

**STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY**

**In the Matter of the Decision
on the Need for an Environmental
Impact Statement for the Proposed
Riverbend Manufactured Home Community
Waste Water Treatment Facility Improvements**

**FINDINGS OF FACT
AND CONCLUSIONS**

Darkenwald Real Estate, Inc. is proposing to expand their existing mechanical wastewater treatment facility (WWTF) that serves the Riverbend Manufactured Home Community in Otsego, Minnesota. The existing WWTF is privately owned by the proposer and currently has a design flow of 60,000 gallons per day (GPD), with an average flow of 26,000 GPD. The proposer is requesting a flow increase of 81,800 GPD so that the WWTF can serve residential, commercial and industrial developments that will be built over the next several years on land west of Highway 101 in Otsego.

Pursuant to Minn. R. 4410.1000 - 4410.1600, Minnesota Pollution Control Agency (MPCA) staff has prepared an Environmental Assessment Worksheet (EAW) for the project. Based on the EAW and comments or information received during the EAW comment period, the MPCA hereby makes the following Findings of Fact and Conclusions.

FINDINGS OF FACT

I. PROJECT DESCRIPTION

A. Project Proposal

1. The existing WWTF is a contact stabilization sewage treatment “package plant”. The facility has had a controlled discharge to the Mississippi River since it began operating in the 1970’s.
2. The expansion of the existing treatment facility would require equipment modifications, removal of some existing equipment and construction of additional treatment units. The current system of controlled effluent discharges would be changed to a continuous discharge. The effluent would bypass the existing polishing pond and discharge into a ditch to the north of the facility and ultimately to the Mississippi River.
3. The expanded facility would discharge to the Mississippi River which was designated an Outstanding Resource Value Water (ORVW) in 1984. The State of Minnesota’s non-degradation rules require that the expanded facility continue to meet the same pollutant mass loadings as the existing facility, despite the increase in flow to the river. In other words, the facility’s pollutant mass load to the ORVW is permanently frozen at 1984 levels and such restrictions would need to be imposed in a modified and reissued permit.
4. Phosphorus is not a regulated pollutant in the existing National Pollutant Discharge Elimination System State Disposal (NPDES/SDS) Permit. The project proposer has, however, accepted a total phosphorus annual average effluent limitation of one milligram/liter (mg/L).

5. The proposed WWTF expansion is related to and associated with Darkenwald's proposal to develop Darkenwald properties west of Highway 101 and adjacent to the existing mobile home park. These properties are proposed to be developed to housing, commercial and industrial development.

The MPCA has determined that both Otsego and Darkenwald Real Estate have included the Darkenwald properties in their sewer service area when determining their facilities' respective design flows. The city of Otsego's Sewer Service Policy Plan, approved in 1998, provided for the possibility that the Darkenwalds might supply wastewater treatment services to their own properties. The city, however, requires that the proposer meet certain conditions and obtain city approval before providing those services. Without those approvals, there may be no need for an expansion of the existing WWTF because the facility is currently operating at less than one-half of its design flow and could serve the existing Riverbend Manufactured Home Community without an expansion.

B. Project Site

1. The treatment facility's expansion would occur adjacent to the existing package plant. This property has been used for wastewater treatment for over 20 years. Some filling of the existing polishing pond would be necessary to accommodate the construction of additional equipment at the site.
2. No soil contamination or storage tanks are known to exist at the site.
3. There are no known significant historical, archaeological, or architectural features that would be affected by this proposal.

C. Major Elements

1. The existing treatment facility is a contact stabilization sewage treatment system with extended aeration modification. The new facility would include two additional 60,000 GPD extended aeration package units.
2. Phosphorus removal would be achieved through the addition of alum. Alum would be added prior to the final clarifiers or after treatment in a flocc/mixing tank. The expanded facility would achieve a one mg/L annual average phosphorus concentration.
3. The package units would be able to produce an effluent quality consistently meeting 90 percent removals for both carbonaceous biochemical oxygen demand (CBOD) and total suspended solids (TSS).
4. The expanded facility must meet the following effluent limits: 25 mg/L CBOD, 30 mg/L TSS; 200 organisms/100 ml fecal coliform; 6.0-9.0 pH; 1 mg/L phosphorus (annual average).
5. The WWTF's sludge would be stored on site temporarily, and then hauled to another permitted WWTF for sludge treatment.

II. PROJECT HISTORY

- A. The proposal involves the expansion of a WWTF, which will result in an increase of more than 50 percent of its average wet weather flow. The preparation of an EAW is mandatory pursuant to Minn. R. 4410.4300, subp. 18B.
- B. An EAW was prepared on the proposed project and distributed to the Environmental Quality Board mailing list and other interested parties on April 2, 1999.
- C. A press release containing the notice of availability of the EAW for public review was provided to media serving the project area on April 2, 1999.
- D. The public comment period for the EAW began on April 5, 1999, and ended on May 5, 1999. Comment letters from the public were received during the 30-day comment period. Responses to comments received have been prepared by MPCA staff and are hereby incorporated by reference.

III. CRITERIA FOR DETERMINING THE POTENTIAL FOR SIGNIFICANT ENVIRONMENTAL EFFECTS

In deciding whether a project has the potential for significant environmental effects, the MPCA must consider the four factors set out in Minn. R. 4410.1700, subp. 7.A. These criteria are: A) the type, extent, and reversibility of environmental effects; B) cumulative potential effects of related or anticipated future projects; C) the extent to which the environmental effects are subject to mitigation on ongoing public regulatory authority; and D) the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other Environmental Impact Statements (EISs). The MPCA findings with respect to each of these issues are set forth below.

A. TYPE, EXTENT, AND REVERSIBILITY OF ENVIRONMENTAL EFFECTS

The first factor that the MPCA must consider is the "type, extent, and reversibility of environmental effects," Minn. R. 4410.1700, subp. 7.A. The MPCA findings with respect to each of these issues are set forth below.

1. Fish, Wildlife, and Ecologically Sensitive Resources.

The WWTF is located approximately 700 feet west of the Mississippi River in Otsego. The Mississippi River is the receiving stream for the waste-water effluent. This portion of the river has been designated as an ORVW and currently supports its designated uses. With the proposed expansion of the facility, the effluent would continue to meet the strict requirements required under MN Rules 7050.0180. Because the facility must maintain current mass loadings of regulated pollutants to the river, fish and other aquatic life in the Mississippi River would not be significantly impacted by this expansion.

The Department of Natural Resources' (DNR) Natural Heritage and Nongame Research Program was contacted regarding the proposed expansion of this facility. The DNR reported that there is one known occurrence of a rare species in the project area, the loggerhead shrike. The proposed expansion of the WWTF is not expected to require any clearing of land or trees and so is not expected to cause significant impacts to the shrike.

The development of the Darkenwald properties west of Highway 101 that will be enabled by this

project could potentially impact some shrike habitat. The DNR has recommended that the proposer plan for open space dedication on these properties as a way to mitigate for or lessen impacts to shrike habitat. This comment has been transmitted to the proposer for consideration.

2. Potential Impacts on Water Quality

The proposed effluent limitations are intended to protect the uses of and prevent degradation to receiving waters. The proposed limits, which would be included in the facility's discharge permit are as follows:

- Five-day carbonaceous biochemical oxygen demand on a continuous basis: 25 mg/L
- Total suspended solids on a continuous basis: 30 mg/L
- Fecal coliform organisms: 200 organisms per 100 milliliters for March - October
- pH: range of 6.0-9.0
- Total phosphorus: 1.0 mg/L as an annual average

This facility's mass load to the Mississippi River is permanently frozen at 1984 levels. The expanded WWTF would not discharge regulated pollutants in amounts greater than allowed under its existing permit for 60,000 GPD. As such, no significant environmental impacts should occur to the ORVW.

3. Odors, Noise and Dust

Dust - During construction fugitive dust may increase temporarily. Watering of access roads and the site would minimize the effects of dust on nearby residences.

Odor - No additional odors are expected as a result of the proposed project. Odors have not been and are not expected to be an issue to nearby residences.

Noise - Noise would result from construction activities. The impacts of construction can be reduced by ensuring that the contractor properly schedules activities at the site and reduces the running time of equipment to the extent possible. Any impacts are expected to be temporary and localized. Construction activities would occur between the hours of 7 a.m. and 7 p.m. during the weekdays, as required by local ordinances.

4. MPCA Findings

The MPCA finds that the project as it is proposed does not have the potential for significant environmental effects.

B. CUMULATIVE POTENTIAL EFFECTS OF RELATED OR ANTICIPATED FUTURE PROJECTS

The second factor that the MPCA must consider is the "cumulative potential effects of related or anticipated future projects," Minn. R. 4410.1700, subp. 7.B. The MPCA findings with respect to this factor are set forth below.

1. The proposed project is intended to provide wastewater treatment capacity at the Riverbend WWTF over the next 20 years.

2. Proposed effluent limitations, particularly the addition of a phosphorus effluent limit, would be protective of water quality and hence of aquatic species in the ORVW.
3. Information regarding the specifics of the proposed land development projects and their potential environmental impacts was not available at the time of the EAW's publication. Further analysis may be warranted once the specific plans are available. However, based on the information that was available to the MPCA, it is the staff's conclusion that the environmental impacts resulting from the proposed developments are not expected to be significant. Impacts are expected to be similar to that of other such real estate developments. For example, the amount of impervious surfaces would increase due to the proposed land uses. This in turn would create greater surface water runoff in the area. The number of people residing in this area and automobile traffic would both increase as a result of the development. The proposed residential/commercial development would reduce the amount of farmland, open space and wildlife habitat in the city of Otsego. It is possible that the residential and commercial development would replace some habitat that may be suitable for the loggerhead shrike as well as small mammals and some songbirds.
4. The MPCA finds that there are no related or anticipated future actions which could result in cumulative, adverse, significant environmental effects.

C. THE EXTENT TO WHICH THE ENVIRONMENTAL EFFECTS ARE SUBJECT TO MITIGATION BY ONGOING PUBLIC REGULATORY AUTHORITY

The third factor that the MPCA must consider is "the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority," Minn. R. 4410.1700, subp. 7.C. The MPCA findings with respect to this factor are set forth below.

1. The following permits or approvals will be required for the project:

<u>Unit of Government</u>	<u>Permit or Approval Required</u>	<u>Status</u>
1. MPCA	NPDES/SDS Permit	To be submitted
2. MPCA	Facility Plan Approval	Has been approved
3. MPCA	Plans and Specs Approval	To be submitted
4. City of Otsego	Comprehensive Plan Amendments	To be submitted
5. City of Otsego	Zoning Ordinance Amendments	To be submitted
6. City of Otsego	Plat Approval	To be submitted
7. Wright County	Utility Permit	To be submitted
8. MnDOT*	Utility Permit	To be submitted
9. Metropolitan Council	Sludge Discharge Permit	To be submitted

*Minnesota Department of Transportation (MnDOT)

Through the NPDES/SDS permitting process, the MPCA will ensure that the WWTF is constructed so that water quality is protected. This will be accomplished through the review of the proposer's Facility Plan, engineering Plans and Specifications for construction and through review of sludge disposal plans.

The city of Otsego will ensure that the WWTF and related land developments meet all local zoning ordinances and building codes. Without these approvals, Darkenwald's basis for the proposed WWTF expansion would no longer exist.

MnDOT will ensure that impacts to the state highways will be minimized.

Wright County will review the proposed project to ensure proper utility crossings in the vicinity of County State Aid Highways.

The Metropolitan Council will ensure that sludge from the facility can be properly disposed of within the Metropolitan Council's wastewater treatment facilities.

5. The MPCA finds that the permits and monitoring reports required by public regulatory authority would provide additional opportunity to mitigate the environmental effects of the project, if necessary.

D. THE EXTENT TO WHICH ENVIRONMENTAL EFFECTS CAN BE ANTICIPATED AND CONTROLLED AS A RESULT OF OTHER AVAILABLE ENVIRONMENTAL STUDIES UNDERTAKEN BY PUBLIC AGENCIES OR THE PROJECT PROPOSER, INCLUDING OTHER EISs.

The fourth factor that the MPCA must consider is "the extent to which environmental effects can be anticipated and controlled as a result of other available environmental studies undertaken by public agencies or the project proposer, including other EISs," Minn. R. 4410.1700, subp. 7.D. The MPCA findings with respect to this factor are set forth below.

1. The proposed Darkenwald WWTF expansion has been preliminarily reviewed by the MPCA staff.
2. There are no elements of the project that pose the potential for significant environmental effects which cannot be addressed in the project design and permit development processes.
3. The MPCA finds that the environmental effects of the WWTF project can be anticipated and controlled as a result of environmental review, previous environmental studies, and permitting processes undertaken by the MPCA on similar projects.

CONCLUSIONS

1. The EAW, the permit development process, the facility planning process, and responses prepared by MPCA staff in response to comments on the EAW, have generated information adequate to determine whether the project has the potential for significant environmental effects.
2. Areas where the potential for significant environmental effects may have existed have been identified and appropriate mitigative measures have been incorporated into the project design and permits. The project is expected to comply with all MPCA standards.
3. Based on the criteria established in Minn. R. 4410.1700, the WWTF project does not have the potential for significant environmental effects.
4. An Environmental Impact Statement is not required.
5. Any findings that might properly be termed conclusions and any conclusions that might properly be termed findings are hereby adopted as such.

Karen A. Studders, Commissioner
Minnesota Pollution Control Agency

Date

REFERENCES AND COMMENT LETTERS RECEIVED

1. Environmental Assessment Worksheet dated April 2, 1999.
2. The following comment letters were received:

Letters from Governmental Organizations:

Thomas Balcom, Minnesota Department of Natural Resources, dated May 5, 1999

Britta Bloomberg, Minnesota Historical Society, dated May 3, 1999

Claudia L. Dumont, Scott Peters, Minnesota Department of Transportation, dated April 26, 1999,
and April 12, 1999, respectively.

Michael Robertson, City of Otsego, dated May 4, 1999

Paul Jacobs, Headwaters Rural Utility Association, dated May 5, 1999

**RESPONSE TO COMMENTS
RIVERBEND WASTEWATER TREATMENT
FACILITY IMPROVEMENTS**

**Thomas Balcom, Department of Natural Resources (MDNR)
Letter dated May 5, 1999**

Comment: Item 9 identifies that the Darkenwald properties located west of Highway 101 lie within the service areas of both this wastewater treatment facility (WWTF) and the Otsego WWTF. DNR concurs with the Minnesota Pollution Control Agency (MPCA) assignment of importance to the issue of “whether the additional discharge levels should be authorized for this discharge location” if the “city does not approve the expanded service area”. The Outstanding Resource Value Water (ORVW) designation of the Mississippi River, especially provisions regarding the prohibition on mass loading increases beyond that established in 1984, requires direct discharges to receive careful scrutiny to ensure non-degradation.

In this respect, we recommend that the MPCA carefully consider incorporating language into the upcoming draft National Pollutant Discharge Elimination System State Disposal (NPDES/SDS) permit that reflects the contingency where the city of Otsego may not approve the expanded service area for the Riverbend WWTF. We also recommend that MPCA’s ongoing Basin Planning efforts consider generally how the circumstance presented with this project might affect basin -wide goals, especially in terms of potential future wasteload allocations across both point and nonpoint sources. (MDNR)

Response: The comments are noted. The MPCA agrees that any proposed permit process must address the potential for overlapping service areas in Otsego.

Comment: Item 11a and 30 correctly noted that a record exists for the state-listed threatened species loggerhead shrike, **Lanuis ludovicianus**, being located in the proposed project’s service area. The Environmental Assessment Worksheet (EAW) also correctly identifies that development of the service area will likely result in habitat loss for the species. It is not possible to precisely predict how this anticipated development will ultimately affect loggerhead shrikes. Shrikes may or may not still inhabit the area when future phases of the development come to fruition. We recommend that the proposer consider and plan for open space dedication within the service area, where this open space exhibits habitat features of value to shrikes. Such a measure can improve the likelihood that any remaining population in the areas can be sustained post-development. (MDNR)

Response: The comment is noted. The MPCA supports the MDNR’s recommendation. The comment will be passed along to the proposer.

**Paul Jacobs, Headwaters Rural Utility Association (HRUA)
Letter dated May 5, 1999**

Comment: Questions of evenhandedness by MPCA arise in the EAW (and in earlier staff meetings on this facility held at MPCA) when the topic of municipal preference is referenced. The EAW now appears to give some bias to the newer (proposed) municipal facility approved in late 1998. As a privatized utility organization, HRUA is sensitive to this topic. Please find attached a 10/18/96 fax from Ted Field (engineer in this EAW for Otsego) to MPCA staff. In it he comments concerning activities in another

town by HRUC (the original name for HRUA). While there are factual errors in his statements, the main problem is that he clearly is concerned about the appearance of competition by this member-owned cooperative association. The attached 10/23/96 letter from Marvin Hora of MPCA clearly puts MPCA in a neutral stance between two potential ownership and technological solutions to a wastewater need. (HRUA)

Response: The commentor is correct in stating that the MPCA did not advocate for one type of wastewater treatment system or another when the city of Corcoran was considering wastewater treatment options. The MPCA believes that the city is in the best position to make that choice. The MPCA's major responsibility is to ensure that the city's proposed treatment system meets water quality effluent limitations developed for the receiving stream.

Comment: In the Riverbend EAW, given its existing status and long term investment in facilities and land, the references to possibly tying the expansion permit for Riverbend to the political actions of the City of Otsego based on land use is an apparent violation of the evenhanded stance of the Hora letter. The issue at hand here is water quality, not some local zoning matter. (HRUA)

Response: MPCA staff are recommending the issuance of a negative declaration for Darkenwalds' proposal to expand the WWTF, based on the Darkenwalds' assertions that the expanded WWTF is needed to address sewer service to their proposed developments within the city of Otsego. Based on information provided by the city, it appears that the Darkenwalds will have to obtain some city approvals or authorizations to provide sanitary sewer service to its proposed developments, which then would give rise for the need for the expanded WWTF. To MPCA's staff's knowledge, the city has not yet issued those possible approvals or authorizations.

The Riverbend facility is unique in that it is a privately owned WWTF within the city limits of the city of Otsego. Because it is located within the city limits of Otsego and based on information provided to MPCA by the city, it appears that the Darkenwalds' proposal to develop and service its properties are subject to local land use rules and regulations. For example, the city of Otsego's Sewer Service Policy Plan indicates that the Darkenwalds must acquire a number of local approvals or they cannot provide wastewater services to their own properties. If the city does not approve the proposer's provision of these sewer services, then there appears to be no need to expand the WWTF to address the Darkenwalds' proposal that was the basis of the EAW. The existing Riverbend WWTF is currently operating at less than one-half of its design capacity. The MPCA is concerned about permitting pollutant discharges to ORVWs where there may be no demonstrated need.

Comment: If verified preconstruction demand for wastewater facility services is suddenly a criteria, how did MPCA approve the adjoining City of Otsego facility request in 12/98 when there was only vacant land on a map to justify its grant of a 400,000 GPD outfall? (HRUA)

Response: Suburban residential development is expanding in most counties within or surrounding the Twin Cities metropolitan area. This has necessitated the construction of a number of new or expansion of the existing WWTF in the region. The city of Otsego has developed projections for city growth over the next 20 years. Historically, cities have met or exceeded these growth projections. Based on the MPCA's engineering review, Otsego's growth projections appeared to be reasonable and it did not appear that the city had any potential approval constraints regarding the provision of sanitary sewer services to areas outside the city.

Comment: Questions on the ORVW “critical loadings process” in the EAW arise when this document and staff discussion thereon is compared to another MPCA document on another ORVW, Lake Superior. Prior MPCA actions dealing with ORVW discharges have combined the annual mass loads in terms of “lb/yr” rather than gallons. [See attached 1994 Gooseberry Falls letters from MPCA (6/1/94) and DNR (6/6/94).] The Riverbend EAW appears to agree that the expansion will have no impact on the ORVW.

It would help if MPCA reconciles its previous definitions of mass loadings of pollutants that do not reflect gallons of discharge. [Discharge = addition of any “pollutant” to waters of the state, not “water” to waters of the state] Nothing in the EAW states that increased volume by Riverbend will add to the phosphorus or other loadings, or even defines the current phosphorus level. Thus any references in the EAW that might imply a net new discharge impact to the ORVW from an increased flow rate are perceptual, not grounded in fact. Combined annual mass load discharged from the Riverbend facility apparently will hold level or actually decline, as noted in section #6. (HRUA)

Response: With respect to Carbonaceous Biochemical Oxygen Demand (CBOD), Total Suspended Solids (TSS), and Fecal Coliform Bacteria, the commentor is correct -- mass loadings of pollutants to the Mississippi River will not increase as a result of the proposed Riverbend facility expansion assuming these discharges are appropriately limited in the reissued permit. The case is less clear for phosphorus, however. Currently, phosphorus is not a regulated pollutant under the Riverbend’s existing NPDES permit. As such, the amount of phosphorus currently being discharged from the facility is unknown.

It is certainly possible that even with a proposed phosphorus limit of 1 mg/l (annual average), the expanded facility’s increase in flow by approximately 82,000 gallons per day may result in an increase in the mass of phosphorus reaching the Mississippi River over what it is today. It is for this reason that the MPCA’s approach to permitting this expansion is conservative.

Comment: Transfer of grandfathered ORVW loadings as part of an overall process to increase water quality appears to meet MPCA policy guidelines. The Gooseberry Falls documents show that grandfathered loadings can be successfully used as the core of new facility plans. This is a significant point since HRUA has observed MPCA staff resistance to the granting of increased capacity to Riverbend on the grounds it may not need or use its requested new limits if the city of Otsego capacity is alternatively utilized for part of the Riverbend holdings. HRUA takes the position that prudent asset allocation by any wastewater facility operator will ensure that any actual excess capacity by the expanded Riverbend facility will be absorbed into the water quality needs of the Upper Mississippi Basin. Frankly, it is speculative for MPCA to assume that the private owners of the Riverbend facility would actually expend their own money for a privatized wastewater facility they will not be able to use. If they get their rezoning later (based on this gallon capacity increase), they clearly will use that capacity. Failing to get their rezoning, their donative letter of intent for a future transfer of this facility to the nonprofit foundation affiliated with HRUA means the Riverbend owners have at least a backup plan for any unused capacity. In either event the water quality of the Mississippi River is better off if the Riverbend facility is expanded. From a basin perspective, not granting the facility expansion means that the voluntary agreement by Riverbend to meet tighter outfall standards would be moot. Not building an improved wastewater facility in the basin is not going to help reduce phosphorus or any other pollutant loading. (HRUA)

Response: It is MPCA’s understanding that the proposer has yet to receive approvals from the city of Otsego for their real estate development and waste water treatment service plans on the Darkenwald properties west of Highway 101. Without the ability to provide its own sanitary sewer service to the proposed development areas, as outlined in the project reviewed under the EAW, there may be no need for additional capacity at the Riverbend facility. The city of Otsego could conceivably provide wastewater service to these properties, removing the need for a Riverbend facility expansions as

Darkenwalds proposed in the project reviewed in the EAW.

The MPCA has been told by the Darkenwalds that the facility would not be donated for at least four to six years. It is possible that the transfer will never occur at all. MPCA is not aware of any formal legal agreement outlining the transfer of ownership to HRUA. Therefore, it would be speculative for the MPCA to assume anything with respect to how the HRUA plans to use excess capacity in future years and any such HRUA plans were not addressed in the EAW.

Comment: Any possible diversion of Riverbend capacity from the Mississippi to the Crow River would add to the already substandard Crow's ratio problem of "8 parts river to 1 part effluent" as outlined in the attached MPCA letter of 12/23/97 by John Hensel. The discussion in the EAW about land use and the City of Otsego's purported interest to also service Riverbend land and then outfall the resulting effluent to the Crow River, appears counter to the MPCA's staff concerns about overloading the lower Crow River with more effluent. Any gallon diverted from the Mississippi. (See Section #19 of the EAW which states that "designated uses of the Mississippi River near the facility would be maintained if the proposed effluent limits are consistently met") would have to go to the Crow River via a more expensive City route to a location where Mr. Hensel states "we are concerned about the impacts on the assimilative capacity of the Crow River for five-day carbonaceous oxygen demand (CBOD5) as a result of development currently planned and development likely to occur in the future". HRUA as one of the groups cooperating with the MPCA organized "Friends of the Crow River" has to question any unnecessary new diversion to the overloaded Crow of treated effluent that can be disposed of elsewhere without negative consequences.

Response: Otsego's WWTF discharges to the Crow River and is subject to Minn. R. C. 7050.0180, subp. 9. This rule requires that new or expanded discharges be controlled so as to assure that there is no deterioration in the water quality of the downstream ORVW (the Mississippi River). A nondegradation review was completed for the Otsego WWTF in accordance with Minn. R. C. 7050.0180, subp. 4, in June of 1998. This included a review of cumulative impacts from the other dischargers into the Crow. It was determined that a 15 mg/L effluent limit CBOD limit should be assigned to the facility to protect wintertime Dissolved Oxygen levels. Effluent limits were proposed in the Otsego permit and public noticed. The permit is now in effect. Water quality in the Crow is currently adequately protected and should not be adversely affected by Otsego's WWTF discharge.

Comment: Misinformation apparently coming to MPCA staff via the staff of the City of Otsego may be prejudicing the process for the Riverbend request. Contemporaneous to the publication of the Riverbend EAW, the City Administrator of Otsego interjected himself into the legislative process that created the water quality co-op pilot process, of which HRUA is the first pilot. Attached is Mr. Robertson's letter of March 30, 1999 to several legislators and a transcript from the tape of his testimony before a committee of the Minnesota Senate on April 8, 1999. Several items reference HRUA and by so doing attempt to reflect negatively on Riverbend and its facility as well. For example:

- HRUC staff were invited by the Chair of the Otsego Economic Development Authority in the summer of 1996 to give a presentation at Otsego City Hall, which it did. The Mayor of Otsego was present and he briefly discussed the cooperative approach to own wastewater facilities with HRUC staff.
- HRUA staff were invited by the Elk River School Superintendent in the summer of 1998 to discuss the cooperative process and our pilot co-op effort first with him and later with his Board. The meeting with the Board occurred in the Otsego Elementary School adjacent to the Riverbend facility in September 1998.

- HRUA via the CRTCD staff at the University received in September 1998 the donative letter of intent from Riverbend's owners to possibly convey their water quality assets to the University related foundation associated with HRUA.
- Note that in each instance HRUA was invited to do something. It did not initiate the contact with local officials. HRUA was not, as Mr. Robertson claims in his 3/99 letter, "trying to force their way into municipalities with existing systems". At the time of HRUA staff visits to Otsego, at the request of representatives of the local government, Otsego had no wastewater facility, EAW of record, or permit for a facility. The persons contacting HRUA said they were exploring alternative concepts.
- Note in the hearing testimony Mr. Robertson claims HRUA's objection to the Otsego EAW "delayed our permit before the MPCA . . . the delay has probably added to our cost". The implication by a public official that public participation in the permit process by anyone is harmful and grounds for disparagement before the legislature is a rather chilling position to take. HRUA did not delay the expedited Otsego permit process by giving written and oral testimony. MPCA staff delayed for about 10 days sending the Otsego EAW documents after they were requested by HRUA staff. All HRUA comments were then filed within the MPCA deadlines and/or before the regularly scheduled MPCA public meeting. The December 1998 meeting in question was actually a week premature because of the holidays. The comments made by HRUA apparently had enough merit to trigger a close (four to three) vote by the MPCA Board. The issue of additional pollutant loading to the Crow River is a topic that has generated MPCA's own "Friends of the Crow River" task force.
- Note also in the letter of 3/30/99 Mr. Robertson refers to a legislative "grant to a specific water quality co-op affiliated with the University of Minnesota Center for Rural Technology. This gives this particular organization an unfair advantage in its competition with other water quality co-ops". Then in the hearing on 4/8/99, Mr. Robertson goes on to argue for "granting the cities the authority to have a two-mile buffer around the communities . . . in which . . . the water quality co-ops could not transact business with them". (HRUA)

Response: None of the information presented above was used in developing the EAW for the Riverbend Manufactured Home Community WWTF expansion or in any other deliberations about this project. Many of the issues outlined above are outside of the scope of the environmental review process for the Riverbend facility. The MPCA has maintained a position of encouraging the city of Otsego and the Darkenwalds to engage in constructive discussions about all of the issues surrounding this proposed project.

Comment: Frankly, MPCA has to step back and look at the big picture here before believing all the misinformation that may be going to its own staff, not just to the Legislature. There are no other water quality co-ops to be disadvantaged here. HRUA is the only one in this basin and it is being created to function in this basin pursuant to an MPCA contract to the University of Minnesota. HRUA is a privatization experiment to bring additional market methods, ownership, and financing options to the limited choices now available to most communities. HRUA has EPA support to focus on wastewater facility ownership issues, and the question of ownership options appears to be at the heart of the objections by the Otsego City Administrator to HRUA's mission in general and the Riverbend facility in particular. Perhaps MPCA should view the numerous attempts by some traditional practitioners of the wastewater art to deflect HRUA from being drawn by unsewered local government officials into their communities for comment and proposals as merely an attempt by one traditional wastewater vendor(s) to limit the market share of a prospective competitor. Welcome to the deregulated 90's. (HRUA)

Response: The comments are noted.

Mike Robertson, City Administrator, Otsego, MN
Letter dated May 4, 1999

Comment: The City believes that the proposed expansion of the Darkenwald Waste Water Treatment Facility (WWTF) is intimately tied to the proposed use of their undeveloped land on the west side of State Highway 101. The land uses and densities the Darkenwalds intend to develop within any expanded service area will have a direct correlation to the necessary capacity of their WWTF. As such, the city of Otsego has stated that any expansion of the WWTF capacity or service must be reviewed by the City in conjunction with a development proposal to fully evaluate consistency with adopted policies, plans and development regulations.

Response: The comment is noted.

Comment: The draft Environmental Assessment Worksheet (EAW) includes several references to the Darkenwalds' intent for "residential, commercial and industrial development they propose to build" including specific references to numbers and densities of residential uses. Item 18.b states that 150 acres west of State Highway 101 would be developed in part with 450 dwelling units. Whereas, Item 30 outlines a multiple phased development including the expansion of the existing mobile home use and development of medium to high density residential uses in the area between State Highway 101 and Quaday Avenue.

Development of any of these land uses will require approval from the city of Otsego including, but not limited to, Comprehensive Plan Amendments, Zoning Ordinance Amendments, plat approval and the public review and input required by state law. Any use of private facilities to serve these lands will also need a separate City approval, since the City has established sewer and water utilities. The brief descriptions of potential development of the Darkenwald properties emphasizes the City's position that the proposed expansion of the WWTF and land use issues are interrelated.

Response: The MPCA believes that the EAW is complete in its current form. The document contains as much information on the proposer's land development plans as was reasonably available at the time of publication. When more information about the land development plans is presented to the city by the proposer, the city of Otsego may have the opportunity to develop an EAW on that development. Depending on the number of residential units planned, the Darkenwald developments may trip a mandatory EAW category, making the city of Otsego the responsible governmental unit (RGU) for that project. The city also has the ability to order the preparation of a discretionary EAW if the project does not exceed the mandatory thresholds and if the RGU determines that because of the nature or location of the proposed project, there may be the potential for significant environmental effects.

Comment: Notwithstanding the possibility of a mandatory or discretionary EAW on any proposed development after the WWTF EAW, consideration should be given to requiring all information pertaining to the development in this EAW since the environmental affects related to the plant expansion appear to clearly come under the definition of a phased action in Minn. R. 4100.0200, subp. 60. Minn. R. subp. 4 indicates that all aspects of a connected or phased action must be considered development and its environmental effect is a phased or connected action.

Response: The MPCA has reviewed the definition of a phased action found in Minn. R. C. 4410.1000

and 4410.2000. The MPCA does not find the proposed WWTF expansion to fit the definition of a phased action. The Minnesota Environmental Quality Board (EQB) recommends that the RGU consider a number of factors as indicative that project stages are “substantially certain to be undertaken sequentially over a period of time.” This project does not meet a number of the factors outlined in the EQB guidance manual. Specifically:

- The project proposer is not seeking approval for later stages from another governmental unit.
- There are no specific assurances from the proposer that future stages (the land developments) will take place within a limited period of time.
- The proposer has not constructed other previous stages in the area, except for the Riverbend Manufactured Home Community, that was constructed over 20 years ago.

The proposed real estate developments appear to better be characterized as a connected action. The MPCA has fulfilled its responsibility to discuss the connected actions related to the proposed land developments west of Highway 101 in the EAW.

Information regarding the type, location, rate and amount of development proposed by Darkenwald Real Estate and enabled by the WWTF expansion was limited at the time the EAW was written. There were significant “unknowns” with respect to what exactly the Darkenwalds were planning in terms of their land developments. Consequently, an in-depth description of the potential environmental impacts of the related land developments was not possible to provide. The EAW provided as much information as was reasonably available from the proposer at that time. Once Darkenwald Real Estate has submitted an application for these developments to the city, more information will be available. If this information raises issues of concern, the city may elect to prepare an EAW on the proposed development, as stated in our response to the previous comment.

Comment: The City believes that since it has not received a development application documenting proposed land uses, service areas and WWTF capacity from the Darkenwalds that it is unable to fully evaluate the proposed WWTF expansion. Lacking a complete development application, the City feels that the Darkenwalds are unable to show a need for expansion of their existing WWTF which is related to a current existing land use which has been found to be consistent with the City’s Comprehensive Plan and Zoning Ordinance. Until a land use and a service area for the Darkenwald WWTF are established through approval of a development application by the city of Otsego, the EAW is substantially incomplete in that it does not properly address Item 9, Land Use; Item 19.a, Water Quality-Wastewaters; Item 23, Vehicle-related Air Emissions; Item 28, Compatibility with Local Plans and Regulations; Item 29, Impact on Infrastructure and Public Services; and Item 30, Cumulative Impacts.

Response: We concur with the city of Otsego that it is difficult to be certain at this point in time that the proposed expansion of Riverbend WWTF is justified because of the uncertainty surrounding the issue of which entity, the city or the Darkenwalds, will eventually provide sanitary sewer service to the Darkenwalds' properties west of Highway 101. The city of Otsego must review the proposer's application and determine whether the Darkenwalds will be allowed to provide wastewater service to these properties.

With respect to the remaining points outlined in the comment above, see our response to the previous comment.

Comment: Minnesota state law requires that a local government make a decision upon a development application within 60 days (or 120 days with an extension) of the submission of a completed application. This means that a finding by the MPCA that the Darkenwalds' EAW permit application must be completed will not unduly delay the Darkenwalds' plans. The city of Otsego has ended its moratorium on new subdivisions so nothing precludes the Darkenwalds from making an application immediately.

Response: The comment is noted.

Comment: The language in the draft EAW infers that the Darkenwalds are entitled under the 1970's Conditional Use Permit (CUP) to proceed with development of their undeveloped lands. This is a misrepresentation in that the city of Otsego does not recognize and there are no development rights associated with any past CUP for the Darkenwald properties. Development of the Darkenwald properties is required to conform to all current policies, plans and ordinances of the city, subject to review and approval of the City Council.

Response: The MPCA did not intend to take a position on whether the Darkenwalds are entitled under the 1970's conditional use permit to proceed with development of their undeveloped properties without any further local approvals. The MPCA is aware of the city's position that the Darkenwalds are subject to the city's most recent policies, plans and ordinances and that they must receive approval from the city council before any construction can begin.

Comment: Economic considerations ought not to be used as the basis for determining the service area and capacity of the Darkenwald WWTF as it is not a criterion outlined in the EAW and cannot be used as a basis for land use decisions. Further, the Darkenwalds have claimed that they can provide lower cost sewer service to their property, but have not provided enough information to evaluate this claim.

In fact, based on information provided in the Darkenwald Feasibility Study, their engineer estimates the cost of providing an additional 81,800 gallons per day of wastewater treatment at \$879,700.00, not including costs for engineering, legal and fiscal expenses. This is a cost of \$10.75 per gallon of treated wastewater. The City has received and approved a bid to construct a 200,000 gallons a day wastewater treatment plant at a cost of \$2,031,000.00, not including engineering, legal and fiscal costs. This means that the city of Otsego's cost for wastewater treatment will be \$10.16 per gallon, or less than the Darkenwalds' estimated costs.

Even if these estimates ultimately become true, this is not relevant to the land use and planning issues that are at the heart of the question for WWTF expansion need. Provision of a sanitary sewer within a community is not a service that is awarded to the low bidder. The City has established municipal sewer and water utilities and any extension of utilities cannot be done without City approval.

If the City does not approve the expansion of the Darkenwald sewer service area, the City sees no reason why the Darkenwald WWTF expansion and additional discharge levels should be approved.

Response: The EAW is a brief document designed to determine whether there is the potential for significant environmental effects from a specific proposed project. An economic cost/benefit analysis of the project was not included in the project description. The Riverbend WWTF EAW did state, however, that one of the Darkenwalds' justifications for using the Riverbend facility to treat wastewater from their properties instead of using the city's wastewater system was that they believed they could provide the service for significantly less money. The MPCA is not involved in determining whether their perception of cost savings is accurate or inaccurate. This statement was included simply as a point of information to help the public understand why the proposer did not opt to hook up to the city's wastewater service.

MPCA staff agree with the commentor that it appears in the proposer's best interest to obtain all necessary city approvals prior to initiating expansion of the Riverbend facility.

Comment: The Darkenwald property not currently served by the existing Darkenwald WWTF is included in the Otsego Sanitary Sewer Service District. The City has received all necessary MPCA approvals and is in the process of constructing municipal sanitary sewer and water systems to provide service to lands, including the Darkenwald properties within the said Sanitary Sewer Service District. The Otsego sanitary sewer and water systems are expected to be operational by Fall 1999.

The proposed expansion of the Darkenwald WWTF service area will affect the city of Otsego's Sanitary Sewer Service District by overlapping with *their* planned service area. In this regard, the proposed expansion of the Darkenwald WWTF conflicts with the local sewer plan. As noted above, the City has established municipal utilities and must approve any expansion of other utilities into the City's designated service area.

Response: The comment is noted. See the MPCA's previous responses for a more thorough discussion of these points. It is the existence of this overlapping service area that is at the heart of MPCA staff concerns over the need to expand the Darkenwalds' treatment capacity.

Comment: The city of Otsego is unable to evaluate the conflict between the municipal Sanitary Sewer Service District and the expanded Darkenwald WWTF in the absence of a development application. As such, the EAW is incomplete with regard to the consistency of the project with the local sewer service policy plan in that resolution of this issue is undetermined. Throughout the EAW the land on both sides of Highway 101 is referred to as the "Darkenwald property" even though it is owned by various entities and irregardless of the fact that ownership can be transferred at any time. This raises a substantial issue as to whether or not the facility is "private" or "public". The City remains the local authority for utilities within its boundaries and must approve any expansion of "other" utilities within its boundaries whether public or private.

Response: The EAW served its purpose of providing information to the public on this project. The document adequately described the potential conflict that could arise between the Darkenwalds' proposal for expansion of Riverbend WWTF and Otsego's policies, plans and ordinances. The purpose of the environmental review process is to provide information. It is the responsibility of the city and the proposer to now resolve outstanding land use concerns. Once the city has received the Darkenwalds' land development application, it can better evaluate whether the plan is consistent with the local sewer policy plan.

Comment: MPCA policy favors regionalization of treatment facilities whenever possible. The MPCA has recently approved the Otsego WWTF, which would serve areas that planned to be served by the proposed Darkenwald expansion. The Otsego WWTF was designed to serve both Otsego and the city of Dayton. This will alleviate environmental problems now existing within Dayton, and will allow the city of Otsego to address potential environmental problems within areas of the City currently being served by individual treatment systems.

The proposed Darkenwald expansion will not alleviate any existing environmental problems, but is only proposed to serve and further develop land presently under their ownership. These lands can be just as easily served by the Otsego WWTF. Service of these areas would enable Otsego to more economically serve those areas now being served by individual treatment systems when problems eventually arise with those systems. Approval of this expansion would create an intervening area served by the Darkenwald WWTF that would lie between the area of need and the Otsego WWTF. Such an arrangement would be contrary to the MPCA policy of regionalization of WWTF facilities and limiting discharge points.

Response: MPCA attempts to promote the policies encompassed in both federal and state water pollution control laws, including cooperative efforts between entities to provide cost-effective treatment alternatives, including regionalization where appropriate. Historically, the MPCA has encouraged these arrangements on a limited basis and between public entities. The question of whether the Darkenwald properties should be serviced by the city of Otsego or the Riverbend WWTF is a local decision.

Comment: The proposed Darkenwald expansion will result in a more than doubling of discharge into the Mississippi River within the city of Otsego. As noted in the EAW, this section of the Mississippi is designated an Outstanding Resource Value Water (ORVW), and any expanded discharge into this river section is subject to the restrictions set forth in Minn. R. 7050.0180. Minn. R. 7050.0180, subp. 6, states that “No person may cause or allow a new or expanded discharge of any sewage, industrial waste, or other waste to any of the following waters unless there is not a prudent and feasible alternative to the discharge:...”.

In this case, there is a prudent and feasible alternative to delivery of sewage to the Darkenwald property west of State Highway 101; connection to the city of Otsego sewer system, which will go directly by the Darkenwald property. The recently issued Otsego National Pollutant Discharge Elimination System Permit does not involve discharge into ORVW waters. The only justification given for expansion of the Darkenwald facilities as to hook up to the Otsego WWTF is a perceived economic benefit to the proposer. Even if such a benefit did exist, that is not an adequate basis for an expansion of a permit affecting ORVW waters.

Minn. R. 7050.0180, subp. 6, says in part, “If a new or expanded discharge to these waters is permitted, the agency shall restrict the discharge to the extent necessary to preserve the existing high quality, or to preserve the wilderness, scientific, recreational, or other special characteristics that make the water an outstanding resource value water.” The mere fact that the proposed expansion affects ORVW waters with an existing prudent and feasible alternative should be enough to require an Environmental Impact Statement (EIS) on the proposed project.

Response: MPCA interprets Minn. R. 7050.0180, subp. 6 differently. Specifically, Minn. R. 7050.0180 subp. 2, item C, defines an expanded discharge as follows:

C. "Expanded discharge" means, except as noted in this item, a discharge that changes in volume, quality, location, or any other manner after the effective date the outstanding resource value water was designated as described in parts 7050.0460 and

7050.0470, *such that an increased loading of one or more pollutants results* (emphasis added). In determining whether an increased loading of one or more pollutants would result from the proposed change in the discharge, the agency shall compare the loading that would result from the proposed discharge with the loading allowed by the agency as of the effective date of outstanding resource value water designation.

The Darkenwalds' proposed treatment plant expansion would not increase the mass load of regulated pollutants discharged to the ORVW if the reissued permit restricts the pollutant levels to prior loading levels. The proposer has agreed to "freeze" the mass loading of CBOD, TSS and fecal coliform and to obtain a reissued permit to implement that freeze. Consequently, the proposed Riverbend facility discharge will not result in an expanded discharge if the proposed discharge is authorized and regulated by a reissued and modified permit that includes the frozen pollutant levels, and thus appropriately regulating that modified discharge under Minn. R. 7050.0180.

The Mississippi River will not be significantly impacted by the proposed facility expansion, thus the MPCA staff do not believe that an EIS is necessary or warranted.

Comment: The Darkenwalds approached the city of Otsego requesting that the City pass a resolution allowing use of their WWTF on their property west of State Highway 101 within the city of Otsego's designated sewer service area. Though no specific resolution was submitted, the City did agree to meet with the Darkenwalds to discuss the matter contingent upon a specific written proposal being presented in writing prior to the meeting in order to allow adequate review by Council and staff. The only written material submitted was copies of material previously received by the City two years ago.

Despite this, the City Council did meet with the Darkenwalds in a special council meeting. At that meeting a verbal proposal was made. The Council asked that proposal be made in writing prior to their next regular Council meeting. A one-page proposal (enclosed) was faxed to the City Attorney's office the day of the Council meeting. With no time for adequate review, the Council has set a meeting this week to discuss the proposal, and to possibly set up an additional meeting with the Darkenwalds.

The City is willing to listen to and evaluate any reasonable proposal presented by the Darkenwalds for the use of their WWTF. However, the City's Comprehensive Plan, which was previously supplied to the MPCA, states that any request for use of the Darkenwald private WWTF to service land established in the city of Otsego sewer service area would be evaluated at the time that a land use request was made to the City. This has not yet happened. While the City will listen to any proposal, it could determine that such a proposal was not in the City's best interest, could determine that such a proposal could not be evaluated independent of an application for land use, or could determine that it needed additional time and information in order to properly evaluate any such proposal and its long term implications.

Response: The comments are noted. The MPCA is encouraged by the fact that the city and the Darkenwalds are engaged in constructive conversations regarding these issues.

Comment: At this time the City has established municipal utilities and reserves any and all rights and authority to approve, disapprove, or regulate inherent in its status as a municipality. While such considerations are arguably outside the scope of environmental review, the City believes the facts presented in this instance are unique, and that appropriate delay in a declaration regarding environmental impact may give both parties additional time to discuss these matters.

Pursuant to the above, the city of Otsego respectfully requests that a positive finding of significant environmental impact be made based upon the issues raised above, and that an EIS be required before further consideration of this application.

Response. No response needed. See previous responses that address the need for an EIS.

**Britta Bloomberg, Minnesota Historical Society (MHS)
Letter dated May 3, 1999**

Comment: There are no properties listed on the National or State Registers of Historic Places, and no known or suspected archeological properties in the area that could be affected by this project. Therefore, the “no” response to question 26a is appropriate. (MHS)

Response: No comment needed.

Comment: The MHS comment letter does not address the requirements of Section 106 of the National Historic Preservation Act of 1966 for the protection of historic properties. If this project is considered for federal assistance, or requires a federal permit or license, it should be submitted to MHS with reference to the assisting federal agency. (MHS)

Response: The comment is noted. No federal funds are being used and MPCA is not aware of the need for any federal agency-issued permits or licenses to expand this WWTF. The WWTF will need a reissued NPDES/SDS permit, and the NPDES/SDS permitting program is delegated to the MPCA under the federal Clean Water Act.

**Claudia Dumont, Scott Peters, Minnesota Department of Transportation
Letters date April 26 and April 12, 1999, respectively**

Comments: Dumont: The district has no comments on the EAW. Peters: We find the EAW acceptable.

Response: No response needed.