

March 21, 2008

Mr. Nile Fellows
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, MN 55155-4194

Re: Highway 96 Dump Superfund Site

Dear Mr. Fellows:

The City Council of the City of North Oaks appreciates this opportunity to provide our suggestions, recommendations and comments regarding the Proposed Plan to amend the Minnesota Decision Document (MDD) for the Highway 96 Dump Superfund Site issued in October 7, 1993. As the City does not have the legal authority to impose requirements upon responsible parties for response actions related to the release of hazardous substances in residential water supplies, the City and its residents must rely upon the Minnesota Pollution Control Agency (MPCA) to impose such actions in order to protect our citizens. Hence, the City and the residents of North Oaks need to have a high-level of trust in the MPCA to impose reasonable, appropriate response actions under these circumstances.

In our opinion, the trust level is low right now and you heard that expressed at the public hearing conducted February 26th. We have a common, shared goal of protecting the public health of our citizens and providing safe water supplies for human consumption. We believe that your consideration and acceptance of our suggestions, recommendations and comments below can help to remedy the trust level in this regulatory process.

Review of the Minnesota Decision Document (MDD) issued October 1993

As you know the MDD was issued by the MPCA in response to the Minnesota Department of Health (MDH) findings of contaminations in water supplies attributed to the dump site in White Bear Township operated by Red Arrow Disposal. The City has been actively involved in the Highway 96 Dump Superfund Site since the findings of volatile organic compounds (VOCs) in residential drinking water wells in the city of North Oaks twenty years ago. The City of North Oaks understands that the problem has not been solved even though we have received evidence that the intensity of the drinking water problem has been reduced, the breadth of the area with contaminated drinking water has been narrowed and an assurance that quality, safe drinking water sources exist.

We strongly believe that the Minnesota Decision Document (MDD) issued in October 1993 with the following four (4) response action objectives should continue to be enforced:

1. "To provide source control by reducing the area, volume and toxicity of the source;
2. To eliminate the contamination of the North Pond, and establish a new wetland;
3. To prevent the migration of contaminated ground water from the Site;
4. To provide safe drinking water for the residents of North Oaks who have received drinking water advisories." *[Minnesota Decision Document dated October 7, 1993]*

Supported by the evidence during the past three years, it is very clear that Objective 3 and Objective 4, relative to permanent drinking water solutions, have not been accomplished at this time. We continue to get reports about the migration of the plume or remnant plumes; specifically three (3) additional residential home private wells have been found with vinyl chloride and other "dump-site" contaminants. Short-term solutions (only bottled water) have been provided for "safe drinking water" in these private residences, and we don't believe we are closer to a permanent solution today than we

were in 1993. We know that twelve (12) homes north and east of Lake Gilfillan were issued well advisories in 1993 by the MDH and were provided a municipal water solution as a part of a negotiated solution among the Responsible Parties (Reynolds Metals and Whirlpool), North Oaks Company, and the City with City officials serving to facilitate the negotiated solution.

We agree that there are new findings, new response actions and new technologies present today that were not available in 1993, but there significance does not materially change the findings and response actions presented in the 1993 MDD. For that reason,

1. **the City believes that the 1993 Minnesota Decision Document (MDD) should remain in full effect, and that the proposed amendment to the MDD is not appropriate at this time.**

The 1993 MDD makes specific provisions for response actions related to the previously referenced MDD objectives. There are response actions in the MDD for source control, ground water and residential drinking water. To illustrate the point regarding residential drinking water, page 5 of the 1993 MDD provides in item 1 under the Heading "Residential Drinking Water Operable Unit:" that "... municipal water connections will be provided ..." and "... of sufficient design capacity for the entire affected area (Figure 1)" [*reference: 1993 MDD, page 5*]. The February 2008 Proposed Plan justifies the proposed amendment by adding a difference and distinction for the existing Residential Drinking Water Operable Unit between an east area and west area about Lake Gilfillan. There is no such distinction in the 1993 MDD clearly supported by the text of the MDD and the area map in Figure 1.

The MDD refers to the "Site" and "the area of the Site" a number of times and generally defines the dump site as the "Site", but also refers to the "area of the Site" as an area in North Oaks with groundwater contamination that "... has affected the drinking water of a residential area in the city of North Oaks". [*MDD 1993*] Further, Comment 6 of Appendix A, Responsiveness Summary, included as a part of the 1993 MDD, addresses the questions raised about the boundary of the "impacted area". There is no east and west, or north or south, of Lake Gilfillan distinction made in the 1993 MDD, as MPCA staff is proposing with the 2008 Proposed Plan.

Respectfully, the present MPCA personnel assigned to this Site were not involved in 1993 and for those of us who were actively involved, Figure 1 in the 1993 MDD was understandably included knowing that vinyl chloride was found in one private residence along the west side of Lake Gilfillan and migration of the plume was not contained in the area east of Lake Gilfillan at that time. There is substantial evidence in the 1993 MDD that the "impacted area" definition "... is set so as to include all homes that would be reasonably expected to be impacted by the plume ..." [*1993 MDD, Appendix A, Responsiveness Summary, Comment 6*].

Hearing that the MPCA staff was considering this distinction without providing any justification, the City has repeatedly communicated with the MPCA, both in writing and in person, asking that the MPCA and/or the Minnesota Attorney General's Office provide a clear, factual explanation for the proposed amendment considering the evidence in the 1993 MDD. This MPCA staff proposal goes to the heart of the present low trust issue by altering a response action for the Residential Drinking Water Operable Unit set in the 1993 MDD.

2. **the MPCA should enforce the response actions formulated in described in the 1993 MDD, which includes all properties surrounding Lake Gilfillan as clearly described in Appendix A, Responsiveness Summary, and Figure 1 of the 1993 MDD.**

The residents of North Oaks received no benefit and only are adversely affected by the activities that led to the release of hazardous substances and the continuing monitoring, testing and lack of permanent response actions. Therefore, the residents and the City should not be

expected to have to expend time, energy, and financial resources to deal with the problem. The City and its residents have been subjected to on-going concerns for more than twenty (20) years. It is time for the MPCA to enforce Objective 3 and stop the migration of contaminated groundwater to more homes, and Objective 4 and require the response action in the Residential Drinking Water Operable Unit of the 1993 MDD.

It was our expectation that the decisions made in 1993 would put the issues to rest. Instead, we have been subjected to more turmoil since 2004, and there is no clear relief in sight. The stress and financial burden to the affected parties and the City is not accounted for in the Feasibility Study or the Proposed Plan, but must be a factor of greater weight than the cost to the responsible parties. The City Council feels very strongly that the decisions the MPCA is currently contemplating must once and for all put the issues to rest. To be crystal clear: we want to be done with this matter!

The adverse affects and impacts on property owners and residents must be a significant factor in your decision-making process. The 1993 MDD set forth Response Action Objectives (repeated above) addressing (a) preventing migration of contaminated groundwater and (b) providing safe drinking water. These objectives have not changed and the remedies selected are still appropriate. The MPCA needs to proceed to enforce the response actions identified in the 1993 MDD without any amendment.

Comments to the February 2008 Proposed Plan

Considering our comments and suggestions about our interpretation of the 1993 MDD that set forth Response Action Objectives for preventing migration of contaminated groundwater and providing safe drinking water, we feel a need to comment on the additional information in the February 2008 Proposed Plan. Knowing that the Response Action Objectives have not changed and the remedies selected in 1993 are still appropriate, the next three comments address these two Response Action Objectives separately.

1. **The MPCA must prevent groundwater contamination from migrating to and reaching more homes about Lake Gilfillan.** It is our opinion that the MPCA has failed to comply with the Minnesota Groundwater Protection Act of 1989, which established the Degradation Prevention Goal (Statute 103H). Furthermore, the MPCA has failed to comply with the following Response Action Objective set forth in the 1993 MDD for this Site: "To prevent the migration of contaminated ground water from the Site." The MPCA has allowed contamination to migrate further west, thereby impacting homes west of Lake Gilfillan not previously impacted in 1993 and prior. It was the City's expectation in 1993 that the selected remedies would put an end to the problem and that there would not be more homes impacted in the future. Clearly this expectation has not been met. This is a specific example of the frustration highlighted above. Impacts to more homes are unacceptable!

The Response Action Objective about migration of contaminated ground water remains valid today, and the selected remedy (groundwater containment through extraction), also remains valid. Therefore, the 1993 MDD does not need to be amended since a different remedy is not proposed. The 1993 MDD needs to be supplemented for revised design plans that specify the location(s) and details for future groundwater extraction. Additional extraction has been added in the past without needing a MDD Amendment, and this situation is no different.

The City expects the MPCA will rectify this shortcoming, and will be clear, that the extraction well that has already been installed in Ski Lane Ravine does not accomplish this plume migration objective. The activation of this extraction well will allow impacts to occur to

homes east (upgradient) of the extraction well. We understand there are logistical issues that make it difficult to capture contaminated groundwater before reaching the west shore of Lake Gilfillan. If these issues are insurmountable, then what needs to be amended is the trigger for providing an alternate water supply so that residents with any level of contamination are provided with an alternate source of water.

Our desire is to be done with the problem and we cannot be done if more homes continue to be impacted, even at low concentrations of contaminants. It is quite simple: go to great lengths to ensure that no contamination reaches any homes or provide a clean source of water (not just below HRLs) for all residents in the area impacted by the Highway 96 Dump Site. The MPCA has the legal authority to require either one of these options.

2. **Municipal water was selected as the remedy for alternate water supply in 1993 and it continues to remain effective, so there is no need to revise the remedy.** We are repeating ourselves in this item. But, the 1993 MDD sets forth a Residential Drinking Water Operable Unit, and states that:

“municipal water connections will be provided to residents of North Oaks who have been issued drinking water advisories by the Minnesota Department of Health as a result of release of hazardous substances from the Site. The water system will be of sufficient design capacity for the entire affected area (Figure 1). In the future, any wells with drinking water advisories must also be connected to the water system.” [1993 MDD]

Figure 1 shows plats of properties, including properties on the west side of Gilfillan Lake. Neither the text nor Figure 1 mentions anything about the “affected area” being limited to a specific geographic area such as only the east side of Gilfillan Lake.

Furthermore, the Responsiveness Summary in the 1993 MDD shows that concerns were raised at that time regarding the “impacted area” and future uncertainties. In the response to Comment #1 in the responsiveness summary, MPCA stated that “because the remedy will be expanded to cover any new threats that may arise (i.e., homes that are issued drinking-water advisories in the future), it also covers future uncertainty.” In the response to Comment #5, the MPCA stated “the plume, or area of contaminated ground water, is actually moving relatively slowly, probably on the order of feet per year. Typically, as a plume moves, the contamination becomes increasingly dilute to the point where eventually it will be undetectable. If more homes become affected, the remedy requires that any residential wells issued advisories in the future be provided a permanent, safe source of drinking water (i.e., municipal water).” The MPCA knew in 1993 that the groundwater contamination was moving west, and in fact, vinyl chloride had been detected in 1993 in one private property drinking water well on the west side of Gilfillan Lake.

Hence, to allay concerns and questions regarding movement of the plume and additional affected homes in the path of the plume, the MPCA specifically stated that “any wells with drinking water advisories must also be connected to the [municipal] water system.” The City and its residents accepted this decision and were trusting that the MPCA would follow through on its proposed response action and its word. The MPCA’s credibility is riding on this decision and its decision to withdraw the proposed amendment to differentiate the east area from the west area of the “impacted area” of the dump site.

3. **The solution approved by the MPCA in the 1993 MDD must be final and provide that the City and its residents with the certainty that they will not have to deal with this problem in the future.** The City has made this point to the MPCA on numerous occasions

Mr. Nile Fellows
Minnesota Pollution Control Agency
March 21, 2008
Page 5

over the past fifteen (15) years. The 1993 MDD set forth Response Action Objectives (repeated above) addressing four actions, including (a) preventing migration of contaminated groundwater and (b) providing safe drinking water. As we have stated before, these Objectives have not changed and the remedies selected are still appropriate. To date, the MPCA has not provided any answer, including nothing in the Proposed Plan to justify the amendment. It is this frustration that has diminished the level of trust the City and its residents have with the MPCA enforcing an enforceable plan of action provided in the 1993 MDD.

We do believe that the MPCA should supplement the MDD with the new findings, the newer alternative remedy, e.g. granular activated carbon (GAC) filter, and the additional monitoring and extraction wells evidence and plans we identify above. We strongly believe that formal supplements to the 1993 MDD should be provided for new, material findings, new approved alternative remedies, e.g. granular activated carbon (GAC) filter, and additional approved monitoring and extraction wells plans. This formality will also provide appropriate communication with the community.

Opportunity to Meet and Review

The City and the MPCA agree with the goal of protecting the public health of our citizens and providing safe water supplies for human consumption. This City Council is continuing the extensive investment of time and resources as previous City Councils did since the early 1990s. We believe that the City and the MPCA have worked together cooperatively in recent months on the newer activities. You have our commitment to continue to do so and represent the interests of our community, even though we have no legal authority in Superfund matters.

Given the significance of the decisions being made and the trust placed in the government regulatory agencies in these matters, the City respectfully requests that the MPCA, before taking any final action, provide a written response to our comments and those of our residents, with reasonable time for review. Further, we request that we have an opportunity to meet and review your conclusions and proposed actions after that time and before taking any final action. As we said previously, the City Council of the City of North Oaks is committed to working with the MPCA and others to “do what is right” to provide safe drinking water to the residents of our city who had no responsibility in creating the situation. We look forward to an outcome that is mutually beneficial.

This letter is not intended to suggest that response actions or solutions deemed necessary by experts in this subject area should not be considered or implemented or to suggest that the City of North Oaks takes any responsibility for the identification or implementation of any response action or solutions. With this letter, we are providing our suggestions, recommendations and comments regarding the Proposed Plan to amend the 1993 Minnesota Decision Document (MDD), which amendment we strongly disagree with for the reasons stated in this letter.

If you have questions about this communication, please contact me. Thank you.

Sincerely and respectfully
on behalf of the City Council of the City of North Oaks,

Thomas N. Watson
Mayor

Mr. Nile Fellows
Minnesota Pollution Control Agency
March 21, 2008
Page 6

cc: Council members, City of North Oaks
Keith Benker, Consulting Engineer, Wenck Associates, Inc.
Jeffrey Roos, City Engineer
Thomas Newcome III, City Attorney
Fred Campbell, MPCA
Ron Frehner, CRA
North Oaks Home Owners' Association
Senator Sandy Rummel
Representative Paul Gardner
Representative Carol McFarlane