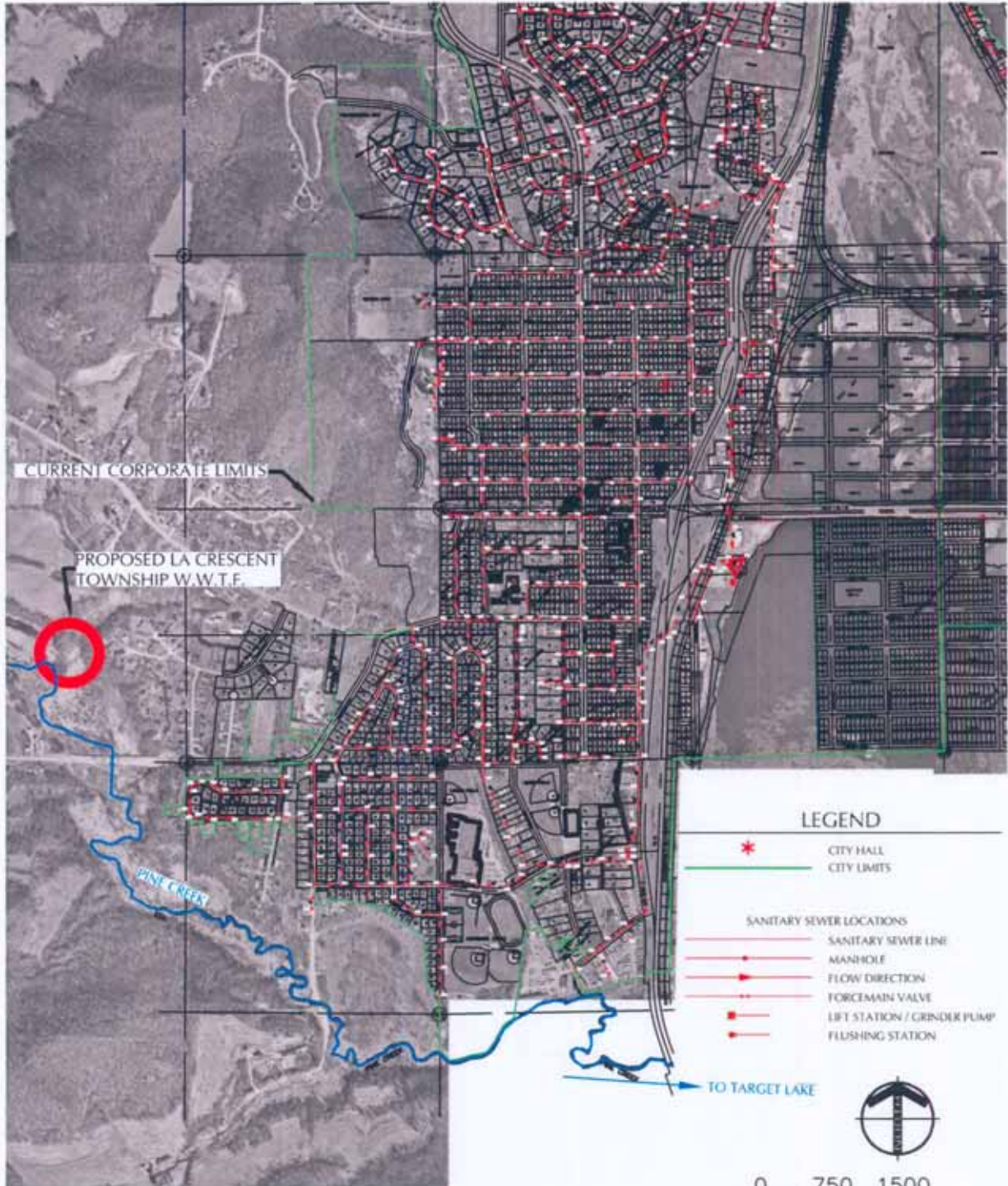
APPENDIX A - MAPS

**City of La Crescent Petition for Environmental Review
of La Crescent Township Homeowner's Association
Proposed Wastewater Treatment Facility
Draft Issued NPDES/SDS Permit No. MN0069248**

CITY OF LA CRESCENT, MINNESOTA SANITARY SEWER SYSTEM



CITY OF LA CRESCENT, MINNESOTA SANITARY SEWER SYSTEM



LEGEND

- * CITY HALL
- CITY LIMITS

- SANITARY SEWER LOCATIONS
- SANITARY SEWER LINE
- MANHOLE
- ▶ FLOW DIRECTION
- |— FORCEMAIN VALVE
- LIFT STATION / GRINDER PUMP
- |— FLUSHING STATION

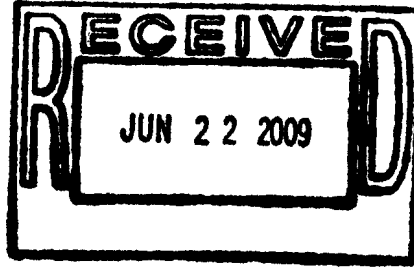




Environmental Quality Board

658 CEDAR STREET
ST. PAUL, MN 55155
PHONE: 651-297-1257
FAX: 651-296-3698
TTY: 800-627-3529
WWW.EQB.STATE.MN.US

2008-069



June 15, 2009

Craig Affeldt
Supervisor, Environmental Review Unit
Regional Division - 4th Floor
520 Lafayette Road
St. Paul, MN 55155-4194

RE: Citizens petitions for an EAW for La Crescent Township Wastewater Treatment Facility project

Dear Mr. Affeldt:

The Environmental Quality Board (EQB) has received a petition requesting that an EAW be prepared on the project described in the petition, and has determined that the MPCA is the appropriate governmental unit to decide the need for an EAW.

The requirements for environmental review, including the preparation of an EAW, can be found in the Minnesota Rules, chapter 4410.

The procedures to be followed in making the EAW decision are set forth in part 4410.1100. Key points in the procedures include:

1. No final government approvals may be given to the project named in the petition, nor may construction on the project be started until the need for an EAW has been determined. Project construction includes any activities which directly affect the environment, including preparation of land. If the decision is to prepare an EAW, approval must be withheld until either a Negative Declaration is issued or an Environmental Impact Statement (EIS) is completed (see part 4410.3100, subpart 1, page 37.)
2. A first step in making the decision regarding the need for an EAW would be to compare the project to the mandatory EAW, EIS and Exemption categories listed in parts 4410.4300, 4410.4400, and 4410.4600, respectively. If the project should fall under any of these categories, environmental review is automatically required or prohibited. If this should be the case, proceed accordingly.

3. If preparation of an EAW is neither mandatory nor exempted, the MPCA has the option to prepare an EAW. The standard to be used to decide if an EAW should be done is given in part 4410.1100, subp. 6. Note that this requires that a record of decision including specific findings of fact be maintained.
4. You are allowed up to 30 working days (Saturdays, Sundays and holidays do not count) for your decision if it will be made by a council, board, or other body which meets only periodically, or 15 working days if it will be made by a single individual. You may request an extra 15 days from EQB if the decision will be made by an individual.
5. You must notify, in writing, the proposer, the petitioners' representative and the EQB of your decision within five working days. I would appreciate your sending a copy of your record of decision on the petition along with notification of your decision for our records. This is not required, however.
6. If for any reason you are unable to act on the petition at this time (e.g., no application has yet been filed or the application has been withdrawn), the petition will remain in effect for a period of one year, and must be acted upon prior to any final decision concerning the project identified in the petition.

Notice of the petition and its assignment to your unit of government will be published in the EQB Monitor on June 29, 2009.

If you have any questions or need any assistance, please do not hesitate to call. The phone number is (651) 201-2477.

Sincerely,



Jon Larsen, Principal Planner
Environmental Review Program

cc: Christopher Hood, petitioners' representative



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

June 29, 2009

CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. Christopher M. Hood, Attorney
Flaherty & Hood, P.A.
525 Park Street
Suite 470
St. Paul, MN 55103

Mr. Richard Barbour, Developer
La Crescent Township
Homeowner's Association
N 2882 State Road 16
LaCrosse, WI 54601

RE: Petition for Environmental Assessment Worksheet
LaCrescent Township Homeowner's Association
Proposed Wastewater Treatment Facility, Draft NPDES/SDS Permit No. MN0069248
La Crescent Township, Houston County, Minnesota

Dear Mr. Hood and Mr. Barbour:

The Minnesota Environmental Quality Board (EQB) has transmitted a petition for an Environmental Assessment Worksheet (EAW) to the Minnesota Pollution Control Agency (MPCA). The MPCA will now carefully review the petition, its supporting evidence, and other information about the project to help determine whether to prepare an EAW. The project may not receive any permits, nor can construction begin, until this decision is made.

Interested parties may request that this decision be made by the MPCA Citizens' Board (Board). The Board meets the fourth Tuesday of each month, at the MPCA offices in St. Paul. All meetings are open to the public and interested parties may testify.

To request that the Board make the EAW petition decision, interested parties must initiate contact with the Board. At least one of the Board members, or the Commissioner, who chairs the Board, must agree to have the Board hear the matter, and so notify the Board Administrator within ten working days of the date of this letter. A list of the Board members' names, addresses and telephone numbers is enclosed with this letter. If the Board is deciding the matter, interested parties will be mailed notice of Board meeting dates and times, along with the proposed findings to be considered at the meeting.

If no one requests that the Board make the decision, or if no Board member agrees that the Board should hear the matter, the decision will be made by the Commissioner.

Mr. Christopher Hood, Petitioners' Representative
Mr. Richard Barbour, Petitionee
June 29, 2009
Page 2

If you have any questions about this letter, please contact the MPCA's Regional Division, Environmental Review staff, Nancy Drach, at 651-757-2317. If you wish to contact a Board member, please refer to the enclosed listing.

Sincerely,



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

CA/NJD:mbo

Enclosure (Board Member List)