



Using the Power of History to Transform Lives  
PRESERVING > SHARING > CONNECTING

## MINNESOTA HISTORIC PRESERVATION OFFICE

September 1, 2016

Corey Mathisen  
Senior Engineer  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul MN 55155-4194

RE: City of Afton Wastewater Collection & Treatment System  
Afton, Washington County  
MnHPO Number: 2015-1403

Dear Mr. Mathisen:

Thank you for continuing consultation on the above project. Information received in our office on 2 August 2015 has been reviewed pursuant to the responsibilities given the State Historic Preservation Officer by the National Historic Preservation Act of 1966, implementing federal regulations 36 CFR Part 800, and pursuant to the 1998 Programmatic Agreement among the Environmental Protection Agency (EPA), the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers for the EPA's State Water Pollution Control Revolving Loan Fund Program.

We have completed our review of your correspondence dated 2 August 2016, a submittal which included your agency's project review summary document entitled *Section 106 Findings: City of Afton Old Village Improvements Project* (including Attachments 1-25). We appreciate the clearly-stated, comprehensive presentation of your agency's findings and determinations pursuant to 36 CFR 800.4 *Identification of Historic Properties* and 800.5 *Assessment of Adverse Effect*.

We concur with your agency's finding that the eleven (11) identified historic properties listed on Table 2 of the summary document, located within the area of potential effect (APE) for the undertaking, are **eligible** for listing in the National Register of Historic Places (NRHP) and that the other thirty-six (36) properties surveyed within the APE for this undertaking are considered **not eligible** for listing in the NRHP.

Based upon information provided to our office at this time regarding the nature and extent of the proposed project and documentation regarding the assessment of adverse effects, we concur with your agency's determination that the undertaking will have **no adverse effect** on historic properties.

Implementation of the undertaking in accordance with this finding, as documented, fulfills the agency's responsibilities under Section 106. If the agency does not construct the undertaking as proposed, including, but not limited to, a situation where engineering/design changes to the currently proposed project diverts substantially from what was presented at the time of this review, or engineering/design changes involving

undisturbed new rights-of-way or easements are made for the undertaking following completion of this review, the agency will need to reopen Section 106 consultation.

We appreciate the fact that your agency will ensure that the *Archaeological Monitoring Plan for Site 21WA10 and Unanticipated Discovery Plan* included with your recent submittal will be implemented during construction of the project.

In order to incorporate all of the survey reports and property inventory forms which were prepared for this project into our statewide inventory, we request that your agency submit all documents in final form meeting the requirements of our survey guidelines and as specified on the attached memorandum within thirty (30) days of the date of this letter.

If you have any questions or concerns regarding this comment letter, please contact me at (651) 259-3456 or [sarah.beimers@mnhs.org](mailto:sarah.beimers@mnhs.org).

Sincerely,

*Sarah J. Beimers*

Sarah J. Beimers, Manager  
Government Programs and Compliance

Enclosure

cc: Ronald Moose, City of Afton  
Brad Johnson, USACE

## Afton Documents for final submission: MnHPO No: 2015-1403

### **History/Architecture:**

Please submit new, unbound, non-perforated copies of inventory forms for these 8 properties that were determined eligible on 4/8/16:

WA-AFC-011 (Brick Schoolhouse)  
WA-AFC-012 (Afton Congregational Church/Afton Historical Museum)  
WA-AFC-067 (L.A. Bluff Bank Building)  
WA-AFC-087 (Charles and Electa Getchell House)  
WA-AFC-065 (Congregational Church Parsonage)  
WA-AFC-069 (Ferdinand Richert House)  
WA-AFC-071 (Selma's Ice Cream Parlor)  
WA-AFC-010 (Squire's House)

Please submit new, unbound, non-perforated copies of inventory forms for these 5 properties that were determined not eligible on 4/8/16:

WA-AFC-082  
WA-AFC-101  
WA-AFC-102  
WA-AFC-083  
WA-AFC-104

Please submit new, unbound, non-perforated copies of inventory forms for these 4 properties that were determined not eligible on 6/22/16 (individually), and 7/22/16 (as part of a district)

WA-AFC-062  
WA-AFC-070  
WA-AFC-074  
WA-AFC-080

We do not need new inventory forms for the remaining 37 properties determined not eligible on 12/22/15, those inventory forms are sufficient.

\* Please submit an updated, bound, final survey report that adequately reflects the final determinations of eligibility for these properties, and assessment of effects for these properties – see multiple “Cultural Resource Assessment” letter reports (various dates) and “final report” dated November 11, 2015.

### **Archaeology:**

\* Please submit a final bound copy of the Phase II Evaluation Report (May 6, 2016)

## **Mathisen, Corey (MPCA)**

---

**From:** Edith Leoso <THPO@badriver-nsn.gov>  
**Sent:** Tuesday, August 02, 2016 4:49 PM  
**To:** Mathisen, Corey (MPCA)  
**Cc:** deborah.mccoy@piic.org  
**Subject:** RE: Notification of MPCA Findings-Section 106 Review-Afton project-Bad River Band of Lake Superior Chippewa Tribe

Dear Mr. Mathisen,

In response to the email below dated August 2, 2016, the Bad River THPO defers the determination concerning the Afton federal undertaking to Mr. Arthur Owen, Prairie Island Indian Community THPO. We recognize and respect the interests held by the Prairie Island Indian Community regarding this area of concern. If you have any questions/concerns pertaining to this response, please do not hesitate to contact me at your convenience.

Weweni (Sincerely),

Edith Leoso  
Tribal Historic Preservation Officer  
Bad River Band of The Lake Superior Tribe of Chippewa

---

**From:** Mathisen, Corey (MPCA) [mailto:[corey.mathisen@state.mn.us](mailto:corey.mathisen@state.mn.us)]  
**Sent:** Tuesday, August 02, 2016 4:21 PM  
**To:** Edith Leoso  
**Subject:** Notification of MPCA Findings-Section 106 Review-Afton project-Bad River Band of Lake Superior Chippewa Tribe

Edith,

The Minnesota Pollution Control Agency (MPCA) is providing notification to you on our Findings regarding the Protection of Historic Properties - Section 106 Review for the City of Afton's Infrastructure Improvements Project. The MPCA is providing this notification to document our Findings of No Adverse Effects to historic properties. Please share this information with any other parties within your organization who may be interested.

Please provide any comments regarding these findings within 30 days of this email, by September 1, 2016, in accordance with 36 CFR 800.5(c). The project may begin construction after September 1, 2016, according to 36 CFR 800.5(d)(1) unless the MPCA receives notification in writing of your disagreement with these Findings meeting the requirements of 36 CFR 800.5(c)(2)(i).

The MPCA appreciates your ongoing consultation regarding the Section 106 Review for this project. Due to the large amount of material, the MPCA is providing our Findings and attachments to the report electronically by posting them on our website at <https://www.pca.state.mn.us/water/findings> as of today's date (Tuesday, August 2, 2016). A copy of the final Findings is attached to this email for your reference. The attachments to the Findings can be found on the webpage. Paper copies of any specific information can be provided by request.

Sincerely,  
Corey

**Corey R. Mathisen, P.E.**  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-4194  
Phone Number: 651-757-2554  
Corey.Mathisen@state.mn.us

## Mathisen, Corey (MPCA)

---

**From:** Leonard Wabasha (CC) <leonard.wabasha@shakopeedakota.org>  
**Sent:** Tuesday, August 02, 2016 4:30 PM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** RE: Notification of MPCA Findings-Section 106 Review-Afton project-Shakopee Mdewakanton Sioux Community

Thank You Corey, has this been shared with the other consulting Tribal parties?



### LEONARD WABASHA

Director of Cultural Resources • Cultural Resources  
Shakopee Mdewakanton Sioux Community  
d: 952.496.6120  
ShakopeeDakota.org  
leonard.wabasha@shakopeedakota.org

The Shakopee Mdewakanton Sioux Community is a federally recognized, sovereign Indian tribe located southwest of Minneapolis/St. Paul. With a focus on being a good neighbor, good steward of the earth, and good employer, the SMSC is committed to charitable donations, community partnerships, a healthy environment, and a strong economy.

---

**From:** Mathisen, Corey (MPCA) [mailto:[corey.mathisen@state.mn.us](mailto:corey.mathisen@state.mn.us)]  
**Sent:** Tuesday, August 02, 2016 4:20 PM  
**To:** Leonard Wabasha (CC) <leonard.wabasha@shakopeedakota.org>  
**Subject:** Notification of MPCA Findings-Section 106 Review-Afton project-Shakopee Mdewakanton Sioux Community

Leonard,

The Minnesota Pollution Control Agency (MPCA) is providing notification to you on our Findings regarding the Protection of Historic Properties - Section 106 Review for the City of Afton's Infrastructure Improvements Project. The MPCA is providing this notification to document our Findings of No Adverse Effects to historic properties. Please share this information with any other parties within your organization who may be interested.

Please provide any comments regarding these findings within 30 days of this email, by September 1, 2016, in accordance with 36 CFR 800.5(c). The project may begin construction after September 1, 2016, according to 36 CFR 800.5(d)(1) unless the MPCA receives notification in writing of your disagreement with these Findings meeting the requirements of 36 CFR 800.5(c)(2)(i).

The MPCA appreciates your ongoing consultation regarding the Section 106 Review for this project. Due to the large amount of material, the MPCA is providing our Findings and attachments to the report electronically by posting them on our website at <https://www.pca.state.mn.us/water/findings> as of today's date (Tuesday, August 2, 2016). A copy of the final Findings is attached to this email for your reference. The attachments to the Findings can be found on the webpage. Paper copies of any specific information can be provided by request.

Please feel free to contact me with any questions related to this project.

Sincerely,  
Corey

Corey R. Mathisen, P.E.

Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-4194  
Phone Number: 651-757-2554  
Corey.Mathisen@state.mn.us

~~~~~  
The information contained in this message is confidential. If you are not the intended recipient, dissemination or copying of this information is prohibited.  
If you have received this communication in error, please notify the sender and delete the message from your system. Thank you!  
~~~~~

## **Mathisen, Corey (MPCA)**

---

**From:** Debra Legrid <DebraL@tenaco.com>  
**Sent:** Friday, August 05, 2016 8:26 AM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** RE: MPCA Section 106 Findings-Afton Infrastructure Project

Corey,

I am saddened to hear this. I guess I will no longer be calling St Croix Beach my home as I will not sit by and watch my property values plummet because of this DIRECTLY across the street from my front yard. I had planned on improving the property with a front deck and more landscaping, but this seals that deal. I am sad that we will have to vacate a home that we have been in since 1999 and move from the neighbors we call friends.

Mike and Deb Legrid  
2065 Quant Ave S  
Lake St Croix Beach, MN 55043

**From:** Mathisen, Corey (MPCA) [mailto:[corey.mathisen@state.mn.us](mailto:corey.mathisen@state.mn.us)]  
**Sent:** Thursday, August 04, 2016 3:33 PM  
**To:** Debra Legrid <DebraL@tenaco.com>  
**Subject:** MPCA Section 106 Findings-Afton Infrastructure Project

The Minnesota Pollution Control Agency (MPCA) is providing our Historic Properties – Section 106 Review Findings on the City of Afton's proposed infrastructure improvement projects to you because you expressed interest and/or provided comments in December 2015. Since that time, the MPCA continued consultation on the project with the Minnesota State Historic Preservation Office, the United States Army Corps of Engineers, and several Native American Tribes who were also interested in the project.

After giving careful consideration to all available information, the MPCA has made a final determination that the project will result in no adverse effects to historic properties. The consultation process resulted in several measures being taken to avoid or minimize any impacts to historic properties as construction of the project occurs. Documentation supporting the MPCA's final determination (including responses to the comments received in December) can be found at <https://www.pca.state.mn.us/water/findings>. Paper copies of these documents can be provided as requested. This information has also been shared with all consulting parties for this project.

The MPCA appreciates your involvement in historic preservation and protection of public health and the environment.

**Corey R. Mathisen, P.E.**  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-4194  
Phone Number: 651-757-2554  
[Corey.Mathisen@state.mn.us](mailto:Corey.Mathisen@state.mn.us)

**IMPORTANT NOTICE:** This message is intended only for the addressee and may contain confidential, privileged information. If you are not the intended recipient, you may not use, copy or disclose any information contained in the message. If you have received this message in error, please immediately notify the sender by reply e-mail and delete the message.

Note: TENA's Compliance/Legal Division will present its rationale or reasoning behind any statutory or regulatory matter related to TENA's product lines; however the information and answers received from this process should not be construed as, nor are they intended to constitute legal advice or counsel.

## **Mathisen, Corey (MPCA)**

---

**From:** Amy.Burnette@llojibwe.org  
**Sent:** Tuesday, August 09, 2016 8:39 AM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** RE: Notification of MPCA Findings-Section 106 Review-Afton project-Leech Lake Band of Ojibwe

Hi Corey,

How come I'm getting conflicting messages from that local interest group saying that SHPO determined it was a site?

Amy

**From:** Mathisen, Corey (MPCA) [mailto:[corey.mathisen@state.mn.us](mailto:corey.mathisen@state.mn.us)]  
**Sent:** Tuesday, August 02, 2016 4:23 PM  
**To:** Amy Burnette <[Amy.Burnette@llojibwe.org](mailto:Amy.Burnette@llojibwe.org)>  
**Cc:** Rich Robinson <[Rich.Robinson@llojibwe.org](mailto:Rich.Robinson@llojibwe.org)>  
**Subject:** Notification of MPCA Findings-Section 106 Review-Afton project-Leech Lake Band of Ojibwe

Amy,

The Minnesota Pollution Control Agency (MPCA) is providing notification to you on our Findings regarding the Protection of Historic Properties - Section 106 Review for the City of Afton's Infrastructure Improvements Project. The MPCA is providing this notification to document our Findings of No Adverse Effects to historic properties. Please share this information with any other parties within your organization who may be interested.

Please provide any comments regarding these findings within 30 days of this email, by September 1, 2016, in accordance with 36 CFR 800.5(c). The project may begin construction after September 1, 2016, according to 36 CFR 800.5(d)(1) unless the MPCA receives notification in writing of your disagreement with these Findings meeting the requirements of 36 CFR 800.5(c)(2)(i).

The MPCA appreciates your ongoing consultation regarding the Section 106 Review for this project. Due to the large amount of material, the MPCA is providing our Findings and attachments to the report electronically by posting them on our website at <https://www.pca.state.mn.us/water/findings> as of today's date (Tuesday, August 2, 2016). A copy of the final Findings is attached to this email for your reference. The attachments to the Findings can be found on the webpage. Paper copies of any specific information can be provided by request.

Sincerely,  
Corey

**Corey R. Mathisen, P.E.**  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-4194  
Phone Number: 651-757-2554  
[Corey.Mathisen@state.mn.us](mailto:Corey.Mathisen@state.mn.us)

## **Mathisen, Corey (MPCA)**

---

**From:** Thomas Shaw <clothingbureau@usiwireless.com>  
**Sent:** Sunday, August 28, 2016 2:18 PM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** Rattlesnake Mound

I oppose the desecration of the Rattlesnake Mound In Afton for the following reasons.

Throughout the last century, the City of Afton has repeatedly allowed and enabled the desecration of the Rattlesnake Mound (officially designated 21WA10) through private building and levee construction. The Afton Wastewater Treatment Facility project is merely the latest in a long line of violations of this Native Tribal burial ground.

Regardless of the length of the consultation process, the responsible Minnesotan authorities have failed to accommodate the expressed concerns of multiple Native Tribes—to cease any and all construction activity in the area of the Rattlesnake Mound.

There is credible historical evidence that human remains have already been found in the immediate area of the Rattlesnake Effigy. The MPCA must be held accountable for its dismissal of this evidence and required to explain exactly what “other significant errors” the MPCA found in the article, that led it to feel reasonable in discounting this key evidence.

The 1990 U.S. Federal Statute, The Native American Graves Protection and Repatriation Act offers severe penalties for desecrating graves, and the City of Afton will not be able to escape liability and criminal prosecution by saying “we didn’t know”, when considering Afton’s historical contempt for the Rattlesnake Mound, its apparent deafness to both Native Tribes and the Minnesota Historic Preservation Office, and the discounting of historical evidence that human remains have already been found in the Rattlesnake Mound.

Thomas G. Shaw  
The Clothing Bureau  
Independent Historian  
612 720-3115

## **Mathisen, Corey (MPCA)**

---

**From:** Rich <richmyhers@gmail.com>  
**Sent:** Sunday, August 28, 2016 2:19 PM  
**To:** Jim Golden  
**Cc:** Mathisen, Corey (MPCA)  
**Subject:** Rattlesnake Mound

Jim:

My comments we're taken out of context. The ax-head (best guess) was not found on the rattlesnake mound. It was found at the base of the levee. Furthermore, my name (spelled incorrectly) and quote are incorrect and my permission to use my name was not granted. In fact, I asked that my name or any information not be used as there is no documented proof of anything. This is a infringement on my/our privacy. I object to this article suggesting otherwise.

Richard Myhers

--  
Sent from Gmail Mobile

**Mathisen, Corey (MPCA)**

---

**From:** Barb Schwendig <bschwendig@gmail.com>  
**Sent:** Sunday, August 28, 2016 3:30 PM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** Rattlesnake Mound in Afton

Yes, I am very concerned at the desecration of this sacred land!!!  
sincerely,  
Barb in the St. croix river valley.

## **Mathisen, Corey (MPCA)**

---

**From:** Dawn Bulera <dbulera@hotmail.com>  
**Sent:** Sunday, August 28, 2016 5:53 PM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** Rattlesnake Mound in Afton

Dear Mr Mathison,  
Please do not continue to disregard the significance of this Sacred Native American Burial Ground area. This site should be protected as it is. It has been known for years that human remains are there. It is disrespectful to continue plans for this site.  
In addition, I believe it will be a detriment to the area as it is a National Scenic Riverway, and must be protected as such. The proposed waste treatment site is too close to the St Croix River and had great potential of contamination.

Dawn Bulera  
16777 16th St. S.  
651-436-5896

Sent from my Verizon Wireless 4G LTE smartphone

## **Mathisen, Corey (MPCA)**

---

**From:** Lance Foster <lancemfoster@yahoo.com>  
**Sent:** Monday, August 29, 2016 7:21 PM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** Rattlesnake Effigy Mound in Afton

Aho, daxga.

The THPO office of the Iowa Tribe of Kansas and Nebraska adds its voice to that of other tribes in protesting the plans to pump sewage through the Rattlesnake Effigy Mound, in Afton. Such mounds are located in places vital to the health and well-being of the land, as well as of the people who live nearby, both Indian and non-Indian.

We are descendants of the Oneota and Woodland People who lived in southern Minnesota, until we moved southward about the year 1700. The Rattlesnake Spirit, Wakandhi, is a guardian of the springs which pour forth water for all our benefit. Water and Life are the same thing in our Ioway language: Nyi (nyee). There are also likely burials in the mound, protected by both state and federal laws.

If a pipe of sewage is run through such a Mound, then according to traditions, the waters will be fouled, and disease, pests, and drought will follow.

We ask that you consider this while making your decision, and realize we are concerned for all, including the residents of the area, your own people, as well.

That is all. Warigroxi.

Lance Foster, THPO  
Iowa Tribe of Kansas and Nebraska  
3345 B Thrasher Rd  
White Cloud, KS 66094  
(785) 595-3258  
lfoster@iowas.org

## Mathisen, Corey (MPCA)

---

**From:** Jan Mitich <janmitich@earthlink.net>  
**Sent:** Monday, August 29, 2016 12:17 AM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** The Afton Wastewater Treatment Facility project and the Rattlesnake Mound

**Importance:** High

Dear Corey Mathisen,

On behalf of my uncle, a Lakota Sioux, we are asking that you stop the proposed Afton Wastewater Treatment Facility project that crosses over the Rattlesnake Mound. This is a sacred place and also a burial site.

- This is not the first time that this site has been violated. Enough is enough.
- The concerns of area Tribes have been repeatedly ignored.
- Human remains have been found here and documented.
- The 1990 U.S. Federal Statute, *The Native American Graves Protection and Repatriation Act* offers severe penalties for desecrating graves, and the City of Afton will not be able to escape liability and criminal prosecution by saying "we didn't know", when considering Afton's historical contempt for the Rattlesnake Mound, its apparent deafness to both Native Tribes and the Minnesota Historic Preservation Office, and the discounting of historical evidence that human remains have already been found in the Rattlesnake Mound.
- American Natives have already lost uncounted burial sites. It's time to respect their rights.

I am confident that you will follow the Federal Statute preventing the desecration of burial sites.

Respectfully,

Janice E. Mitich

## **Mathisen, Corey (MPCA)**

---

**From:** Pat Christensen <pdonolsondist@yahoo.com>  
**Sent:** Monday, August 29, 2016 11:02 AM  
**To:** Mathisen, Corey (MPCA); Protectvalleycreek Info  
**Subject:** Protect the Rattlesnake Mound in Afton

Please do not go forward with the Afton wastewater treatment facility project that will destroy the site known as the Rattlesnake Mound.

The comments from the MPCA that the Office of State Archaeologist are not relevant. If the files do not hold record of significant historical value, this only confirms that native culture/cultural artifacts are ignored. Evidence that these mounds have historical importance has been submitted.

The interest in rapid expansion of housing and businesses in the area should not take precedence over the rights of the Dakota to preserve this historical site.

The problem caused by our society misuse of water should be resolved. The cleanliness of water treated by this facility will be inadequate in the future. The plans for this treatment system are inadequate to handle a major rain storm induced flood as we know will occur in our area. We know the plans for diversion of Lake Michigan water to Waukesha, Wisconsin clean water return acknowledge that storm water will not be adequately cleaned.

The standard should become a social obligation to not flush away out waste. Now is the time to demand that EACH homeowner or business use practices that return water already in pristine condition. The short term goal should be to change the social expectation for us to leave nothing that our future will regret.

Mr. Mathisen, you need to stop this current plan. You need to save the Rattlesnake Mound. You need to call for a true clean water return.

Patricia Christensen  
2645 16th Ave South  
Minneapolis, MN 55407

## **Mathisen, Corey (MPCA)**

---

**From:** Anita Hart <ahart@whchurch.org>  
**Sent:** Monday, August 29, 2016 1:16 PM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** Save Rattlesnake Mound

*I believe this project will have a severely adverse effect on the mound. Please stop this project.*

Anita Hart

Throughout the last century, the City of Afton has repeatedly allowed and enabled the desecration of the Rattlesnake Mound (officially designated 21WA10) through private building and levee construction. The Afton Wastewater Treatment Facility project is merely the latest in a long line of violations of this Native Tribal burial ground.

Regardless of the length of the consultation process, the responsible Minnesotan authorities have failed to accommodate the expressed concerns of multiple Native Tribes—to cease any and all construction activity in the area of the Rattlesnake Mound.

There is credible historical evidence that human remains have already been found in the immediate area of the Rattlesnake Effigy. The MPCA must be held accountable for its dismissal of this evidence and required to explain exactly what “other significant errors” the MPCA found in the article, that led it to feel reasonable in discounting this key evidence.

The 1990 U.S. Federal Statute, The Native American Graves Protection and Repatriation Act offers severe penalties for desecrating graves, and the City of Afton will not be able to escape liability and criminal prosecution by saying “we didn’t know”, when considering Afton’s historical contempt for the Rattlesnake Mound, its apparent deafness to both Native Tribes and the Minnesota Historic Preservation Office, and the discounting of historical evidence that human remains have already been found in the Rattlesnake Mound.

Blessings,

Anita

Anita Hart  
Care Coordinator  
Woodland Hills Church  
ahart@whchurch.org  
651-287-2065

## **Mathisen, Corey (MPCA)**

---

**From:** SUSAN <susywho@centurylink.net>  
**Sent:** Monday, August 29, 2016 8:38 PM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** Rattlesnake Mound in Afton

1. Throughout the last century, the City of Afton has repeatedly allowed and enabled the desecration of the Rattlesnake Mound (officially designated 21WA10) through private building and levee construction. The Afton Wastewater Treatment Facility project is merely the latest in a long line of violations of this Native Tribal burial ground.
2. Regardless of the length of the consultation process, the responsible Minnesotan authorities have failed to accommodate the expressed concerns of multiple Native Tribes—to cease any and all construction activity in the area of the Rattlesnake Mound.
3. There is credible historical evidence that human remains have already been found in the immediate area of the Rattlesnake Effigy. The MPCA must be held accountable for its dismissal of this evidence and required to explain exactly what “other significant errors” the MPCA found in the article, that led it to feel reasonable in discounting this key evidence.
4. The 1990 U.S. Federal Statute, *The Native American Graves Protection and Repatriation Act* offers severe penalties for desecrating graves, and the City of Afton will not be able to escape liability and criminal prosecution by saying “we didn’t know”, when considering Afton’s historical contempt for the Rattlesnake Mound, its apparent deafness to both Native Tribes and the Minnesota Historic Preservation Office, and the discounting of historical evidence that human remains have already been found in the Rattlesnake Mound.

## **Mathisen, Corey (MPCA)**

---

**From:** Ken Siyaka <kenneth.siyaka@gmail.com>  
**Sent:** Tuesday, August 30, 2016 10:42 AM  
**To:** Mathisen, Corey (MPCA)  
**Cc:** batw53@yahoo.com; PENNY; Chuck Floro; Zelma Flute; arikv\_82@hotmail.com; lance.hildebrandt@mail.house.gov; lojowms@yahoo.com; Sylvan Flute. x-1183  
**Subject:** Afton effigy mound

<http://us11.campaign-archive2.com/?u=e8fa3ccb195e3e1646402b4f2&id=141210f7e3&e=727a9843e4>

My opinion is that the sewer lines should NOT go through the Native American effigy mound.

---

State: we want to run a sewer line through your sacred and historical effigy mound.

Me: No.

State: why not?

Me: Can we run a sewer line through Ft Snelling or Arlington Cemetaries?

State: No.

Me: Why not?

State: Because they are sacred and historical burial places.

Me: The same reason why you can not go through the Afton effigy mound.

---

No sewer through the Afton effigy mound, find a differant route for your sewer project.

Thank you,

Kenneth Siyaka,  
- USAF, ret.  
- Sisseton-Wahpeton/ Mdewakanton Dakota

## **Mathisen, Corey (MPCA)**

---

**From:** Ang Kor <angkorday2@yahoo.com>  
**Sent:** Tuesday, August 30, 2016 3:31 PM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** Rattlesnake Mound Be Protected

Good day,

In response to a plan that the City of Afton has planned, concerning the building of a wastewater treatment plant partially on the sacred site of Rattlesnake Mound, I would like to voice my opposition. Here is why:

Regardless of the length of the consultation process, the responsible Minnesotan authorities have failed to accommodate the expressed concerns of multiple Native Tribes—to cease any and all construction activity in the area of the Rattlesnake Mound.

There is credible historical evidence that human remains have already been found in the immediate area of the Rattlesnake Effigy.

Throughout the last century, the City of Afton has repeatedly allowed and enabled the desecration of the Rattlesnake Mound (officially designated 21WA10) through private building and levee construction. The Afton Wastewater Treatment Facility project is merely the latest in a long line of violations of this Native Tribal burial ground.

The 1990 U.S. Federal Statute, The Native American Graves Protection and Repatriation Act offers severe penalties for desecrating graves, and the City of Afton will not be able to escape liability and criminal prosecution by saying “we didn’t know”, when considering Afton’s historical contempt for the Rattlesnake Mound, its apparent deafness to both Native Tribes and the Minnesota Historic Preservation Office, and the discounting of historical evidence that human remains have already been found in the Rattlesnake Mound.

As a personal addition, I have researched and photographed various Mississippian and southeastern mounds. What I can say is some are obviously in a better position than others. The saddest of all is when you look up a moundsite on the internet and go visit: only to discover, it is partly demolished/ten feet from a highway/polluted and covered in trash. This is not tolerable. This is a continuation of many insults to indigenous culture of this land. Please reconsider this plan: when it is gone, it is gone for good.

Many thanks  
Marc Aleep  
Tallahassee Florida

## **Mathisen, Corey (MPCA)**

---

**From:** Alex Roth <roth0487@umn.edu>  
**Sent:** Tuesday, August 30, 2016 3:40 PM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** Afton Wastewater treatment plant public comments

Corey,

Please accept these comments on the proposed Afton wastewater treatment plant. If this is not the right venue for such comments, I would appreciate it you could direct these to the correct location.

Thank you.

Comments:

Regardless of the length of the consultation process, the responsible Minnesotan authorities have failed to accommodate the expressed concerns of multiple Native Tribes—to cease any and all construction activity in the area of the Rattlesnake Mound. Information from the Minnesota Historic Preservation Office has been ignored as well.

There is credible historical evidence that human remains have already been found in the immediate area of the Rattlesnake Effigy. The MPCA must be held accountable for its dismissal of this evidence. The 1990 U.S. Federal Statute, *The Native American Graves Protection and Repatriation Act* offers severe penalties for desecrating graves, and the wastewater treatment plant will be a clear violation of this statute.

Please conduct a more thorough review of the historical significance of the mound, including the necessary archaeological digs.

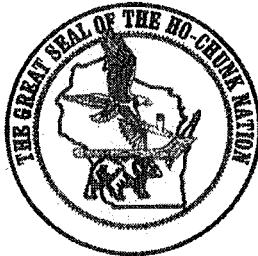
--  
Alex Roth, Ph.D.  
University of Minnesota  
Natural Resources Science and Management  
209 Green Hall  
1530 Cleveland Avenue N.  
St. Paul, MN, 55108  
Email: [roth0487@umn.edu](mailto:roth0487@umn.edu)  
Phone: (614) 420-1655

## **Mathisen, Corey (MPCA)**

---

**From:** davideastwoodafton@gmail.com  
**Sent:** Tuesday, August 30, 2016 6:02 PM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** Indian artifacts

Corey I had a brother that died back in 1973 my other brother just told me the other day he had found all kinds of Indian artifacts on the property the city of aften bought from our family so where the drain field might be is where the Indians use to have there teepees so be on the lookout for bones because what could have been mounds were plowed under to plant crops by farmers way back when. TRUE STORY Sent from my iPhone



## HO-CHUNK NATION LEGISLATURE

*Governing Body of the Ho-Chunk Nation*

August 31<sup>st</sup>, 2016

On December 31<sup>st</sup> 2015, I caused a letter to be sent on behalf of the Rattlesnake Effigy Mound in St. Croix Valley, Afton Minnesota. The City of Afton applied for a permit with the MPCA for construction on a wastewater treatment plant on the location of the Rattlesnake Effigy Mound.

The National Historic Preservation Act ("NHPA") provides legislative mandates for environmental review and consultation requirements, and demands that planners of a federally supported project take into account its effect on any area eligible for inclusion in the National Register of Historic Places. 16 U.S.C. S. § 470f; 16 U.S.C.S. § 470a (a). The NHPA provides that planners shall *consult with any Indian tribe that attaches religious and cultural importance to an eligible affected area*. 16 U.S.C.S. § 470a (d)(6)(B). Consulting tribes are entitled to a reasonable opportunity to identify concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate views on the undertaking's effects on them, and participate in resolving those effects. §§ 800.3-800.7.

On May 20<sup>th</sup> 2016, the MPCA met with Tribal representatives in the Minnesota area for a Tribal Consultation. During this consultation, a concern was expressed regarding mammal bones found on the site of the Rattlesnake Effigy Mound. A follow-up study was promised to determine if the mammal bones were human. As an interested Tribal party, I am writing to request that all construction efforts halt until the promised study has been conducted. Pursuant to 36 C.F.R § 800.4(d)(1), and *via* this communication, an objection is now being presented in the allotted 30-day time period.

Until evidence has been presented to rebut the existence of human remains on the site of the Rattlesnake Effigy Mound, the project cannot move forward, as doing so would irreparably damage the historical and cultural integrity of the Rattlesnake Effigy Mound under the NHPA and the Native American Graves Protection and Repatriation Act ("NAGPRA"). Any movement forward without a final study, discounts credible evidence of human remains on-site of the Rattlesnake Effigy Mound, evidence that is known to the MPCA. Please contact me, or Legislative Attorney Gennafer Garvin, at the Ho-Chunk Nation Legislative office for further guidance.

Best regards

Robert V. TwoBears  
Ho-Chunk Nation District 5 Representative  
(715) 299-0649

**Executive Offices**

W9814 Airport Road • P.O.Box 667 • Black River Falls, WI 54615  
(715)284-9343 • Fax (715)284-3172



# ECKBERG LAMMERS

ATTORNEYS AT LAW

[www.eckberglammers.com](http://www.eckberglammers.com)

Writer's Direct Dial:  
(651) 351-2134

Writer's E-mail:  
[KSandstrom@eckberglammers.com](mailto:KSandstrom@eckberglammers.com)

## Reply to Stillwater

August 31, 2016

### Via E-Mail & U.S. Mail

Corey R. Mathisen, P.E.  
Minnesota Pollution Control Agency  
520 Lafayette Rd N  
St. Paul, MN 55155-4194  
[corey.mathisen@state.mn.us](mailto:corey.mathisen@state.mn.us)

Alan Watts, Director  
Office of Enforcement & Compliance  
U.S. EPA, Region 5  
77 W. Jackson Blvd.  
Chicago, IL 60604  
[rShotline@epa.gov](mailto:rShotline@epa.gov)

Ronald Moorse, City Administrator  
City of Afton  
3033 St. Croix Trail S.  
Afton, MN 55001  
[administrator@ci.afton.mn.us](mailto:administrator@ci.afton.mn.us)

D. Stephen Elliott, Director  
Minnesota Historical Society  
345 W. Kellogg Blvd.  
St. Paul, MN 55102  
[director@mnhs.org](mailto:director@mnhs.org)

Re: *City of Afton Wastewater Collection and Treatment System—Comments on Section 106 Review*  
Our File No.: 01801-24102

Dear Mr. Mathisen, Mr. Moorse, Mr. Watts & Mr. Elliott:

As some of you know, I am the City Attorney for the City of Lake St. Croix Beach. I write on behalf of the City of Lake St. Croix Beach (hereinafter "LSCB") regarding the recently completed National Historic Preservation Act "Section 106 Review" of the above-noted large subsurface wastewater treatment system project ("Project") by the City of Afton. We write in final follow up to the Section 106 Review Findings issued by the MPCA, issued on August 2, 2016. The City of LSCB provides these final comments as a self-promoted "consulting party" pursuant to the issued notice.

Although the MPCA's letter to us of December 1, 2015 opines that LSCB is not an appropriate "consulting party" in the Section 106 Review process, we disagree. Ironically, we raised concerns early on in this process that it appeared the City of Afton was being designated as the Agency Official for this process, and that such appointment constitutes a conflict of interest, because Afton also constitutes the party promoting the Project and proposing to build the Project. In response, we received correspondence from the MPCA dated October 19, 2015, asserting that the MPCA would in fact be designated as the "Agency Official," but at the same time noted that the MPCA was retaining the City of Afton as a "Contractor to prepare information and analysis" of the Section 106 issues. This is *absolutely atrocious* for the MPCA to utilize the City of Afton as the "Contractor" responsible for investigating and analyzing the potential effects of its own Project on historical and archaeological sites of great significance to the

Stillwater Office  
1809 Northwestern Avenue  
Stillwater, MN 55082  
Phone: 651-439-2878  
Fax: 651-439-2923

Hudson Office  
430 Second Street  
Hudson, WI 54016  
Phone: 715-386-3733  
Fax: 715-386-6456

*LSCB Comments following Section 106 Review Findings*

*August 31, 2016*

*Page 2 of 4*

Native American Community. This conflict of interest should invalidate the entire Section 106 Review process.

Given that the City of Afton is the entity proposing and promoting this Project, to be built directly adjacent to its border with neighboring LSCB, as a result, LSCB is the only effected municipality that holds an unbiased outside view of this Project and its consequences. Regulation 36 CFR §800.2(c)(3) provides that “A representative of a local government with jurisdiction over the area in which the effects of an undertaking may occur is entitled to participate as a consulting party [in the Section 106 Review].” (emphasis added.) Although the Project is proposed to be built within the borders of Afton, there is absolutely no doubt that the *effects* of this Project reach well into LSCB, and therefore it is a mandatory consulting party. Consequently, LSCB is an appropriate consulting party pursuant to 36 CFR §800.2(a)(4) and § 800.2(c)(3).

The foregoing simply highlights the concerns that LSCB has been raising throughout this process, that the City of Afton and the MPCA have been railroading this Project forward from the very outset, without taking an unbiased and overarching view of the impacts of this proposed Project, nor ever properly considering the issues and concerns being raised by LSCB and others.

The detrimental impacts of this Project, which have been repeatedly raised by us and repeatedly overlooked and ignored by both the City of Afton and the MPCA include the following:

1. The proposed Large Subsurface Wastewater Collection and Treatment System is being built on a parcel of land within Afton, but that borders LSCB, including residents within LSCB that utilize individual wells for their drinking water. The effects of this proposed system upon the groundwater and their wells has not been adequately studied and documented. What was documented is that the effluent from the system will enter the groundwater and said groundwater apparently flow directly towards LSCB and its residents. Thus LSCB and its residents stand to be directly affected by this system, yet the multiple concerns raised by us throughout this process have been largely ignored, downplayed, and swept under the rug.
2. The proposed groundwater monitoring system for the Project is inadequate. It monitors an inadequate number of locations, and monitors only for nitrates, and does not adequately monitor for other potential contaminants that may leach from this system.
3. The system is being built within a few hundred feet of a sensitive surface water, namely Valley Creek, which is not only a highly regarded trout stream (one of a few remaining in the state), but which also promptly flows directly into the St. Croix River, which is a national park and treasured waterway protected by the National Wild and Scenic Rivers Act. Indeed this area is categorized as an area of “very high” sensitivity to pollution in the water table. This area is also home to endangered, threatened, or sensitive species of animals, plants, and fish, such as Brown Trout, Brook Trout, Rainbow Trout, Blanding’s Turtle, Henslow’s Sparrow, Slimy Sculpin and

*LSCB Comments following Section 106 Review Findings*

*August 31, 2016*

*Page 3 of 4*

Brook Lamprey. A catastrophic failure or overflow of this system will result in human waste being dumped directly into ground water near drinking wells, and/or into Valley Creek and the St. Croix River. The situs of this Project is very ill advised. Better and safer alternatives were not adequately investigated. The City could have acquired a better site by condemnation, but chose this site largely because it was available for purchase, rather than because it was the most appropriate site.

4. Despite absolute proof that the area of the Project is well known as a sacred area to Native Americans, with evidence of numerous archaeological finding including human remains, rather than erring on the side of caution, the City of Afton and the MPCA have chosen to downplay any and all such evidence as not credible or unfounded. This poor credibility and integrity judgment shows that Afton and the MPCA have made every effort to rubber stamp this Section 106 review and steamroller the entire Project towards approval, rather than making any legitimate effort to arrive at well-founded conclusions that are best for the environment, the citizens of LSCB, or the Native American Community, all of which are detrimentally impacted by this Project.
5. The overarching concern is that the Project grossly violates the concept of Environmental Justice, despite the fact that the MPCA espouse to promote Environmental Justice. The MPCA's own policy on Environmental Justice states:

The MPCA is committed to making sure that pollution does not have a disproportionate impact on any group of people —the principle of environmental justice. This means that all people – regardless of their race, color, national origin or income – benefit from equal levels of environmental protection and have opportunities to participate in decisions that may affect their environment or health.

The U.S. EPA defines Environmental Justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies. The MPCA agrees with the basic principles of this statement and believes that implementing these principles is part of good governance.

Fair treatment means that no group of people, including a racial, ethnic or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

([www.pca.state.mn.us/index.php/about-mpca/assistance/mpca-and-environmental-justice.html](http://www.pca.state.mn.us/index.php/about-mpca/assistance/mpca-and-environmental-justice.html))

*LSCB Comments following Section 106 Review Findings*

*August 31, 2016*

*Page 4 of 4*

The proposed system benefits the landowners in the Afton "old village" by moving the wastewater away from their properties. The negative environmental consequences are exclusively (and therefore disproportionately) borne by the people of LSCB who drink from wells downgradient from the proposed system drainfield. The affected people of LSCB are not even eligible to use and participate in the benefits of the system by virtue of their property being on the wrong side of a municipal boundary and being outside the service area of the Project. It further burdens the Native American communities who have cultural and archaeological rights in this land. This constitutes an Environmental Injustice.

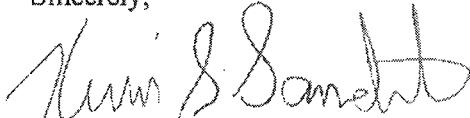
The direct consequence of the Project as proposed by the City of Afton is to shift a disproportionate share of the negative environmental consequences of its human wastewater and storm water from its own citizens in its "old village" area to rest upon and burden the citizens of Lake St. Croix Beach, the Native American communities whose sacred lands will be desecrated, and upon the users of Valley Creek and the St. Croix River. The site of this Project is being promoted by Afton and the MPCA largely because it is one of the nearest, and therefore least expensive sites on which to build and operate the proposed sewage treatment system. This Project constitutes a gross violation of the tenets of Environmental Justice.

Enclosed for your reference are prior documents we submitted raising concerns about this Project, including the following:

1. Letter from Senior Hydrologist Stuart Grubb, PG of Emmons & Olivier Resources, Inc. dated April 1, 2015, which explains in more detail some of the technical problems with the proposed Project from an environmental perspective;
2. Letter from LSCB City Attorney dated Nov. 12, 2014 raising concerns about the Project;
3. LSCB's Petition for Contested Case Hearing on MPCA SDS Permit #MN0070599, dated April 1, 2015; and
4. LSCB's Petition for Environmental Impact Statement on Afton Wastewater Treatment Project, dated April 1, 2015.

Thank you for your attention to the foregoing.

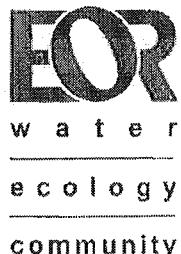
Sincerely,



Kevin S. Sandstrom

Enclosures

C: Susan Schuler, LSCB Administrator (via email & U.S. Mail)



April 1, 2015

Shauna Bendt  
Municipal Wastewater Section, Municipal Division  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155

Subject: Comments on the Draft Wastewater Permit  
Proposed City of Afton Wastewater Collection and Treatment Project

Dear Ms. Bendt:

The following comments demonstrate that there are significant environmental concerns with the proposed project and that the project should not receive a permit until an Environmental Impact Statement is completed.

Emmons & Olivier Resources, Inc. (EOR) has been retained by the City of Lake St. Croix Beach to review the EAW. EOR is a multi-disciplinary environmental consulting firm that specializes in water resource issues. I am a Professional Geologist with over 25 years of experience as an environmental consultant. I have worked extensively throughout Washington County on issues related to groundwater and public facility siting.

Comments

1. The groundwater flow direction at the site is not adequately understood and characterized. The only data that are publicly available are groundwater elevation data collected in October and November 2013. These data indicate groundwater flow to the northeast, away from nearby Valley Creek and counter to the southerly flow of the St. Croix River. This observation is very unusual for Washington County and should not be accepted as correct without further documentation or investigation. Groundwater, especially groundwater in the uppermost (water table) aquifer, typically flows towards nearby streams in a generally downstream direction. Groundwater flow direction can vary substantially between seasons of the year. A full year of monthly water level measurements are required before groundwater flow direction can be accurately determined. If changes in groundwater flow direction are noted throughout the year, the monitoring period should be extended. Given the nearby residential wells and other sensitive natural resources in the area, it is critical to understand which wells and resources will be most adversely affected by the wastewater and at what times of the year.
2. Effluent discharge from the drainfield will alter the direction of groundwater flow. As the effluent reaches the water table, a "groundwater mound" will develop at the water table below the drainfield. Groundwater will flow radially away from the center of the drainfield until it changes course due to the influence of a well, stream, change in geology, or the background hydraulic gradient. A preliminary analysis by Emmons & Olivier Resources indicates that a mound of more than 0.05 feet could develop above the water table. This could change conditions at the site enough so that effluent would flow toward Valley Creek.

and toward several offsite wells.

3. The setback distance of 600 feet between a drainfield and nearby wells, though established in state rules, is arbitrary and not protective of drinking water wells near the proposed system. A single safe setback distance cannot be determined for all wastewater systems and all geologic systems because the treatment capacity of the site soils will vary. The treatment capacity of soils is the result of:
  - a. Groundwater travel time from the drainfield to the receptor. Faster moving groundwater does not allow as much time for treatment.
  - b. The capacity of the soil to absorb contaminants. Finer soils have a greater capacity than coarse sandy soils.
  - c. The capacity of the soil to support biological activity and other reactions that breakdown contaminants in wastewater.

The proposed site was preferred over others because it has sandy soils that allow rapid groundwater movement. The benefit to the project proposer is that more wastewater can be quickly infiltrated through the drainfield, reducing the size and cost. However, the tradeoff is less subsurface treatment of the wastewater, placing nearby wells and households at greater risk. Also increasing the risk at this site is the large number of wells and households that could be affected. The 600 feet setback may be protective of a small wastewater system in a rural area with clayey soils and few wells, but it presents a much higher risk in this populated area with sandy soils. A laboratory and literature study should be required as part of an EIS to demonstrate that the proposed setback in these types of soils, this setting, and this density of wells is protective of human health and the environment.

4. Nitrate is the only chemical parameter that will be measured in the wastewater treatment effluent, which is not adequate to protect groundwater. While nitrate is a concern, there are many more contaminants of concern that can and will (at some concentration) be entering the groundwater in the area of the drainfield, including:

- a. Pesticides, paints, cleaners, and other household and commercial waste
- b. Petroleum products and other volatile organic compounds
- c. Pharmaceuticals
- d. Endocrine disruptors associated with detergents and other products.
- e. Viruses

Nitrate is typically used as an indicator parameter because it is conservative (nonreactive), moves quickly through the aquifer, and is inexpensive to analyze. However, absence of nitrate does not indicate an absence of other contaminants. In fact, the system's reactor to remove nitrates will reduce the effectiveness of nitrate as an indicator compound. This does not imply that the reactor should not be part of the system, but rather that additional monitoring should be required to protect households from undetected contaminants.

5. The proposed system lacks a spill and leak response plan. A discharge may come from leakage in a force main or system failure at the treatment plant. Other facilities in Minnesota have had underground leaks that have gone undetected for long periods of time. A leak would be particularly harmful to the public waterbodies of Valley Creek and the Unnamed Tributary, as well as downstream at the St. Croix River. A permit should not be issued until a spill and leak response plan is filed with the MPCA.
6. The permit should prohibit trucked-in waste or other waste brought to the treatment plant facility.

7. Because there is no bypass or overflow designed into the system, any problem with the system could result in untreated wastewater being released to the drainfield and groundwater. The permit should state that in the event of a bypass or overflow, groundwater monitoring should be required. The monitoring should occur at the onsite monitoring wells and also at nearby residential wells. The sampling should be required monthly for a period of one year or longer if any sign of groundwater contamination is detected. Groundwater samples should be analyzed for:
  - Major anions and cations, including nitrate
  - Volatile organic compounds
  - Semi-volatile organic compounds
  - Arsenic, lead, and copper
  - Any other compounds suspected to be in the wastewater.

Thank you for your consideration.

Sincerely,



Stuart Grubb, PG  
Senior Hydrogeologist



**REPLY TO STILLWATER**

November 12, 2014

**Via U.S. Mail**

Ronald J. Moorse, Administrator  
City of Afton  
3033 St. Croix Trail South  
P.O. Box 219  
Afton, MN 55016

**Re: *City of Afton Subsurface Sewage System Project***  
SDS Permit # MN0070599  
Our File No.: 01801-24102

Dear Mr. Moorse:

I write to you as the City Attorney of both the Cities of Lake St. Croix Beach and St. Mary's Point. This letter is to provide comments to Afton regarding the Facilities Plan dated March 1, 2013 and apparently amended/supplemented on or about September 24, 2014, in preparation for the public hearing scheduled for December 4, 2014. Please ensure that the following comments are made part of the record on your project, at the public hearing, and in any future submissions to the Minnesota Pollution Control Agency.

As you know, Minnesota Rule 7077.0272 lays out the requirements for a Facilities Plan. The Rule states that “[a] facilities plan must address items A to E in the amount of detail that is appropriate to describe a project accurately.” We will address each item of the Rule below.

**A. A complete description and evaluation of the existing wastewater treatment system and problems that need correction. This evaluation must consider the age, condition, design capacity, and treatment capabilities of each treatment unit, the system's ability to meet current or proposed permit requirements, and the location, frequency, and quantity of any bypasses. For existing individual sewage treatment systems, a survey must also be prepared which identifies whether or not each individual sewage treatment system in the project service area conforms to the requirements under chapter 7080.**

This Rule provision requires analysis of all of the existing individual sewage treatment systems. Your Facilities Plan indicates at Section 2 that the review of existing ISTS was done by visual inspection only from the property boundaries, and the Plan speaks in terms of “likely” compliant vs. non-compliant systems. The Plan states that each “parcel” was visually inspected, but does not state that each ISTS was inspected as required by the Rule. It seems to us that this required survey of existing ISTS's was done in a cursory fashion and is based upon speculation and conjecture, rather

**Stillwater Office**  
1809 Northwestern Avenue  
Stillwater, MN 55082  
Phone: 651-439-2878  
Fax: 651-439-2923

**Hudson Office**  
430 Second Street  
Hudson, WI 54016  
Phone: 715-386-3733  
Fax: 715-386-6456

than actual observation data or determination of compliance with Chapter 7080. The Rule requires you to determine if existing ISTS's are compliant; instead your Plan states: "Upon visual inspection of each individual parcel a determination was made regarding the potential that the ISTS for the dwelling(s) would be compliant or non-compliant with Minnesota Rule Chapter 7080." Your Plan does not comply with the Rule and is deficient in this regard.

**B. Data describing existing residential wastewater flows and loadings, and existing nonresidential wastewater flows and loadings. The existing wastewater flow and loading data must be reported on a form provided by the agency.**

According to our review, your Facilities Plan is again lacking in any description of existing residential and nonresidential wastewater flows and loadings. Rather, Section 3 of your plan states that: "Using the MPCA Design Guidance and 2011 Minnesota Rules, Part 7081.0120, an average daily flow for each system or wastewater generator is estimated using a formula. This formula calculates a flow based on the number of bedrooms in each of the residences, the treatment system type, and the total number of wastewater generating parcels, included in each system." (underlining added). Again, rather than complying with the requirements of the Rule, which requires "existing" flow rates, your plan makes guesses and assumptions rather than gathering the data mandated by the Rule. Thus it is impossible to tell whether the design of your system can in fact adequately service the parcels in question.

**C. Data describing future residential and nonresidential wastewater flows and loadings within the next 20-year period based on projected residential growth, projected nonresidential growth, and signed letters of intent from significant industrial users. The future wastewater flow and loading data must be reported on a form provided by the agency.**

The provisions in your plan relating to anticipated growth appear sparse, as outlined in a four-sentence paragraph included on page 4-2 of the Plan. The basis for your anticipated growth of 30 people (17%) is unclear, but even less clear is the exact amount of wastewater flows and loading expected from those additional people. As you know, there have been proposed plans in the past for construction of condos in the old village area of Afton. If approved, no doubt they would be connected to the system. It does not appear that a potential condo project was factored into your 17% growth figures over the next 20 years. It seems that future connections would increase by more than 30 people if a condo project were included in the mix.

Your plan also does not appear to include any anticipated growth in the commercial users of your system, which in fact comprises over 50% of the wastewater flow according to page 3-2 of the Plan. Lack of growth figures for commercial uses appears to be detrimental to your plan.

D. An analysis of all feasible treatment alternatives that are capable of meeting the applicable effluent, water quality, and public health requirements for 20 years. Where the project service area is currently served by individual sewage treatment systems, the analysis of feasible treatment alternatives must be submitted on a form prescribed by the commissioner. The discussion of the considered alternatives must include: (1) a comparison of the cost-effectiveness of the alternatives considered. The comparison must include a detailed breakdown of the present worth of all capital costs, annual operation and maintenance costs, equipment replacement costs, and salvage values. If excessive levels of infiltration or inflow exist, the comparison of treatment alternatives must include a comparison of the cost of eliminating excessive infiltration or inflow with the cost of transportation and treatment of the infiltration or inflow; (2) a site assessment of the existing soil and groundwater conditions conducted and signed by a professional engineer. For individual sewage treatment systems designed to treat less than 5,000 gallons per day of wastewater, a site assessment must be done by either a professional engineer or an individual sewage treatment system designer authorized under agency rules to make the assessment; (3) an evaluation of the impact of the alternatives on all existing wastewater treatment systems, including sewers and lift stations; (4) a comparison of the potential environmental impacts.

Your Plan conducts the foregoing analysis at pages 5-2 to 5-8. Two collection options and four treatment options are analyzed. The option of simply replacing the existing non-compliant ISTS's is apparently determined by your Plan to be infeasible, and the financial analysis of such an approach is not provided at all. Thus the Plan does not fully comply with the required analysis of this section of the Rule.

E. If the project service area is currently served by individual sewage treatment systems, the facilities plan must include: (1) a determination of the operating condition of each individual sewage treatment system made by an individual authorized by agency rules to determine the compliance status of individual sewage treatment systems; (2) a determination of whether each lot in the project service area can support a replacement individual sewage treatment system made by an individual authorized by agency rules to make such a determination; and (3) an assessment of the suitability of an individual sewage treatment system that would serve multiple dwellings. The assessment in subitem (3) must be conducted by an individual authorized by agency rules to make such an assessment unless the flow volumes or other circumstances of the system would warrant issuance of an SDS permit, in which case the assessment must be conducted by a registered professional soil scientist or professional engineer.

As noted above, per the Facilities Plan, your consultant's review of the existing septic systems was cursory and done via inadequate visual inspection of the properties from their boundary, with no analysis of the existing ISTS themselves. The above Rule provisions require even more in-depth analysis of the existing ISTS, including in essence the feasibility of simply replacing each existing non-compliant system, including the suitability of ISTS's that might serve multiple dwellings. This investigation clearly did not occur. Consequently, your Facilities Plan is deficient under the terms of the Rule and additional investigation by "an individual authorized by agency rules to make such an

assessment" is required.

Observe that one of the criteria in this section is whether it would be suitable for an individual sewage treatment system to serve multiple dwellings. In other words, would it be possible for a septic system on Property A to serve both Property A and neighboring Property B. Your Plan abandons the idea of simply replacing the existing septic systems in part asserting that some of the lots do not have adequate space to install a new, conforming system. But your Plan seemingly fails to consider whether a series of smaller systems could be installed that serve multiple dwellings.

**F. A description of the selected treatment alternative and the complete wastewater treatment system of which it is a part, including: (1) the specific design parameters of all individual treatment units and the complete treatment system; (2) estimated construction, annual operation and maintenance, and equipment replacement costs; (3) estimated annual sewer service charges; (4) a determination of whether pretreatment of any industrial wastes is needed in order to avoid disruption of the proper operation of the proposed system; (5) an evaluation of how and where sludge or septage resulting from the treatment process will be disposed; (6) an analysis of the 25- and 100-year flood elevations in relation to the proposed project site or sites, showing that the project will be operable during a 25-year flood and protected during a 100-year flood; and (7) an analysis of how interim treatment will be accomplished during construction to meet permit requirements.**

It does appear that your plan provides the foregoing analysis of the proposed project. However, what does appear to be lacking from this analysis is the potential environmental impact of the proposed system, particularly upon nearby Valley Creek or upon nearby drinking wells in the vicinity of the proposed project. The site is directly uphill and less than 500 feet from Valley Creek, a sensitive trout stream that flows into the St. Croix River. The system is also less than 500 feet from several wells of the residents of Lake St. Croix Beach. The potential effects of a failure of the proposed system on the groundwater or surface water in the area is woefully lacking.

**Other Concerns:**

As an additional overarching concern, we note that your Facilities Plan is short sighted. There are numerous concerns with the selected site that you have glossed over, while failing to give adequate consideration to alternative sites for the system based solely on slightly higher cost. A different site with slightly higher cost is clearly preferred if such a site can avoid the pitfalls of constructing your system under a delicate trout stream and nestled amongst numerous homes and drinking water wells, as currently proposed.

Additionally, you will recall that in July/August of 2013, Lake St. Croix Beach and St. Mary's Point proposed a Joint Powers Agreement relating to your proposed system, which in part contained terms relating to a potential future right on the part of Lake St. Croix Beach and St. Mary's Point to connect to your system. Although Afton claimed it was committed to minimizing impacts of the system on Lake St. Croix Beach

*Letter to Afton*

November 12, 2014

Page 5 of 5

and St. Mary's Point and foster positive relationships with them, the JPA was squarely rejected by Afton with minimal consideration and no proposed alternatives. Another copy of the proposed Joint Powers Agreement is enclosed for your reference. A regional solution for the lower St Croix Valley makes sense, and we suggest that allowing the potential for future connection on the part of Lake St. Croix Beach and St. Mary's Point is a practical solution to serve the larger area on a permanent basis. The proposed Joint Powers Agreement has not been given enough consideration by Afton.

Thank you for your consideration of this matter.

Sincerely,



Kevin S. Sandstrom, City Attorney

KSS/

Enclosures- proposed JPA

CC: Mitch Berg, LSCB Clerk (w/ encl.)  
Cindie Reiter, SMP Clerk (w/ encl.)  
Shauna Bendt and Cory Mathisen, MPCA (w/ encl.)

**JOINT POWERS AGREEMENT  
BETWEEN AND AMONG THE CITY OF AFTON, THE CITY OF LAKE ST. CROIX  
BEACH, AND THE CITY OF ST. MARY'S POINT**

**THIS AGREEMENT** is made by and between political subdivisions organized and existing under the Constitution and laws of the State of Minnesota. The City of Afton, Minnesota, a municipal corporation, by and through its city council (hereinafter "Afton"); the City of Lake St. Croix Beach, Minnesota, a municipal corporation, by and through its city council (hereinafter "LSCB"); and the City of St. Mary's Point, Minnesota, a municipal corporation, by and through its city council (hereinafter "SMP"); are the parties to this Agreement.

**WHEREAS**, Minnesota Statutes Section 471.59 provides that two or more governmental units may by agreement jointly exercise any power common to the contracting parties;

**WHEREAS**, Afton has purchased a parcel of real estate located west of the intersection of Highway 95/St. Croix Trail South and St. Mary's Drive, with a street address of 2318 St. Croix Trail, Afton, MN 55001 (PID # 14.028.20.22.0001) (hereinafter the "Property");

**WHEREAS**, the Property is north of downtown Afton, and is directly adjacent to the communities of LSCB and SMP;

**WHEREAS**, Afton is investigating and pursuing the construction of a community subsurface sewage treatment system ("SSTS") on the Property;

**WHEREAS**, LSCB and SMP have serious concerns about Afton's proposed SSTS and the fact that it is proposed to be located in close proximity to LSCB and SMP, and in close proximity to residential neighborhoods, sensitive local wetlands, creeks, and watersheds;

**WHEREAS**, LSCB and SMP have communicated their objections to the SSTS project; and

**WHEREAS**, in order to be community-minded and keep the peace between neighboring communities, Afton, LSCB, and SMP wish to enter into this Joint Powers Agreement.

**NOW THEREFORE**, pursuant to the authority contained in Minnesota Statutes Section 471.59, commonly known as the Joint Powers Act, which authorizes two or more governmental units to jointly exercise any power common to them, and in consideration of the mutual covenants herein contained and the benefits that each party hereto shall derive hereby, the cities of Afton, LSCB and SMP agree to the following terms and conditions.

**PURPOSE**

The purpose of this joint powers agreement is set forth in the recitals contained in the above Whereas clauses, which are incorporated by reference as fully set forth herein.

## **AFTON'S RESPONSIBILITIES**

1. If Afton proceeds with the construction of the SSTS, then Afton shall design, locate and construct the SSTS on the Property in a manner that minimizes any negative impacts on the residents and property owners of LSCB and SMP (including but not limited to visual impacts, odors, environmental impacts, property value impacts, or otherwise).
2. The construction of the SSTS shall include natural screening around the SSTS to reduce the visual impact to neighboring properties. Screening shall include retention and maintenance of existing trees on the periphery of the property to the greatest extent possible, and the planting and maintenance of evergreen buffer trees around all SSTS-related structures placed on the Property.
3. Afton agrees that, following the initial construction and hook-ups to the SSTS, it shall not relocate, alter, or expand the SSTS without the consent of the then-existing city councils of LSCB and SMP at the time of the relocation, alteration, or expansion. The consent of the then-existing city councils of LSCB and SMP shall be subject to a two-thirds (2/3) supermajority consensus vote.
4. If the parties agree pursuant to the foregoing Paragraph 2 to expand the use of the SSTS beyond the households and businesses initially proposed to be serviced by the SSTS; then Afton agrees that it shall grant LSCB and SMP the first right and option to connect to the SSTS for the benefit of the residents of LSCB and SMP, in an equivalent number of units or households, prior to any additional new connections by residents or businesses in Afton.

## **TERM OF AGREEMENT**

This Agreement shall be effective upon execution by all of the parties. This Agreement shall remain in effect so long as Afton's SSTS remains proposed to be built on the Property, or is built and remains located on the Property, whether the SSTS system is in use or not. The Agreement shall remain in effect until the SSTS system is no longer located on the Property, or until the parties mutually agree to terminate this Agreement, whichever is sooner. Notwithstanding the foregoing, the Indemnification provisions herein shall survive the termination of this Agreement and shall remain in effect whether the SSTS system is in use or not.

## **INDEPENDENT CONTRACTOR**

It is agreed that nothing in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of co-partners, joint venturers, agents, representatives, or employees between the parties with respect to the proposed SSTS. The SSTS site, project, and system shall remain in the sole ownership and the sole liability of Afton.

## **AUTHORITY & ASSIGNMENT**

The undersigned parties represent that they have obtained the consent of their respective governing bodies to enter into this Agreement. No party to this Agreement shall assign any rights or obligations under the Agreement to another person.

## **INDEMNIFICATION**

1. Afton agrees it will defend, indemnify and hold harmless LSCB and SMP, its officers, employees, and residents against any and all liability, loss, costs, damages and expenses which LSCB and SMP, its officers, employees, and residents may hereafter sustain, incur, or be required to pay arising out of the negligent or willful acts or omissions of Afton in the performance of this Agreement, or the negligent construction, operation, or use of the SSTS.
2. LSCB and SMP agree they will defend, indemnify and hold harmless Afton, its officers and employees against any and all liability, loss, costs, damages and expenses which Afton, its officers, or employees may hereafter sustain, incur, or be required to pay arising out of the negligent or willful acts or omissions of LSCB or SMP in the performance of this Agreement.
3. The liability of the parties under this Agreement shall be governed by Minnesota Statutes Section 471.59, subd. 1a. The indemnification provisions shall survive the termination of this Agreement.

## **INSURANCE REQUIREMENTS**

Afton agrees that it will at all times during the term of this Agreement keep in force the following insurance protection in the limits specified.

1. Maintain general liability insurance sufficient to cover its potential liability under Minnesota Statutes Section 466.04.

Afton shall, upon request, furnish the other parties with proof of adequate insurance. Afton shall not cancel or amend any insurance without thirty days notice to the other parties.

## **RECORD DISCLOSURES/MONITORING**

Pursuant to Minnesota Statutes Section 16C.05, subdivision 5, the books, records, documents and accounting procedures and practices of Afton relevant to this Agreement are subject to examination by SMP and LSCB, as appropriate. Afton agrees to maintain and make available these records for a period of six years from the date of the termination of this Agreement.

## **DATA PRACTICES**

All data collected, created, received, maintained, or disseminated in connection with this Agreement is subject to the Data Practices Act, Minnesota Statutes Chapter 13.

## **AMENDMENT/TERMINATION**

The parties to this agreement may amend or terminate this agreement only by a two-thirds (2/3) supermajority vote of the city councils of all of the parties to this agreement. All amendments or terminations must be made in writing.

### **CITY OF AFTON**

BY: \_\_\_\_\_  
Mayor Richard Bend

DATE: \_\_\_\_\_

### **CITY OF LAKE ST. CROIX BEACH**

BY: \_\_\_\_\_  
Mayor Thomas McCarthy

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
City Clerk Ronald Moorse

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
City Clerk Mitchell Berg

DATE: \_\_\_\_\_

### **CITY OF ST. MARY'S POINT**

BY: \_\_\_\_\_  
Mayor Jay Roettiger

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
City Clerk Cindie Reiter

DATE: \_\_\_\_\_



**ECKBERG  
LAMMERS**  
ATTORNEYS AT LAW

[www.eckberglammers.com](http://www.eckberglammers.com)

Writer's Direct Dial:  
(651) 351-2134

Writer's E-mail:  
[KSandstrom@eckberglammers.com](mailto:KSandstrom@eckberglammers.com)

**Reply to Stillwater**

April 1, 2015

**Via Email (shauna.bendt@state.mn.us) & U.S. Mail**

Shauna Bendt  
Municipal Wastewater Section  
Minnesota Pollution Control Agency  
520 Lafayette Rd N  
St. Paul, MN 55155-4194

Re: *Proposed Afton Wastewater Treatment Project*  
Our File No.: 01801-24102

Dear Ms. Bendt:

Enclosed and served upon you please find the following:

1. Petition for Contested Case Hearing on MPCA SDS Permit #MN0070599

Please contact me with any questions. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Kevin S. Sandstrom". The signature is fluid and cursive, with "Kevin" on the top line and "S. Sandstrom" on the bottom line.

Kevin S. Sandstrom

KSS/

Enclosures

C: Susan Schuler, LSCB Administrator (via email, w/ encl.)  
Cindie Reiter, SMP Clerk (via email, w/ encl.)

Stillwater Office  
1809 Northwestern Avenue  
Stillwater, MN 55082  
Phone 651-439-2878  
Fax 651-439-2923

Hudson Office  
430 Second Street  
Hudson, WI 54016  
Phone 715-386-3733  
Fax 715-386-6456

OFFICE OF ADMINISTRATIVE HEARINGS  
&  
MINNESOTA POLLUTION CONTROL AGENCY

---

City of Lake St. Croix Beach,  
City of St. Mary's Point,  
Petitioners,

v.

PETITION FOR CONTESTED CASE  
HEARING ON MPCA SDS PERMIT  
#MN0070599

City of Afton  
Respondent.

---

Petitioners City of Lake St. Croix Beach and City of St. Mary's Point, by their attorneys, Eckberg, Lammers, Briggs, Wolff & Vierling, PLLP, for their Petition, plead as follows:

**I. PARTIES**

1. City of Lake St. Croix Beach (LSCB) is a municipal corporation situated in Washington County, Minnesota, on the St. Croix River and to the north of the City of Afton.
2. City of St. Mary's Point (SMP) is a municipal corporation situated in Washington County, Minnesota, on the St. Croix River and to the north of the City of Afton.
3. Upon information and believe, Respondent City of Afton is a municipal corporation situated in Washington County, Minnesota and is an applicant for a State Disposal System (SDS) Permit #MN0070599.

**II. FACTUAL ALLEGATIONS**

4. Afton has applied for a permit for a large cluster septic system to be located north of downtown Afton, and on a parcel of land within Afton city limits but directly adjacent to and bordering upon LSCB and SMP, denoted by MPCA #MN0070599 (hereinafter "Project").
5. Afton's proposed Project is in close proximity to Valley Creek and a wetland and an unnamed tributary of Valley Creek.

6. Afton's proposed Project will require its sewage lines to cross Valley Creek and the unnamed tributary, which is a protected trout stream which flows through SMP and into the St. Croix River.

7. Afton's proposed Project is in close vicinity to residential neighborhoods not being served by the system, and being served by groundwater wells. Specifically, the system is just over 300 feet from multiple drinking water wells of surrounding residences.

8. Afton's proposed Project is in close vicinity to known sensitive or rare plant and animal species, such as brook, rainbow, and brown trout. Valley Creek is one of only a few streams in the entire Twin Cities metropolitan area that has a naturally reproducing population of brook trout, the only trout species native to Minnesota. Rare species such as Blanding's turtles, Henslow's sparrows, and slimy sculpin reside and reproduce in this area. According to the Valley Creek Watershed Management Plan, Valley Creek also supports a population of native American brook lamprey, which has been listed as a "Special Concern species" according to the DNR. (See MN DNR Report- Population Status and Habitat Requirements of the American Brook Lamprey in Southeastern Minnesota—July 1, 1996.)

9. According to Afton's zoning maps, Afton's Project site for the SDS is located within the Shoreland Management Overlay Zoning District, in other words within a water-related land use management district.

10. The SDS Project is proposed to be built in an area that is known to be susceptible to karst geological formations in the bedrock, in other words there is the potential for caves, sinkholes, solution channels and other karst features to develop in the area of the Project. These features could jeopardize operation of the facility and cause significant environmental damage. Concentration of subsurface discharge in the area could increase development of karst features.

11. Pursuant to Minn. R. 4410.4400, subp. 12(C), construction of a hazardous waste processing facility within a water-related land use management district, or in an area characterized by soluble bedrock, is subject to a mandatory completion of an Environmental Impact Statement ("EIS"). Hazardous waste generally includes waste that is ignitable, corrosive, reactive, or toxic. Toxic waste are harmful to human health or fatal when ingested or absorbed. Although sewage is not typically labeled as "hazardous waste," raw sewage does have the potential for serious and harmful adverse health effects to humans, particularly when ingested. The provisions of Minn. R. 4410.4400 strongly suggest that an EIS should be performed in this case.

12. To date, Afton has completed only a cursory EAW, and has not completed an EIS.

13. An EIS should be ordered by the MPCA and the Courts due to the potential for serious environmental impacts of this system.

14. The EAW provided by Afton does not adequately address alternatives to the project such as alternate locations. Only one other site was considered, which was apparently not a reasonable alternative due to underlying soils. Many other potentially feasible sites within the City of Afton were not considered. The existing site was selected primarily because there was a willing seller, which does not constitute adequate research for the project from an environmental perspective.

15. LSCB and SMP have voiced their ongoing concerns and objections to the Project.

16. Residents of LSCB and SMP have voiced their objections to the Project.

17. The Project violates and offends principles of "Environmental Justice" and therefore raises significant environmental concerns. Environmental Justice, as promoted and implemented by the MPCA, is as follows:

The U.S. EPA defines Environmental Justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies. The MPCA agrees with the basic principles of this statement and believes that implementing these principles is part of good governance.

Fair treatment means that no group of people, including a racial, ethnic or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

([www.pca.state.mn.us/index.php/about-mpca/assistance/mpca-and-environmental-justice.html](http://www.pca.state.mn.us/index.php/about-mpca/assistance/mpca-and-environmental-justice.html))

18. The proposed Project places a disproportionate share of the negative environmental consequences resulting from wastewater disposal onto well owners in LSCB and SMP. Wastewater from the Afton village was formerly disposed of in individual septic treatment systems located near where the wastewater was generated. The proposed system benefits the landowners in the Afton village by moving the wastewater away from their property. The negative environmental consequences are exclusively (and therefore disproportionately) borne by the people who drink from wells downgradient from the proposed drainfield. The affected people are not even eligible to participate in the benefits of the system by virtue of their owning property on the wrong side of a municipal boundary established decades ago and outside the service area of the project. This constitutes an Environmental Injustice.

19. LSCB has retained environmental consultants Emmons & Olivier Resources, Inc. ("EOR") to analyze Afton's Project.

20. EOR has raised numerous concerns with the Project and Afton's deficient submissions in relation thereto. EOR's findings are outlined in a report attached hereto as

Exhibit A.

COUNT I  
Request for Contested Case Hearing

21. Petitioners restate, reallege, and incorporate all preceding paragraphs.
22. Petitioners request a contested case hearing pursuant to Minn. R. 7000.1900 to determine disputed facts about the Project, including but not limited to the following:
  - a. Whether the Afton septic project may have a detrimental impact upon neighboring property owners.
  - b. Whether the Afton septic project may have a detrimental impact upon neighboring wells, aquifer, and groundwater in the immediately adjacent areas.
  - c. Whether Afton's EAW is insufficient to analyze the environmental impact of the project.
  - d. Whether the Afton septic project may have a detrimental impact upon Valley Creek and its adjoining wetlands, which is a prized and sensitive trout stream which is directly adjacent to the proposed SDS and flows directly into the St. Croix River.
  - e. Whether nutrients flowing out of the system may have a detrimental impact upon Valley Creek.
  - f. Whether Afton should be required locate its proposed facility in a location to the south or west that is not immediately adjacent to numerous residences, drinking wells, and a protected trout stream (i.e. whether the reduced environmental impact of other potential sites outweighs added cost or other factors on other sites).

g. Whether Afton should more appropriately connect its system to an existing MUSA line, rather than utilizing a large scale septic system (i.e. whether the environmental impact of connecting to a MUSA line is less).

23. A contested case hearing is necessary to present evidence on the foregoing disputed facts.

24. In the alternative, if a contested case hearing is denied, then Petitioners request a public informational meeting as provided in Minn. R. 7000.0550, subp. 4.

25. Petitioners request that Afton's permit be denied in its entirety based upon the incomplete EAW, or alternatively that Afton be required to complete a full environmental investigation and Environmental Impact Statement (EIS).

Petitioners' witnesses and evidence for the hearing are currently undetermined, but will likely include residents of the Cities of Afton, Lake St. Croix Beach, and St. Mary's Point, as well as representatives of Emmons & Olivier Resources, Inc. It is believed that evidence could be presented in a hearing of 2-3 days' duration.

ECKBERG, LAMMERS, BRIGGS, WOLFF & VIERLING, PLLP

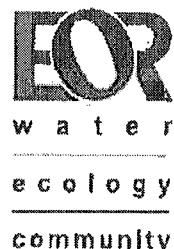
Dated: 4/1/15

By: Kevin S. Sandstrom

Kevin S. Sandstrom (#0348958)  
Attorneys for Petitioners  
1809 Northwestern Avenue  
Stillwater, MN 55082  
Phone: (651) 439-2878  
Fax: (651) 439-2923



April 1, 2015



Shauna Bendt  
Municipal Wastewater Section, Municipal Division  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155

Subject: Comments on the Draft Wastewater Permit  
Proposed City of Afton Wastewater Collection and Treatment Project

Dear Ms. Bendt:

The following comments demonstrate that there are significant environmental concerns with the proposed project and that the project should not receive a permit until an Environmental Impact Statement is completed.

Emmons & Olivier Resources, Inc. (EOR) has been retained by the City of Lake St. Croix Beach to review the EAW. EOR is a multi-disciplinary environmental consulting firm that specializes in water resource issues. I am a Professional Geologist with over 25 years of experience as an environmental consultant. I have worked extensively throughout Washington County on issues related to groundwater and public facility siting.

#### Comments

1. The groundwater flow direction at the site is not adequately understood and characterized. The only data that are publicly available are groundwater elevation data collected in October and November 2013. These data indicate groundwater flow to the northeast, away from nearby Valley Creek and counter to the southerly flow of the St. Croix River. This observation is very unusual for Washington County and should not be accepted as correct without further documentation or investigation. Groundwater, especially groundwater in the uppermost (water table) aquifer, typically flows towards nearby streams in a generally downstream direction. Groundwater flow direction can vary substantially between seasons of the year. A full year of monthly water level measurements are required before groundwater flow direction can be accurately determined. If changes in groundwater flow direction are noted throughout the year, the monitoring period should be extended. Given the nearby residential wells and other sensitive natural resources in the area, it is critical to understand which wells and resources will be most adversely affected by the wastewater and at what times of the year.
2. Effluent discharge from the drainfield will alter the direction of groundwater flow. As the effluent reaches the water table, a "groundwater mound" will develop at the water table below the drainfield. Groundwater will flow radially away from the center of the drainfield until it changes course due to the influence of a well, stream, change in geology, or the background hydraulic gradient. A preliminary analysis by Emmons & Olivier Resources indicates that a mound of more than 0.05 feet could develop above the water table. This could change conditions at the site enough so that effluent would flow toward Valley Creek.

and toward several offsite wells.

3. The setback distance of 600 feet between a drainfield and nearby wells, though established in state rules, is arbitrary and not protective of drinking water wells near the proposed system. A single safe setback distance cannot be determined for all wastewater systems and all geologic systems because the treatment capacity of the site soils will vary. The treatment capacity of soils is the result of:
  - a. Groundwater travel time from the drainfield to the receptor. Faster moving groundwater does not allow as much time for treatment.
  - b. The capacity of the soil to absorb contaminants. Finer soils have a greater capacity than coarse sandy soils.
  - c. The capacity of the soil to support biological activity and other reactions that breakdown contaminants in wastewater.

The proposed site was preferred over others because it has sandy soils that allow rapid groundwater movement. The benefit to the project proposer is that more wastewater can be quickly infiltrated through the drainfield, reducing the size and cost. However, the tradeoff is less subsurface treatment of the wastewater, placing nearby wells and households at greater risk. Also increasing the risk at this site is the large number of wells and households that could be affected. The 600 feet setback may be protective of a small wastewater system in a rural area with clayey soils and few wells, but it presents a much higher risk in this populated area with sandy soils. A laboratory and literature study should be required as part of an EIS to demonstrate that the proposed setback in these types of soils, this setting, and this density of wells is protective of human health and the environment.

4. Nitrate is the only chemical parameter that will be measured in the wastewater treatment effluent, which is not adequate to protect groundwater. While nitrate is a concern, there are many more contaminants of concern that can and will (at some concentration) be entering the groundwater in the area of the drainfield, including:
  - a. Pesticides, paints, cleaners, and other household and commercial waste
  - b. Petroleum products and other volatile organic compounds
  - c. Pharmaceuticals
  - d. Endocrine disruptors associated with detergents and other products.
  - e. Viruses

Nitrate is typically used as an indicator parameter because it is conservative (nonreactive), moves quickly through the aquifer, and is inexpensive to analyze. However, absence of nitrate does not indicate an absence of other contaminants. In fact, the system's reactor to remove nitrates will reduce the effectiveness of nitrate as an indicator compound. This does not imply that the reactor should not be part of the system, but rather that additional monitoring should be required to protect households from undetected contaminants.

5. The proposed system lacks a spill and leak response plan. A discharge may come from leakage in a force main or system failure at the treatment plant. Other facilities in Minnesota have had underground leaks that have gone undetected for long periods of time. A leak would be particularly harmful to the public waterbodies of Valley Creek and the Unnamed Tributary, as well as downstream at the St. Croix River. A permit should not be issued until a spill and leak response plan is filed with the MPCA.
6. The permit should prohibit trucked-in waste or other waste brought to the treatment plant facility.

7. Because there is no bypass or overflow designed into the system, any problem with the system could result in untreated wastewater being released to the drainfield and groundwater. The permit should state that in the event of a bypass or overflow, groundwater monitoring should be required. The monitoring should occur at the onsite monitoring wells and also at nearby residential wells. The sampling should be required monthly for a period of one year or longer if any sign of groundwater contamination is detected. Groundwater samples should be analyzed for:
  - Major anions and cations, including nitrate
  - Volatile organic compounds
  - Semi-volatile organic compounds
  - Arsenic, lead, and copper
  - Any other compounds suspected to be in the wastewater.

Thank you for your consideration.

Sincerely,



Stuart Grubb, PG  
Senior Hydrogeologist



**ECKBERG  
LAMMERS**  
ATTORNEYS AT LAW

[www.eckberglammers.com](http://www.eckberglammers.com)

Writer's Direct Dial:  
(651) 351-2134

Writer's E-mail:  
[KSandstrom@eckberglammers.com](mailto:KSandstrom@eckberglammers.com)

**Reply to Stillwater**

April 1, 2015

**Via Email (kevin.kain@state.mn.us) & U.S. Mail**

Kevin Kain  
EAW Project Manager  
Minnesota Pollution Control Agency  
520 Lafayette Rd N  
St. Paul, MN 55155-4194

Re: *Proposed Afton Wastewater Treatment Project*  
Our File No.: 01801-24102

Dear Mr. Kain:

Enclosed and served upon you please find the following:

1. Petition for Environmental Impact Statement on Afton Wastewater Treatment Project

Please contact me with any questions. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Kevin S. Sandstrom".

Kevin S. Sandstrom

KSS/

Enclosures

C: Susan Schuler, LSCB Administrator (via email, w/ encl.)  
Cindie Reiter, SMP Clerk (via email, w/ encl.)

Stillwater Office  
1609 Northwestern Avenue  
Stillwater, MN 55082  
Phone 651-439-2878  
Fax 651-439-2923

Hudson Office  
430 Second Street  
Hudson, WI 54016  
Phone 715-386-3733  
Fax 715-386-6456

OFFICE OF ADMINISTRATIVE HEARINGS  
&  
MINNESOTA POLLUTION CONTROL AGENCY

---

City of Lake St. Croix Beach,  
City of St. Mary's Point,  
Petitioners,

v.

City of Afton  
Respondent.

PETITION FOR ENVIRONMENTAL  
IMPACT STATEMENT ON AFTON  
WASTEWATER TREATMENT  
PROJECT

Petitioners City of Lake St. Croix Beach and City of St. Mary's Point, by their attorneys, Eckberg, Lammers, Briggs, Wolff & Vierling, PLLP for their Petition, plead as follows:

**I. PARTIES**

1. City of Lake St. Croix Beach (LSCB) is a municipal corporation situated in Washington County, Minnesota, on the St. Croix River and to the north of the City of Afton.
2. City of St. Mary's Point (SMP) is a municipal corporation situated in Washington County, Minnesota, on the St. Croix River and to the north of the City of Afton.
3. Upon information and believe, Respondent City of Afton is a municipal corporation situated in Washington County, Minnesota and is an applicant for a State Disposal System (SDS) Permit #MN0070599 for a Wastewater Collection and Treatment System.

**II. FACTUAL ALLEGATIONS**

4. Afton has applied for a permit for a large cluster septic system to be located north of downtown Afton, and on a parcel of land within Afton city limits but directly adjacent to and bordering upon LSCB and SMP, denoted by MPCA #MN0070599 (hereinafter "Project").
5. Afton's proposed Project is in close proximity to Valley Creek and a wetland and an unnamed tributary of Valley Creek.

6. Afton's proposed Project will require its sewage lines to cross Valley Creek and the unnamed tributary, which is a protected trout stream which flows through SMP and into the St. Croix River.

7. Afton's proposed Project is in close vicinity to residential neighborhoods not being served by the system, and being served by groundwater wells. Specifically, the system is just over 300 feet from multiple drinking water wells of surrounding residences.

8. Afton's proposed Project is in close vicinity to known sensitive or rare plant and animal species, such as brook, rainbow, and brown trout. Valley Creek is one of only a few streams in the entire Twin Cities metropolitan area that has a naturally reproducing population of brook trout, the only trout species native to Minnesota. Rare species such as Blanding's turtles, Henslow's sparrows, and slimy sculpin reside and reproduce in this area. According to the Valley Creek Watershed Management Plan, Valley Creek also supports a population of native American brook lamprey, which has been listed as a "Special Concern species" according to the DNR. (See MN DNR Report- Population Status and Habitat Requirements of the American Brook Lamprey in Southeastern Minnesota—July 1, 1996.)

9. According to Afton's zoning maps, Afton's Project site for the SDS is located within the Shoreland Management Overlay Zoning District, in other words within a water-related land use management district.

10. The SDS Project is proposed to be built in an area that is known to be susceptible to karst geological formations in the bedrock, in other words there is the potential for caves, sinkholes, solution channels and other karst features to develop in the area of the Project. These features could jeopardize operation of the facility and cause significant environmental damage. Concentration of subsurface discharge in the area could increase development of karst features.

11. Pursuant to Minn. R. 4410.4400, subp. 12(C), construction of a hazardous waste processing facility within a water-related land use management district, or in an area characterized by soluble bedrock, is subject to a mandatory completion of an Environmental Impact Statement ("EIS"). Hazardous waste generally includes waste that is ignitable, corrosive, reactive, or toxic. Toxic waste are harmful to human health or fatal when ingested or absorbed. Although sewage is not typically labeled as "hazardous waste," raw sewage does have the potential for serious and harmful adverse health effects to humans, particularly when ingested. The provisions of Minn. R. 4410.4400 strongly suggest that an EIS should be performed in this case.

12. To date, Afton has completed only the more cursory EAW, and has not completed an EIS.

13. An EIS is mandatory pursuant to the rules, or if not mandatory, should be ordered in the discretion of the MPCA and the Courts due to the potential for serious environmental impacts of this system.

14. The EAW provided by Afton does not adequately address alternatives to the project such as alternate locations. Only one other site was considered, which was apparently not a reasonable alternative due to underlying soils. Many other potentially feasible sites within the City of Afton were not considered. The existing site was selected primarily because there was a willing seller, which does not constitute adequate research for the project from an environmental perspective.

15. LSCB and SMP have voiced their ongoing concerns and objections to the Project.

16. Residents of LSCB and SMP have voiced their objections to the Project.

17. The Project violates and offends principles of "Environmental Justice" and therefore raises significant environmental concerns. Environmental Justice, as promoted by the MPCA, is as follows:

The U.S. EPA defines Environmental Justice as the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations and policies. The MPCA agrees with the basic principles of this statement and believes that implementing these principles is part of good governance.

Fair treatment means that no group of people, including a racial, ethnic or a socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

([www.pca.state.mn.us/index.php/about-mpca/assistance/mpca-and-environmental-justice.html](http://www.pca.state.mn.us/index.php/about-mpca/assistance/mpca-and-environmental-justice.html))

18. The proposed Project places a disproportionate share of the negative environmental consequences resulting from wastewater disposal onto well owners in LSCB and SMP. Wastewater from the Afton village was formerly disposed of in individual septic treatment systems located near where the wastewater was generated. The proposed system benefits the landowners in the Afton village by moving the wastewater away from their property. The negative environmental consequences are exclusively (and therefore disproportionately) borne by the people who drink from wells downgradient from the proposed drainfield. The affected people are not even eligible to participate in the benefits of the system by virtue of their owning property on the wrong side of a municipal boundary established decades ago and outside the service area of the project. This constitutes an Environmental Injustice.

19. LSCB has retained environmental consultants Emmons & Olivier Resources, Inc. ("EOR") to analyze Afton's Project.

20. EOR has raised numerous concerns with the Project and Afton's deficient submissions in relation thereto. EOR's findings are outlined in a report attached hereto as Exhibit A.

COUNT I  
Request for Environmental Impact Statement

21. Petitioners restate, reallege, and incorporate all preceding paragraphs by reference.
22. Petitioners assert that Afton's EAW is incomplete and deficient for the reasons set forth in this Petition and the attached report issued by EOR.
23. Petitioners assert that the Project mandates or at least strongly suggests an EIS is necessary pursuant to Minn. R. 4410.4400, subp. 12 due to its location and the nature of the project.
24. Petitioners assert that the Project mandates an EIS pursuant to Minn. R. 4410.4400, subp. 19, because the project includes the alteration of an existing marina facility.
25. Petitioners assert that the Project mandates an EIS pursuant to Minn. R. 4410.4400, subp. 21 as a mixed residential and commercial project
26. Petitioners assert that the Project has the potential for significant environmental effects as set forth in Minn. R. 4410.2000, and should be subject to a discretionary ruling that Afton be required to complete an EIS.
27. Petitioners request that Afton's permit be denied in its entirety based upon the incomplete EAW, or alternatively that Afton be required to complete a full environmental investigation and Environmental Impact Statement (EIS).
28. Petitioners request that such decision on the need for an EIS is rendered by the MPCA Citizens' Board.

ECKBERG, LAMMERS, BRIGGS, WOLFF &  
VIERLING, PLLP

Dated: 4/1/13

By:

Kevin S. Sandstrom

Kevin S. Sandstrom (#0348958)

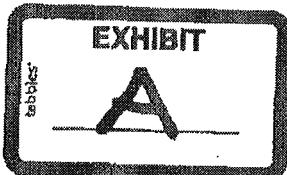
Attorneys for Petitioners

1809 Northwestern Avenue

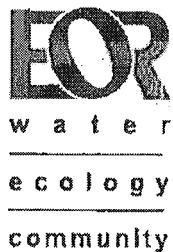
Stillwater, MN 55082

Phone: (651) 439-2878

Fax: (651) 439-2923



April 1, 2015



Kevin Kain  
EAW Project Manager  
Minnesota Pollution Control Agency  
520 Lafayette Rd N  
St. Paul, MN 55155-4194

Subject: Comments on the Environmental Assessment Worksheet  
Proposed City of Afton Wastewater Collection and Treatment Project

Dear Mr. Kain:

The following comments demonstrate that there are significant environmental concerns with the proposed project and that an Environmental Impact Statement is necessary before the project can be permitted and constructed.

Emmons & Olivier Resources, Inc. (EOR) has been retained by the City of Lake St. Croix Beach to review the EAW. EOR is a multi-disciplinary environmental consulting firm that specializes in water resource issues. I am a Professional Geologist with over 25 years of experience as an environmental consultant. I have worked extensively throughout Washington County on issues related to groundwater and public facility siting.

Comments

1. The groundwater flow direction at the site is not adequately understood and characterized. The only data that are publicly available are groundwater elevation data collected in October and November 2013. These data indicate groundwater flow to the northeast, away from nearby Valley Creek and counter to the southerly flow of the St. Croix River. This observation is very unusual for Washington County and should not be accepted as correct without further documentation or investigation. Groundwater, especially groundwater in the uppermost (water table) aquifer, typically flows towards nearby streams in a generally downstream direction. Groundwater flow direction can vary substantially between seasons of the year. A full year of monthly water level measurements are required before groundwater flow direction can be accurately determined. If changes in groundwater flow direction are noted throughout the year, the monitoring period should be extended. Given the nearby residential wells and other sensitive natural resources in the area, it is critical to understand which wells and resources will be most adversely affected by the wastewater and at what times of the year.
2. The EAW states that the groundwater flow direction "is generally consistent with regional information presented by Swanson & Meyer (Minnesota Geological Survey, 1990)." This statement is misleading and should be disregarded by anyone reviewing the EAW. The referenced map (Plate 5 of the Washington County Geologic Atlas) actually shows groundwater flow to the east, not the northeast, in the area of the site. However, the map is irrelevant because it is outdated and was never intended for use on a small scale. The map was drawn on a county scale using only one well in the area of the site, and the well is

EOR is an Equal Opportunity Affirmative Action Employer

Emmons & Olivier Resources, Inc. 651 Hale Ave N Oakdale, MN 55128 T/ 651.770.8448 F/ 651.770.2552 [www.eorinc.com](http://www.eorinc.com)

located about one mile to the east. When the map was published in 1990, very limited water table data were available. Much more data and better maps are available now. Minnesota Department of Natural Resources is currently completing an update of the Washington County Geologic Atlas that is expected to be released in the next few months. Any conclusions about regional groundwater flow should be reconsidered after that information is available.

3. Effluent discharge from the drainfield will alter the direction of groundwater flow. As the effluent reaches the water table, a "groundwater mound" will develop at the water table below the drainfield. Groundwater will flow radially away from the center of the drainfield until it changes course due to the influence of a well, stream, change in geology, or the background hydraulic gradient. A preliminary analysis by Emmons & Olivier Resources indicates that a mound of more than 0.05 feet could develop above the water table. This could change conditions at the site enough so that effluent would flow toward Valley Creek and toward wells not shown as being downgradient in the EAW.
4. The setback distance of 600 feet between a drainfield and nearby wells, though established in state rules, is arbitrary and not protective of drinking water wells near the proposed system. A single safe setback distance cannot be determined for all wastewater systems and all geologic systems because the treatment capacity of the site soils will vary. The treatment capacity of soils is the result of:
  - a. Groundwater travel time from the drainfield to the receptor. Faster moving groundwater does not allow as much time for treatment.
  - b. The capacity of the soil to absorb contaminants. Finer soils have a greater capacity than coarse sandy soils.
  - c. The capacity of the soil to support biological activity and other reactions that breakdown contaminants in wastewater.

The proposed site was preferred over others because it has sandy soils that allow rapid groundwater movement. The benefit to the project proposer is that more wastewater can be quickly infiltrated through the drainfield, reducing the size and cost. However, the tradeoff is less subsurface treatment of the wastewater, placing nearby wells and households at greater risk. Also increasing the risk at this site is the large number of wells and households that could be affected. The 600 feet setback may be protective of a small wastewater system in a rural area with clayey soils and few wells, but it presents a much higher risk in this populated area with sandy soils. A laboratory and literature study should be required as part of an EIS to demonstrate that the proposed setback in these types of soils, this setting, and this density of wells is protective of human health and the environment.

5. Nitrate is the only chemical parameter that will be measured in the wastewater treatment effluent, which is not adequate to protect groundwater. While nitrate is a concern, there are many more contaminants of concern that can and will (at some concentration) be entering the groundwater in the area of the drainfield, including:
  - a. Pesticides, paints, cleaners, and other household and commercial waste
  - b. Petroleum products and other volatile organic compounds
  - c. Pharmaceuticals
  - d. Endocrine disruptors associated with detergents and other products.
  - e. Viruses

Nitrate is typically used as an indicator parameter because it is conservative (nonreactive), moves quickly through the aquifer, and is inexpensive to analyze. However, absence of nitrate does not indicate an absence of other contaminants. In fact, the system's nitrate

removal will reduce the effectiveness of nitrate as an indicator compound. This does not imply that nitrate removal should not be part of the system, but rather that additional monitoring should be required to protect households from undetected contaminants.

6. Figure 6 of the EAW shows that one of the reserve drainfields lies within the 600 foot setback distance from a sensitive well, which is not acceptable.
7. The proposed system lacks a spill and leak response plan. The EAW does not address any method of containing an untreated sewage discharge. The proposer neglected to include measures to prevent spilled wastewater from leaving the site. A discharge may come from leakage in a force main or system failure at the treatment plant. Other facilities in Minnesota have had underground leaks that have gone undetected for long periods of time. A leak would be particularly harmful to the public waterbodies of Valley Creek and the Unnamed Tributary, as well as downstream at the St. Croix River.
8. The lack of a surface runoff plan is a significant environmental concern for the site. Details, quantification, or rationale of the post-construction runoff characteristics of the site is not publicly available. It is therefore difficult to evaluate the potential risk and impacts to surface runoff without further quantification, but construction of several large facilities would be expected to result in increased runoff both during and after construction. While the EAW states a "surface water runoff plan" will be provided, there is no further mention of stormwater runoff beyond: "all stormwater would follow existing site drainage" (Page 21). This is a very vague statement and creates questions about the proposed path of surface water runoff with the large amount of site grading the project will require.
9. There is a lack of detail regarding the proposed crossings of the two designated trout streams, Valley Creek and the Unnamed Tributary. Details on boring pit locations and the boring pipe installation are not included in the EAW. With the St Croix Trail bridge crossing as one physical obstacle and extensive floodplain adjacent to the road on the north side of the road, there is concern about the installation. The bore pits and the corresponding work may occur in the floodplain of the stream, thus creating a potential for contamination as well as additional damage to the floodplain and the stream bed. The specific details regarding pipe boring and installation near waterways should be clearly shown and addressed in an EIS.
10. The proposed design will impact herpetiles during construction. Based on data from the National Heritage Information System (NHIS), rare herpetiles may migrate to the site. In particular, the sandy soils are attractive to Blanding's turtles. The proposed design lacks adequate restrictions to prevent herpetiles from migrating onto the site. The plan lacks standard measures to capture and remove herpetiles before construction begins, including cover boards, drift fences, and pitfall traps and a schedule of daily monitoring of traps to prevent accidental animal mortality.
11. The design lacks any plan to survey for endangered birds. Henslow's sparrows, an endangered species, breed in nearby Afton State Park. The grassland habitat of the site may be attractive to these birds during the breeding season. The presence of any state or federal threatened and endangered species within the proposed site will impact construction and operations.
12. Any accidental, untreated discharge from the LSTS to Valley Creek would affect the slimy sculpin (*Cottus cognatus*). This is a coldwater dependent benthic fish that has been

documented and studied in Valley Creek. The distribution of slimy sculpins in Minnesota is typically known from two regions including the Driftless area and the Great Lakes region. The population in Valley Creek appears to be disjunct. This species requires large substrates for the vast majority of their life cycle, including spawning. The release of untreated sewage would likely decrease the oxygen concentration in the creek, thereby causing direct mortality to any fish downstream of the release site. In addition, indirect mortality could be caused by sedimentation within the creek from significant construction site runoff and erosion.

13. The siting process used for the facility was not adequate, which has contributed to the significant environmental concerns listed above. A primary siting criteria was the willingness of landowners to sell their property. This resulted in only two potential sites being given serious consideration. Other sites with suitable soils and less potential risk to nearby well owners likely exist close to the service area and could be obtained through a public condemnation process. An EIS should be required to provide further justification for why the selected site is the best site that is most protective of human health and the environment.

Thank you for your consideration.

Sincerely,



Stuart Grubb, PG  
Senior Hydrogeologist

**Mathisen, Corey (MPCA)**

---

**From:** Jim Golden <jimg37@gmail.com>  
**Sent:** Wednesday, August 31, 2016 7:56 AM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** Dead line for comments

Good morning Corey  
In regards to comments for the 106 Afton sewage treatment plant.  
Is the deadline Thursday September 1st midnight ?

Sent from my iPhone

## **Mathisen, Corey (MPCA)**

---

**From:** Jan Dalsin <jandalsin@gmail.com>  
**Sent:** Wednesday, August 31, 2016 4:30 PM  
**To:** Mathisen, Corey (MPCA)  
**Cc:** Jan Dalsin  
**Subject:** Re: MPCA Section 106 Findings-Afton Infrastructure Project

Dear Mr. Mathisen:

Thank you for continuing to keep me informed of the progress in the environmental assessment of the Rattlesnake Effigy Mound in Afton, a Dakota Sacred Site. Having reviewed the comments which were submitted to your office by December 31st, 2015, and having studied the available history and cultural materials, I have yet to see that a formal Environmental Impact Study(EIS) has been done on the project. And such study was requested to be done by the people who hold this Rattlesnake Effigy Mound to be an important, sacred site. I find that to be a compelling reason for rejecting MPCA's "final determination." From my reading of SHPO's response, they, too, call into question the adequacy of the assessments done so far.

I recognize that I am not "a consulting party," and I also know that every voice "counts" in these matters, where justice and right relationships are the building blocks for good decision-making.

Thank you for your continuing openness to hearing all of our voices.

Please do keep me in the flow of information. I look forward to hearing from you.

Sincerely,

Lois Dalsin  
1440 Randolph Avenue, #102  
Saint Paul, MN 55105

On Aug 4, 2016, at 3:31 PM, Mathisen, Corey (MPCA) <[corey.mathisen@state.mn.us](mailto:corey.mathisen@state.mn.us)> wrote:

The Minnesota Pollution Control Agency (MPCA) is providing our Historic Properties – Section 106 Review Findings on the City of Afton's proposed infrastructure improvement projects to you because you expressed interest and/or provided comments in December 2015. Since that time, the MPCA continued consultation on the project with the Minnesota State Historic Preservation Office, the United States Army Corps of Engineers, and several Native American Tribes who were also interested in the project.

After giving careful consideration to all available information, the MPCA has made a final determination that the project will result in no adverse effects to historic properties. The consultation process resulted in several measures being taken to avoid or minimize any impacts to historic properties as construction of the project occurs. Documentation supporting the MPCA's final determination (including responses to the comments received in December) can be found

at <https://www.pca.state.mn.us/water/findings>. Paper copies of these documents can be provided as requested. This information has also been shared with all consulting parties for this project.

The MPCA appreciates your involvement in historic preservation and protection of public health and the environment.

**Corey R. Mathisen, P.E.**  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-4194  
Phone Number: 651-757-2554  
[Corey.Mathisen@state.mn.us](mailto:Corey.Mathisen@state.mn.us)

## Mathisen, Corey (MPCA)

---

**From:** Tamara St John <tamara\_stjohn@yahoo.com>  
**Sent:** Thursday, September 01, 2016 3:22 PM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** Fw: Fwd: Rattle Snake Mound

**From:** Erich Longie <thpo@gondtc.com>  
**Date:** September 1, 2016 at 12:28:18 PM MDT  
**To:** "Tamara St.John (TamaraS@SWO-NSN.GOV)" <TamaraS@SWO-NSN.GOV>  
**Subject: Rattle Snake Mound**

Ms St. John,

Our ancestors roamed Minnesota thousands of years before they were forced to migrate to Spirit Lake. We still view those lands as our homeland. We would like to see the graves of our ancestors there, undisturbed. In regards to Rattle Snake Mound, we have the same concerns as the other tribes have, which is, construction of any kind will have an adverse effect on what is obviously a cultural site. Please add my concerns about Rattle Snake Mound to the lists of concerns from other tribes.

Pidamaya!

Erich Longie, Ed.D.  
Spirit Lake THPO  
701.230.7029

*"The old people came literally to love the soil and they sat or reclined on the ground with a feeling of being close to a mothering power. Their tipis were built upon the earth and their altars were made of earth. The birds that flew into the air came to rest upon the earth and it was the final abiding place of all things that lived and grew."*

*Luther Standing Bear*

## Mathisen, Corey (MPCA)

---

**From:** Tamara St John <[tamara\\_stjohn@yahoo.com](mailto:tamara_stjohn@yahoo.com)>  
**Sent:** Thursday, September 01, 2016 3:21 PM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** Fw: afton

**From:** St. John Bonnie <[bonniestjohn1968@gmail.com](mailto:bonniestjohn1968@gmail.com)>

**To:** Tamara St John <[tamara\\_stjohn@yahoo.com](mailto:tamara_stjohn@yahoo.com)>

**Sent:** Thursday, September 1, 2016 8:35 AM

**Subject:** Re: afton

The Crow Creek Sioux Tribe is opposed of no effect made by the MPCA at the Rattlesnake mound as it is a part of our cultural heritage of the Oceti Sakowin.

Thank You

Sincerely,  
Bonnie McGhee THPO Director  
Crow Creek Sioux Tribe

On Wed, Aug 31, 2016 at 11:28 PM, Tamara St John <[tamara\\_stjohn@yahoo.com](mailto:tamara_stjohn@yahoo.com)> wrote:

Even just an email stating the crow creek Sioux Tribe oppose the determination of no effect made by the MPCA at the Rattlesnake mound as it is a part of your cultural heritage and oral history of the oceti sakowin

Sent from my iPhone

On Aug 31, 2016, at 2:20 PM, St. John Bonnie <[bonniestjohn1968@gmail.com](mailto:bonniestjohn1968@gmail.com)> wrote:

send mine with yours. What do you need from me?

On Wed, Aug 31, 2016 at 3:01 PM, Tamara St John <[tamara\\_stjohn@yahoo.com](mailto:tamara_stjohn@yahoo.com)> wrote:

Here is my letter and if you just say the basics and send it to me I'll be sending w mine!!

We just need to get something in to halt it

Sent from my iPhone

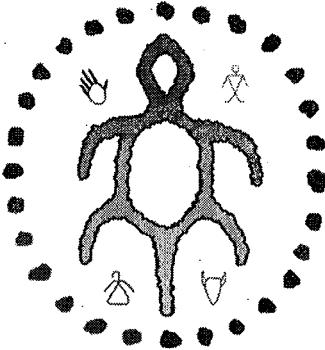
Begin forwarded message:

**From:** Tamara St.John <[TamaraS@SWO-NSN.GOV](mailto:TamaraS@SWO-NSN.GOV)>

**Date:** August 31, 2016 at 8:59:00 AM CDT

**To:** "Tamara St. John" <[tamara\\_stjohn@yahoo.com](mailto:tamara_stjohn@yahoo.com)>

**Subject:** aften



# Tribal Historic Preservation Office

P.O. Box 509  
Agency Village, SD 57262  
(605) 698-3584

August 30, 2016

Corey Mathisen  
Senior Engineer  
Minnesota Pollution Control Agency

Re: Afton Wastewater Collection and Treatment System  
MnHPO #: 2015-1403

Mr. Mathisen:

We are writing in response the MPCA section 106 findings on the City of Afton Old Village Improvements Project dated August 2, 2016 as per our responsibilities in the Section 106 process according to the National Historic Preservation Act of 1966 (as amended). As per the 36 CFR 800 regulations and specifically 36 CFR 800.5 (c)(1) we are now providing written documentation of objection to the MPCA's finding of no adverse effects.

The Sisseton Wahpeton Oyate and the Tribal Historic Preservation Office, on behalf of our cultural preservation board and numerous other concerned tribes and tribal members of the Oceti Sakowin, has made clear and continued effort to address the issues surrounding this project since first notification and particularly since February 19, 2016. At that time, we conveyed critical concerns about the lack of defined area of potential effect (APE) and stated that certainly for us as a Dakota tribe and a part of the Oceti Sakowin, we define the area of potential effect to be the entire area of the mound including the exterior areas of the mound site as a part of the burial site with the potential for disturbance of human remains. I would like to refer to the attached letter by Nigel Parry to Tamara StJohn and the SWO THPO, Sept 1, 2016. This letter relates to the artifacts and human remains at the site and also acknowledges the Minnesota cemetery law. The letter also speaks to our assertion of the mound complex with potential for burials in between the mound areas to be significant.

We would like to reiterate that the entire area as a whole is a part of the cultural teachings including oral history identify more than just the mound itself to be of importance to the Dakota and Oceti Sakowin. I am attaching an email from Crow Creek Sioux Tribe THPO stating their opposition to the determination as well. I will also be requesting that the other tribes who have brought us concerns about the project, attach their comments with ours as a part of the Oceti Sakowin and aboriginal tribes.

The SWO THPO continues to concur with the MnSHPO in the determination of Rattlesnake mound (21WA10) as being eligible for listing in the National Register of Historic Places (NRHP) under criteria A, C, and D and with the reiteration of recommendation that the evaluation of the site be fully documented according to the Secretary of the Interior's standards for evaluation as well as the requirement for archaeological survey and inventory. SWO THPO also recommends that the field site N5.5 E12 now (21WA0166) be evaluated for NRHP eligibility. It is our determination that both sites as National Register eligible properties, should be afforded protection as such under the National Historic Preservation Act.

The Sisseton Wahpeton Oyate and the SWO THPO do not agree with your determination of 'No Adverse Effect'.

Sincerely,

Dianne Desrosiers  
SWO THPO

## TRIBAL HISTORIC PRESERVATION OFFICE

P.O. Box 128 • LAME DEER, MONTANA 59043

(406) 477-4839/4838 • FAX (406) 477-6388

9/1/2016

Corey Mathisen  
Senior Engineer  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN. 55155-4194

RE: City of Afton Wastewater & Treatment Facility  
Afton, Washington County  
MnHPO Number: 2015-1403

Dear Mr. Mathisen,

We are writing in response to the '*no adverse effect*' finding, as determined by the MPCA, pursuant to Section 106 of the National Historic Preservation Act. Upon review of the current proposal to construct a Wastewater and Treatment Facility within the APE of the Rattlesnake Effigy Mound; we have concluded that this will have a direct impact on tribal cultural resources, as well as an adverse effect on traditional knowledge and cultural resources that my tribe, as well as other area tribes hold in high regard. As per the 36 CFR 800 regulations and specifically 36 CFR 800.5 (c)(1), our objection to the project is outlined as follows:

Minnesota was once home to the Cheyenne people, and we still hold our ancestral lands in high regard. The Cheyenne ancestral land base extends from Minnesota to the Rocky Mountains, and we have maintained a continued presence there by ensuring that our cultural identity is preserved by protecting the integrity of sites that may have historically been affiliated with our tribe. The rattlesnake effigy mound was determined by the Minnesota State Historical Preservation Office and consulting tribes to be a site that is eligible to the National Register of Historic Places under criterion A, C, and D. Therefore, additional construction of pipelines within the previously determined buffer zone threatens the existing archaeological integrity of the Rattlesnake Effigy mound, in that further construction in this area may result in permanent loss of cultural resources for future generations.

Finally, our concerns echo those of other tribal nations, and additional government-to-government consultation is needed so tribes can provide valuable input that can mitigate potential losses for both sides in the future. It is with my highest recommendation that a mitigation plan be created for avoidance of directional drilling under and within the buffer zone of the Rattlesnake effigy mound. The possibility of further desecration to this sacred area alarms

tribes, in that there is an increased potential for loss of significant archaeological and cultural resources that contribute to our traditional cultural and ecological knowledge that has maintained our way of life. Thank you for your time and effort in considering our comments.

Sincerely,

*Teanna Limpy*

Teanna Limpy, THPO

September 1, 2016

Tamara St. John  
Sisseton Wahpeton Oyate  
Tribal Historic Preservation Office  
PO Box 907  
Sisseton SD 57262

Dear Ms. St. John,

I have been working with Jim and Kathy Golden on the Protect Valley Creek campaign as a researcher and writer since July 2015. My background is in the human rights and journalism sectors. I was awarded the ADC's Voices of Peace award in 2003 and my writing was featured in TIME magazine's end-millennium feature, "Visions of the 21st Century".

According to the preponderance of available literature by historians who have studied the Dakota people and Native American history, mounds were almost exclusively used for burial purposes, serving a secondary ceremonial function after construction. There should be no confusion in the case of the Afton Wastewater Treatment Facility project that we are dealing with construction on a Native American burial ground.

Minnesota's Private Cemeteries law (307.08) protects all human burials equally regardless of ethnic origin or religious and cultural background, on both public and private lands. It is a felony to remove, destroy, or mutilate human remains and burial grounds.

In an August 4, 2016 letter, the Minnesota Pollution Control Agency (MPCA) stated:

"After giving careful consideration to all available information, the MPCA has made a final determination that the project will result in no adverse effects to historic properties."

Frankly, this is impossible. It is common in the case of mound clusters such as the Rattlesnake Mound in Afton (and its formerly 8 satellite mounds) that human remains are found in-between mounds as well as inside mounds. As the proposed reservoir is located adjacent to the Rattlesnake Mound's head (pictured on next page), it is hard to understand how the City of Afton imagines that the site will not impact burial grounds.



**Figure 10:** Project area with GPS coordinates (yellow dots and lines) and approximate location of ponds (yellow dots mapped from survey points in the field). Base map is modern air photo with Winchell map overlain.

It's not just about "bones". Michael Scott, Vice Chairman of the Mendota Mdewakanton Dakota Community wrote a letter to Mendota Heights City Council on October 29, 2003, in which he noted:

"What was around these bones? Where is the flesh, hair, eyelashes, hearts, intestines? Moving the bones doesn't change the significance of the land. This is a way to make yourself go to sleep at night after doing this, without any guilt. It is impossible to get the remains out of the dirt.... My ancestors are in the whole hill, in the dirt, you can not remove them. It's impossible to remove them!"

Visible human remains have already been found in the Rattlesnake Mound, as documented in a 1956 *Stillwater Gazette* article, "Indian Grave" preserved in the Afton Historical Museum.

Then property owner D.J. Peabody was quoted as saying:

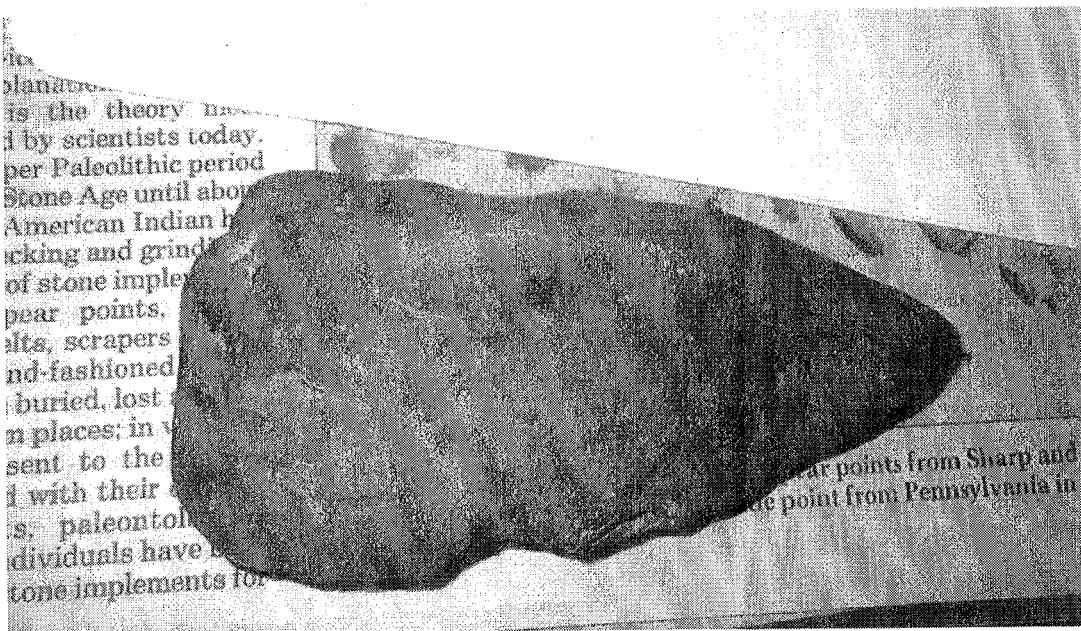
"At least one tomahawk and a number of arrowheads have been found in the Mound... A number of years ago, several workmen uncovered two skulls from the body of the fish."

The MPCA chose to discount this newspaper report as "hearsay", claiming the article contains "other significant errors". However, even a cursory read of the article undermines this claim, quite simply because there is scant other factual information in the article beyond Peabody's father-in-law's name and length of residence in Afton, and Peabody's age and occupation. Is the MPCA challenging these facts? These are literally the only other facts in the article, beyond the correct dimensions of the Rattlesnake Mound.

The MPCA has no basis for this claim, and is transparently sidestepping reported eyewitness testimony to avoid an uncomfortable truth.

Rich Myhers, the current Afton resident whose backyard is home to the Rattlesnake Mound head, reported to me in a March 9, 2016 email that:

"The Rattlesnake Effigy is in our backyard. East of that the City of Afton has acquired property through eminent [sic] domain for a holding pond. Approximately 10 years ago I found a axe-head there [pictured below] and it was surmised as that by Ken Marten. It now is on display at the Afton Historical Museum."



**Figure 26: Stone recovered from the area of 21WA10. Currently in the Afton Historical Museum.**

In a February 15, 2016 phone interview conducted by Jim Golden with former Peabody neighbor John Kershbaum, Kershbaum spoke of how, in 1980-81 in the period immediately after Peabody's death, landfill was added to the area, covering up much of the head of the Rattlesnake Mound.

Locals remember between 8-10 feet of dirt being moved in to level the yard where the Mound is located. The archeological survey commissioned by Afton dug test holes only to the depth of 1 yard, which is clearly an inadequate survey given the amount of modern landfill on the 1000-year-old site. The archeologist who conducted the survey for Afton seemed blissfully unaware of this when describing the directional drilling for new sewage lines under the Rattlesnake Mound:

"Because the drilling will reach depths of 8-12 feet, the disturbance will be well below any potential cultural layers." (p 17, "A Phase II Archaeological Assessment and Evaluation of 21WA10", Afton, Washington County, Minnesota)

This depth, of course, corresponds to the amount of landfill added in the early 1980s.

In an August 30, 2016 letter to Corey Mathisen of the MPCA, Afton resident David Eastwood wrote:

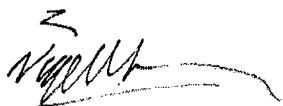
"I had a brother that died back in 1973[.] My other brother just told me the other day he had found all kinds of Indian artifacts on the property the City of Afton bought from our family, so where the drain field might be is where the Indians use to have there teepees. So be on the lookout for bones because what could have been mounds were plowed under to plant crops by farmers way back when. TRUE STORY."

Artifacts such as the these, and the axe-head found by Rich Myhers, currently on display in the Afton Historical Museum, are unambiguous pointers to burial grounds. In the same way a European family may bury their grandfather with his favorite gold watch, Native Americans buried their dead with these artifacts. Artifacts are signs of burial grounds.

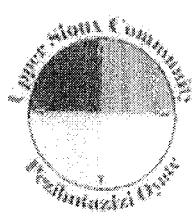
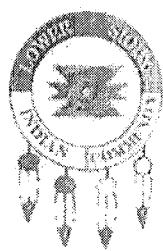
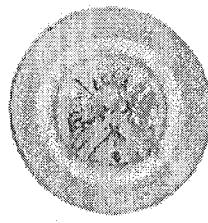
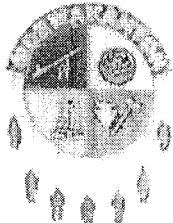
John Kershbaum also recalls that during the construction of Afton's post office in the 1960s, one of the Rattlesnake satellite mounds was dug up, and multiple human bones and skulls were found. This was common knowledge in Afton at the time.

It should be obvious to all that there is no possible way the project can proceed without impacting the area burial ground. The City of Afton needs to find another location for this pond or be in violation of the Minnesota's Private Cemeteries law (307.08).

Sincerely yours,



Nigel Parry



September 1, 2016

Corey Mathisen  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, MN 55155-1194  
(p) 651-757-2534  
[corey.mathisen@state.mn.us](mailto:corey.mathisen@state.mn.us)

RE: Notification of MPCA Findings-Section 106 Review-Afton project-Mni Sota Dakota Nations Response

Dear Mr. Mathisen,

Thank you for initiating consultation with the four Mni Sota Dakota Nations (Prairie Island Indian Community, Shakopee Mdewakanton Dakota Community, Lower Sioux Indian Community, and the Upper Sioux Indian Community) Tribal Historic Preservation Offices (the "THPO"). We appreciate the opportunity to provide comment on your proposed undertaking. Unfortunately, we have had vacancies in some of our THPO staff and only now are able to forward a response. We would like to provide additional comments as soon as possible.

In accordance with 36 CFR 800.5(c)(2)(i) the four Mni Sota Dakota Nations disagree with the Minnesota Pollution Control Agency (the "MPCA") which was the Lead Federal Agency for completion of the Section 106 Findings (the "Findings") through a programming agreement with the U.S. Environmental Protection Agency regarding Rattlesnake Mound Effigy Group, Site 21WA10.

It is heartening to have affirmation in the Findings and the Phase II Archaeological Assessment and Evaluation of the significance and importance of the Rattlesnake Mound Effigy Group. Also, it is significant for the various stakeholders and consultants to acknowledge and appreciate that this site has been negatively impacted previously and such impacts should be addressed. However, to say that the wastewater project will actually help the Rattlesnake Mound Effigy Group does not make sense.

With the site's significance, rehabilitation and mitigation should be done in the first place even though there have been impacts from previous construction. Even permitting directional drilling under the Rattlesnake Mound Effigy Group does not appear to protect or respect the site and its significance. Regarding undisturbed and disturbed burial sites exterior to the Rattlesnake Mound Effigy, we are not confident that

Corey Mathisen  
Minnesota Pollution Control Agency  
September 1, 2016  
Page 2

those have been completely identified to date. No one can assure that the previously impacted areas do not have human remains that may surface with new earthwork. These are just some of the concerns that we wish to have addressed prior to any construction.

Further, at a minimum our THPO Officer(s) or their designee(s) should be present if construction moves forward in case human remains are discovered and other cultural patrimony are identified.

We appreciate how the law looks at such matters. However, from cultural and spiritual perspectives any disturbing of the Rattlesnake Mound and surrounding area no matter the size of the buffer zone or that it has been disturbed before is extremely concerning requiring further attention. This area is a sacred site eligible for designation as a National Historic Place meeting at least three criteria for such a designation. Future disruption and disturbance would be a clear hindrance to protecting the historic properties of the site.

Therefore, we disagree with the Findings and demand additional dialogue and consideration as to the appropriate ways to protect the Rattlesnake Mound Effigy Group and its surrounding area including further consultation and participation in the process.

Please consider the four Minnesota Dakota Nations as consulting parties to the Afton City Project and continue to update our THPO staff on the project.

Lower Sioux Indian Community

By: Robert Larsen  
Robert Larsen, President

Prairie Island Indian Community

By: Shelley Buck  
Shelley Buck, President

Shakopee Mdewakanton Dakota Community

By: Charles Vig  
Charles Vig, Chairman

Upper Sioux Indian Community

By: Kevin Jensvold  
Kevin Jensvold, Chairman  
*Marion Blyawash*  
*ViceChairwoman*  
*for Kevin Jensvold*

# PROTECT VALLEY CREEK

A CAMPAIGN BY CITIZENS FOR VALLEY CREEK

Corey Mathisen  
Minnesota Pollution Control Agency  
Municipal Division  
520 Lafayette Road North, 4th Floor  
St. Paul, MN 55155

September 1, 2016

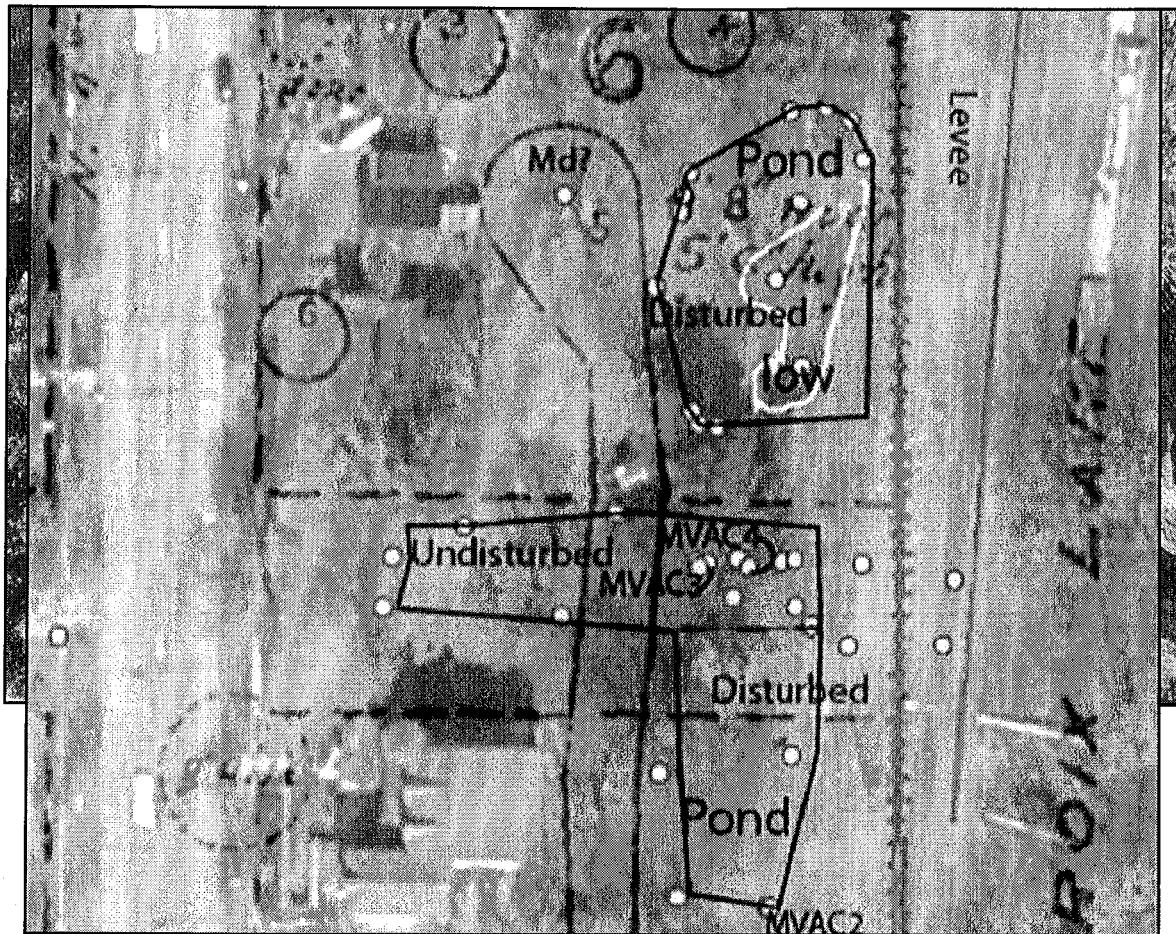
Dear Mr. Mathisen,

The proposed Afton Wastewater Treatment Facility project will have a significant and permanent impact on important Native American archaeological and cultural resources, particularly the 1000-year-old Rattlesnake Mound (or Rattlesnake Effigy).

The St. Croix River has been known for thousands of years by the Dakota people as Hogan Wanke Kin, or “the place where the fish lies,” a reference to a legend originating from—among other places—the well-known Wisconsin sandbar known as Catfish Bar (pictured right), across the river from the city of Afton, Minnesota. In June 1883, the archaeologist T. H. Lewis located and surveyed the Rattlesnake effigy Mound in Afton.



The association between the presence of the Dakota in this area of the St. Croix and the Catfish Bar legend, that provided their name for the river, is all the more significant given that the Afton Rattlesnake effigy and Catfish Bar lie across the river from each other and—a little further to the west on the Afton side—the tips of Native American pointing trees (pictured below) stretch out towards both landmarks.



The point must be made that the area of Dakota cultural significance around Afton is much larger than the mound site itself. It includes the Catfish Bar, the pointing trees, and other areas likely within and immediately adjacent to the proposed treatment facility.

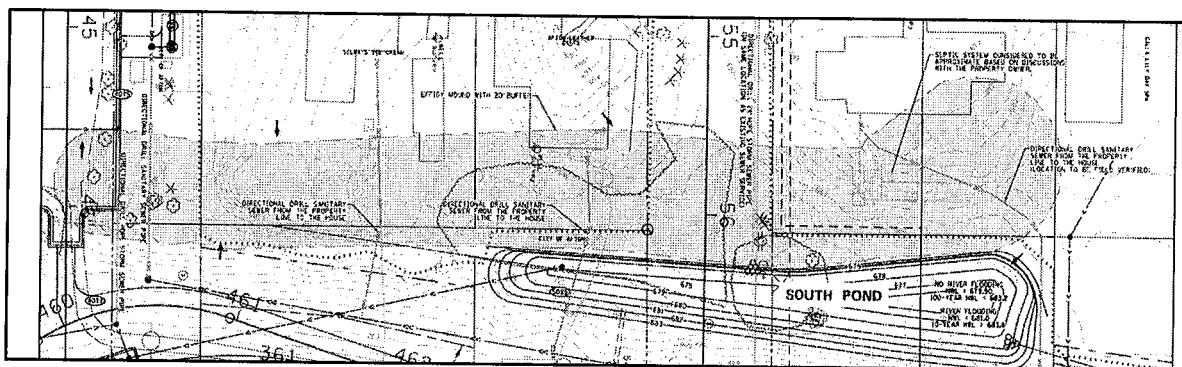
The presence of the known trio of natural and man-made spiritual markers in this small geographical area suggests this section of the river is as potentially significant to the Dakota people as Jerusalem is to Christians, Muslims, and Jews. Without a full archaeological survey of the Native American presence in the area, there is a danger that an important cultural history will be destroyed irrevocably.

The Afton Wastewater Treatment Facility project and the Rattlesnake Mound An aerial photo/map (on the following page), submitted with a May 2015 archaeological survey, outlines the location of proposed storm ponds (in yellow) in relation to the

Rattlesnake Mound. The sheer proximity reveals an amazing level of disregard for an obvious spatial violation of what should be a federally-protected sacred Mound.

The City of Afton's engineer's map (below) of the proposed sewer project shows a plan in which five new pipelines (in red) violate the physical boundaries of the Rattlesnake Mound, passing through the head and body outline. The plan is literally to pump sewage under the Mound.

Existing sewer lines (in orange) will be abandoned in place to decay, thus further polluting this key Native American cultural treasure and burial ground.



During the public consultation process, Native American tribes and other interested parties contributed comments to the Minnesota Pollution Control Agency (MPCA).

**Human Remains Have Already Been Found in the Rattlesnake Mound**  
While tentatively listed on the National Register of Historic Places, the 1000-year-old Rattlesnake Mound has yet to be fully surveyed and receive a final official designation. In a June 6, 2016 letter from the Minnesota Historic Preservation Office (MHPO) to the MPCA, the MHPO stated its belief that the Rattlesnake Mound is "eligible for listing in the National Register of Historic Places". Yet the sewage project continues on.

One of the key points made repeatedly in public comments during the consultation period was that human remains were excavated from the Mound in the 1950s, as documented in a 1956 *Stillwater Gazette* article, "Indian Grave". Then property owner D.J. Peabody was quoted as saying:

"At least one tomahawk and a number of arrowheads have been found in the Mound... A number of years ago, several workmen uncovered two skulls from the body of the fish."

The MPCA chose to whitewash this core issue, which should have resulted in the automatic protection of the Mound under U.S. Federal law, issuing a determination that:

The Office of the State Archaeologist has no definitive records in its files that document human bones being recovered within the limits of [the Rattlesnake Mound]. In a letter from the State Archaeologist to the MPCA on January 19, 2016, they were not aware of any human remains being documented from the site for the purposes of the Native American Graves Protection and Repatriation Act (NAGPRA).

A local 1956 newspaper account stated that workmen had found two skulls in the body of a "fish" (assumed to be the Rattlesnake) Mound. Because the skulls are no longer available for inspection in any known public or private collection, the account is being treated as hearsay, especially since there are other significant errors in the newspaper account.

The 1956 *Stillwater Gazette* article is an interview with D.J. Peabody, a former resident of the Afton property with the Mound in its backyard and his respect and physical care for the Mound. Peabody's neighbor until his death in 1980, John Kerschbaum confirmed in a February 15, 2016 phone interview that Peabody recognized the spiritual significance of the Mound, reportedly even chasing nosy kids away from it with a shotgun and promises of buckshot!

"I don't think he ever dug," Kerschbaum recalled, "That was kind of a no-no and taboo". As Peabody himself put it in the article, "I wouldn't want anyone digging up my grave!"

The MPCA's reference to "other significant errors" in the article is a blatant and baseless attempt to discount the unambiguous historical testimony in Peabody's own words—that human remains have already been found in the immediate vicinity of the Rattlesnake Mound.

When you read the text of the *Stillwater Gazette* article, found online at <http://protectvalleycreek.info/issues-of-concern/native-rights/indian-grave/> what is immediately striking is that there are no contentious assertions made.

Most of the article is concerned with Peabody's general opinions regarding respecting the sacred site. The dimensions of the Mound he gives in the article are correct. The only remaining factual information that could be said to be in "error" are minor and banal background details such as his father-in-law's name and length of residence in Afton, and Peabody's age and occupation. Those are literally the only facts left for the MPCA to dispute.

Reading the article, the MPCA's claim of error is a falsehood obvious to any reader. By discounting the article, the MPCA is able to avoid the immediate shutdown of the stormwater and sewage project according to the 1990 U.S. Federal Statute, The Native American Graves Protection and Repatriation Act, which can basically be summed up as —"if there are human remains, you can't dig".

In an August 4, 2016 letter, the MPCA stated:

After giving careful consideration to all available information, the MPCA has made a final determination that the project will result in no adverse effects to historic properties.

The Minnesota Historic Preservation Office bluntly disagreed with the MPCA's "no adverse effects" determination, in a July 22, 2016 letter to the MPCA during the consultation process.

Their opinion appears to have been entirely discounted by the MPCA.

The full findings of the MPCA's consultation process can be viewed online at: <https://www.pca.state.mn.us/water/findings>

### **Afton's Historical Lack of Concern for the Rattlesnake Mound**

The Rattlesnake Mound has been repeatedly vandalized over the last 100 years—all under the oversight of, and with the official permission of, the City of Afton—including from 1971 levee construction and the addition in 1980-81 of between 8-10 feet of landfill to the private backyard where the Rattlesnake's head is located, which we assume has covered parts of the Mound and is one of the reasons why the overall outline is not visible.

Peabody's neighbor John Kerschbaum, was traveling in the year Peabody died and remembers returning in 1981 to discover that Peabody's house had been sold.

"I remember I was walking on the [nearby] dike, and I noticed [they'd put a septic] right on the mound. I remember stopping [and thinking] 'What the heck is going on here? How could they just do that? Isn't it protected? And I called the City and it fell on deaf ears."

Kerschbaum recalls the addition of the dirt, which he described as "covering up the head", which remains partially visible to this day, suggesting the existing body of the snake lies buried under the 8-10 feet of dirt.

An archaeological survey of the Rattlesnake Mound area earlier this year went only surface deep, digging shallow, one-yard-deep test holes in the area surrounding the Mound. As the first 8-10 feet beneath the surface is exactly that landfill dirt dating from the early 1980s, it is hardly a surprise that a survey conducted to only a superficial, one-yard depth, turned up no Native American artifacts or remains in the immediate area of the 1000-year-old Mound.

Rich Myhers, the current Afton resident whose backyard is home to the Rattlesnake Mound head, believes there will be both artifacts and human remains found:

"Approximately 10 years ago I found an axe-head there [Editor's note: in the location of the proposed holding pond]... It now is on display at the Afton Historical Museum... I have no doubt artifacts will be found. There is a high probability human remains will be unearthed."

Throughout the last century, the City of Afton has repeatedly allowed and enabled the desecration of the Rattlesnake Mound (officially designated 21WA10) through private building and levee construction. The Afton Wastewater Treatment Facility project is merely the latest in a long line of violations of this Native Tribal burial ground.

Regardless of the length of the consultation process, the responsible Minnesotan authorities have failed to accommodate the expressed concerns of multiple Native Tribes —to cease any and all construction activity in the area of the Rattlesnake Mound.

There is credible historical evidence that human remains have already been found in the immediate area of the Rattlesnake Effigy. The MPCA must be held accountable for its

dismissal of this evidence and required to explain exactly what "other significant errors" the MPCA found in the article, that led it to feel reasonable in discounting this key evidence.

The 1990 U.S. Federal Statute, The Native American Graves Protection and Repatriation Act offers severe penalties for desecrating graves, and the City of Afton will not be able to escape liability and criminal prosecution by saying "we didn't know", when considering Afton's historical contempt for the Rattlesnake Mound, its apparent deafness to both Native Tribes and the Minnesota Historic Preservation Office, and the discounting of historical evidence that human remains have already been found in the Rattlesnake Mound.

Sincerely,

Jim Golden, Board Member  
Citizens For Valley Creek, Inc.  
1920 Quarry Avenue South  
Lake Saint Croix Beach, MN 55043  
(651) 295-5111 - cell  
(651) 998-1178 - home phone

## **Mathisen, Corey (MPCA)**

---

**From:** Barb F. Aubert <baubert@csjstpaul.org>  
**Sent:** Thursday, September 01, 2016 2:18 PM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** Desecration of the Afton Effigy Mound

I do understand that this is not open for public comment at this time but I hope you read my comments and keep them in the back of your mind as you consider this project.

A friend of mine called this morning to share the story about Effigy Mound project. I wish I knew more about this; I don't but I think my comments are noteworthy. I have been trying to education myself on Native American culture and history over the past 5 years and what I've learned is this group of people have been taken advantage in many ways for many years and surprisingly it continues today. If the Native Americans are concerned about this then action needs to be taken. Let us not forgot about the desecration and artifact-stealing from the burial grounds located in Mounds Park. Although this situation is not artifact-stealing, it is a desecration. Desecration of another sacred site that the Minnesota Native Americans treasure. Not only do I see, in my brief review of three articles, the significant probably of negative impact, I also feel ashamed that again the sacredness of another site by Native Americans is not being taken into consideration. In my experience, I have not seen this group of people just jump on and fight anything that comes along. Please let their voices be heard and as an government agency, I hope that the the Department of Pollution Control does the right thing. I appreciate the opportunity to speak to this.

Barb Aubert  
A faithful good steward of our land

## **Mathisen, Corey (MPCA)**

---

**From:** James Rock <rockx016@d.umn.edu>  
**Sent:** Friday, September 02, 2016 12:11 PM  
**To:** Mathisen, Corey (MPCA)  
**Subject:** Recent scientific journal publishing re: Rattlesnake Mound

Dear Corey,

I realize that today is now the day after your "deadline" but let's remember that the dead remain so in "living circles" according to our Indigenous view...and deadlines are only for those temporary living colonizer-settlers who feel they must now disturb, bulldoze, and place their sewage near, on and around our relatives resting remains and spirits. They left us their HUNKAKAN ancestors, stories and sacred landscape features to point us to the stars and show us how to live here on Turtle Island as good relatives between Sky and Earth which are mirrors. The River is the Milky Way and the we Dakotas have a serpent constellation. This is not the appropriate time nor protocol for me to explain to outsiders how and why our star stories and these sites must remain to teach us. Recently, my wife and I have published a scholarly article on the rattlesnakes as represented in nearby upstream cave petroglyphs. Please inform yourself beyond the superficial "soil survey" We know these sites exist and are part of a larger network of effigy mounds through out the river valley system and represent our ancient cosmological origin stories. Please feel free to contact us if you have the backbone to be a decent upstander for those who your DNA likely does not include...not meaning to be insulting but please recognize the insulting threat this sewage on a sacred site represents to us...My wife and I are university professors and are Indigenous consultants for the Bruce Vento Nature Sanctuary and Wakan Tipi cave and Indian Mounds Park which are all connected Dakota sites to the ones at the river's "Bdote" at "Afton" You must understand that your colonizer names and places can never know or understand our living presence here unless you care enough to learn and ask us. My name is Jim Rock and my wife is Dr. Roxanne Gould. Thank you for reading this if you can still recognize that deadlines are for the shortsighted living only. I have many books and resources to offer you some of which I have authored and others from my father and relative who represent 10,000 years of phenology right here.