LAND STEWARDSHIP PROJECT

LEWISTON OFFICE
180 East Main St, Box 130
Lewiston, MN 55952
507-523-3366

MINNEAPOLIS OFFICE
821 East 35th St, #200
Minneapolis, MN 55407
612-722-6377

MONTEVIDEO OFFICE
117 South 1st St
Montevideo, MN 56265
320-269-2105

The Honorable Mark Dayton
Governor of Minnesota
130 State Capitol
75 Reverend Dr. Martin Luther King Jr. Blvd. #130
Saint Paul, MN 55155

Subject: EIS necessary on Catalpa, LLC 4,980 sow feedlot in Fillmore County

September 6, 2018

Dear Governor Dayton,

Thank you for meeting with us on July 3, 2018, about the environmental review being conducted on the Catalpa, LLC factory hog farm proposed in Newburg Township, Fillmore County. This facility would house 4,980 sows, house an 8.9 million-gallon liquid manure pit, use 8.8 million gallons of the area's groundwater annually and is proposed in a high-risk karst area that has numerous nearby sinkholes. The Environmental Assessment Worksheet (EAW) itself acknowledges that the location of the proposed project poses a high risk to groundwater pollution. It states, "The Project, including manure application sites, are in an area designated as having a high risk to groundwater pollution."

Minnesota law states that "An EIS [Environmental Impact Statement] shall be ordered for projects that have the potential for significant environmental effects," (Minnesota Statute 4410.1700 Subpart 1). The public record clearly demonstrates that this standard has been exceeded and that, therefore, an EIS is mandatory. Below is a summary of the most critical information, and attached are the most notable public comments:

1. Demand for an EIS from local residents and farmers has been overwhelming.

Overall, 772 comments were submitted on the Environmental Assessment Worksheet (EAW). Of the 772 commenters, 760 expressed concern about the facility; 409 specifically identified themselves as local residents and 43 specifically identified themselves as farmers. 581 commenters explicitly called for an EIS. (Only six comments were in favor of the operation.) Two of the submitted comments were petitions demanding an EIS. The petitions represented 749 individuals, 611 of whom live in Fillmore County.

2. Six impacted local units of government or representatives of local units of government have stated that an EIS is necessary and asked for one. (Attachments 2A-2F.) These are:

- Newburg Township Board of Supervisors (Attachment 2A)
- Fillmore County Board of Commissioners by vote on July 3, 2018 (Attachment 2B)
- Fillmore County Commissioner representing the district where the project is proposed (Attachment 2C)
- Fillmore County Soil & Water Conservation District Board of Supervisors (Attachment 2D)
- Mayor and City Council of Canton (Attachment 2E)
- Mayor of Mabel (Attachment 2F)

3. Minnesota Department of Natural Resources (DNR) comments to the EAW indicate the potential for significant environmental impacts and support the need for ordering an EIS. (Attachment 3)

The DNR's comments state that the Root River watershed, where the facility is proposed, is one of five pilot watersheds for the Minnesota Board of Water and Soil Resource's (BWSR) One Watershed, One Plan program. The plan for the Root River watershed has received $1.2 million in funding for this biennium. The two statements below from the DNR letter clearly indicate "the potential for significant environmental impacts":

> "One of the most commonly occurring water quality impairments in southeast Minnesota streams is bacteria impairments. The Root River Watershed WRAPS report summary states that "Aquatic recreation impairment from E. coli was prevalent at all AUIDs that were sampled". The summary continues to state that "Reducing the amount of bacteria throughout the watershed should be an immediate priority". We are concerned that bacteria levels remain elevated in many streams despite numerous efforts at reduction. Adding a new potential source of bacteria at the scale of this proposed facility is inconsistent with the conclusions in the WRAPS report regarding bacteria impairments in the Root River watershed."

> "The Root River Watershed Stressor Identification Report (MPCA 2015) found that elevated nitrate concentrations and low dissolved oxygen levels are stressors to the macroinvertebrate community in the South Fork Root River subwatershed which includes Wisel Creek. Wisel Creek had macroinvertebrate index of biotic integrity (MIBI) scores near the threshold of impairment declaration in 2015. We are concerned that potential increased nutrient loading to Wisel Creek may result in an impairment declaration for the invertebrate community. The parcels where manure spreading would occur are entirely located within subwatersheds which already receive high nutrient loading. This may exacerbate nutrient loading to the system and may decrease the likelihood that these streams will meet water quality and recreational use standards."

4. Minnesota's leading karst expert, Dr. Calvin Alexander of the University of Minnesota, investigated the proposed site. His research led him to call for an EIS. (Attachment 4)

"From a karst perspective," Dr. Alexander wrote in his comments to the EAW, "there are two issues: sinkhole formation under the facility causing catastrophic failure of the manure pits or other infrastructure; and diverse karst features under the manure spreading fields increasing pollution of surface and groundwater."

Through a limited LiDAR exercise and on-site fieldwork, Dr. Alexander identified 37 sinkholes, potential sinkholes and springs—*only three of which were actually listed in the EAW*. (Due to sinkholes, three of southeastern Minnesota's 22 municipal sewage lagoons collapsed in recent years (Altura in 1976, Lewiston in 1991, Bellchester in 1992). Possible pit failure due to the sensitive karst area would result in millions of gallons of raw liquid manure entering the groundwater, wells, trout streams and rivers.

Dr. Alexander also noted that southeastern Minnesota's water already has high nitrate levels, and that adding a large-scale feedlot that produces the amount of waste equivalent to a city of 50,000 people, to be spread on fields where there is rapid connection to surface and groundwater, poses significant risk. The karst landscape allows water (and the manure, nitrates, antibiotics, diseases and viruses it carries) to move several miles per day. Dr. Alexander wrote: "Such a CAFO will inevitably inflict major, damaging, area-wide environmental impacts if permitted and constructed… There is no reasonable doubt that such a facility will scientifically impact the surrounding environment in a detrimental way."

5. The project would significantly impact groundwater availability, which must be analyzed through an EIS.

The facility would use 8.8 million gallons of groundwater annually, for a total consumption of 220 million gallons over 25 years. The EAW states that this issue would be dealt with as part of the DNR Water Appropriation Permit Program. This defeats the purpose of environmental review, which is to inform the

permitting process and determine if there are ways to mitigate potential harm. It is inappropriate to defer the permitting process in this aspect of environmental assessment.

6. In 2000, in a very similar case, a Fillmore County District Judge ordered an EIS on a large-scale feedlot proposed in Fillmore County after the MCPA refused to do so. The Judge cited in his ruling that the Minnesota Pollution Control Agency (MPCA) failed to address the issue of sinkhole collapse underneath the manure lagoon. (Attachment 6)

When Fillmore County residents challenged a negative declaration on the need for an EIS for a large dairy in karst country, a Minnesota District Court overturned the decision and required an EIS to be completed. In the Dec. 22, 2000, ruling on Fillmore County Residents Concerned for Health vs. MPCA, District Court Judge Benson wrote: "The MPCA's decision not to conduct an EIS in this matter is not supported by the record and is arbitrary and capricious. The Court finds that the MPCA failed to consider at least one important aspect of the problem, i.e. the possibility of an underground collapse of the basin. If the basin would collapse, how would groundwater contamination be stopped? This Court could not find any information in the MPCA's brief to answer this disturbing question. The MPCA should have addressed this issue and they did not." Much of the analysis in this ruling applies directly to the EAW of the proposed Catalpa, LLC facility. The EAW does not address the issue of a collapse of the manure pit and does not indicate that the pit is constructed to withstand the opening of one or several sinkholes beneath it.

7. An EIS is needed to take economic and public health impacts into account.

An EIS would consider the economic and human health impacts the operation would bring to the community, including the financial costs for wear and tear on roads, drilling deeper wells and installing expensive filtration systems, decreased property values, and costs of increased health problems from air and water pollution (i.e. hydrogen sulfide). The manure odor and water quality would specifically negatively impact local businesses, especially those who rely on tourism and submitted comments on the EAW, including: Niagara Cave, Eagle Bluff Education Center, Karst Brewing, and 43+ family farmers in Newburg Township and surrounding townships.

This is particularly concerning because the operation would be managed by outside corporate interests: Waukon Feed Ranch of Iowa, which manages 24,000 sows in three states, would manage the operation, and the hogs would be owned by Holden Farms of Northfield, Minn., which, according to *Successful Farming* magazine, was the country's 17th largest pork producer in 2017 with 60,000 sows.

8. The MPCA's actions in ordering further investigations of the site have made it clear that the agency acknowledges the "potential for significant environmental impacts."

On July 13, 2018, the MPCA announced that it was postponing the decision on the need for an EIS for 30 days to gather information on just two points: whether a potential sinkhole exists within 300 feet of the manure storage pit, and whether other karst features within a half-mile may present environmental impacts. On August 6, 2018, the MPCA delayed making a decision on ordering an EIS until Aug. 31, 2018, citing as a reason the fact that it does not have sufficient information to assess the vulnerability of the geologic setting and possibility for soil collapse. The MPCA is conducting Electrical Resistivity Imaging (ERI) to "gather necessary information regarding the subsurface bedrock." Yesterday, September 5, 2018, the MPCA again delayed the decision until December 31, 2018 to evaluate ERI results and "respond to the extraordinarily high volume of comment letters".

The MPCA's decision to delay this process three times to order further investigation clearly indicates that the agency acknowledges that there is the "potential for significant environmental effects." These studies are being conducted because of the issues raised by the public that indicate this potential, but the purpose of an EIS is to conduct these studies.

In closing, for the above reasons, and more, this proposal clearly has the "potential for significant environmental effects," and an EIS is required. However, we are concerned, because to our knowledge, MPCA staff have never recommended an Environmental Impact Statement on a proposed large-scale feedlot. We urge you to weigh in with the MPCA and let them know that you are expecting them to value our rural community over any pressure being exerted from large-scale ag interests. **Additionally, enclosed in Attachments 9A-9J is a selection of comments that highlight concerns from local family farmers, residents, small businesses, and faith communities.**

Lastly, on August 23, 2018, Newburg Township adopted a moratorium that includes a prohibition on new and expanding feedlots above 500 animal units. Your past support and action on keeping local control in Minnesota strong helped make this possible. However, as far as we know the proposer has not withdrawn the permit application to the MPCA. Unless he does so, a decision by the MPCA on ordering an EIS must be made.

Thank you for your past strong action on behalf of Minnesota's rural water crisis and your time on this issue.

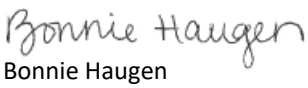
Sincerely,

On behalf of the Land Stewardship Project and Responsible Ag in Karst Country

Aaron Bishop
Harmony, Minn.

Dayna Burtness
Hog Farmer, Spring Grove, Minn.

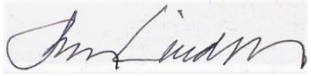
Jon Duhachek
Mabel, Minn.



Bonnie Haugen
Dairy Farmer, Canton, Minn.

Michelle Hockersmith
Mabel, Minn.

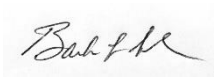
Loni Kemp
Canton, Minn.



John Lindell
Newburg Township, Minn.

Jeff Nelson
Newburg Township, Minn.

Richard Nethercut
Canton, Minn.

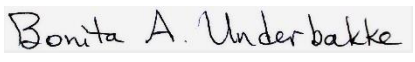


Barton Seebach
Newburg Township, Minn.

Pamela Seebach
Newburg Township, Minn.

Mark Spande
Farmer, Newburg Township, Minn.

Carol Thompson
Mabel, Minn.



Bonita Underbakke
Holt Township, Minn.

Cc: Commissioner John Linc Stine, MPCA and Assistant Commissioner Shannon Lotthammer, MPCA

Notable Public Comments on the Environmental Assessment Worksheet (EAW) Completed by Catalpa, LLC

Table of Contents

Attachment 2A: Newburg Township Board of Supervisors

From: Barb Eiken <luckygirl381@gmail.com>
Sent: Friday, June 15, 2018 8:58 AM
To: Peterson, Charles V (MPCA) <charles.peterson@state.mn.us>
Subject: Proposed swine farrowing facility being constructed in Newburg Township by Catalpa,LLC

I am writing this on behalf of the Newburg Township Board.

As a township board we feel it is our obligation to do what we can to ensure the safety of our community. At our last meeting we reviewed and discussed the EAW regarding the swine facility being constructed by Catalpa, LLC in our township. We have the following concerns.

1. The amount of water this facility will require. We fear this could impact neighboring wells. Some of us have heard stories, true or not we don't know, of people near other facilities of this nature having their wells go dry. We would like to have reassurances that this would not happen to our residents.

2. The amount of semi traffic on our township roads. We understand the majority of the fertilizer will be pumped to the fields. But there will be some that will be hauled on our township roads, and they will also be hauling pigs out to other facilities. We are given a limited amount of money to maintain our roads and are concerned that the excess semi traffic could cause damage. The amount of rock needed to maintain these roads could go beyond what we have budgeted for in past years. Will our township road allotment increase to help cover these costs?

3. The possible contamination of the waterways and trout streams in Newburg Township. When we read through what surrounds the 24 manure application sites it becomes a serious concern. Accidental contamination could cause devastating harm to these streams and waterways.

Due to extremely strong opposition and concerns of the Newburg community, the Newburg Township Board believes that Catalpa must complete a full Environmental Impact Statement

Thank you for listening to our concerns and we hope our issues will be addressed.

Newburg Township Board Members, Oswald Landsom, Mark Gjere, Genette Halverson, and Barb Eiken

Attachment 2B: Fillmore Cty Board of Commissioners

FILLMORE COUNTY

COURTHOUSE • P.O. BOX 466 • PRESTON, MINNESOTA 55965
BOBBIE VICKERMAN • COUNTY COORDINATOR • (507) 765-4566
Fax: (507) 765-2803

July 3rd, 2018

To: Charles Peterson, Resource Management & Assistance Division, MPCA
Mark Gernes, East Feedlot Unit, Watershed Division, MPCA

RE: Request for an Environmental Impact Statement for the Catalpa, LLC request

Dear Mr. Peterson and Mr. Gernes;

At the Fillmore County Board of Commissioners meeting held July 3rd, 2018, the Board of Commissioners unanimously approved the following motion regarding a request for an Environmental Impact Statement and answers to questions regarding the Catalpa, LLC request:

The motion reads:
"On motion by Prestby, and seconded by Peterson, the Fillmore County Board of Commissioners unanimously approved a motion to support the letters provided by the Fillmore County Feedlot Officer and the Fillmore Soil & Water Conservation District Administrator and requesting Minnesota Pollution Control Agency to do an Environmental Impact Statement for the Catalpa, LLC request and to provide answers to the questions referenced in the letters."

As stated in the motion:
The Board supports the attached two letters from Mike Frauenkron, Fillmore County Feedlot Officer dated May 30, 2018 and June 28th, 2018.

The Board also supports the attached letter from Donna Rasmussen, Administrator dated May 30, 2018 on behalf of the Fillmore Soil & Water Conservation District Board of Supervisors.

The Board asks that the MPCA requires an Environmental Impact Statement for the Catalpa, LLC request and further asks the Minnesota Pollution Control Agency for answers to the questions asked in the attached letters that were referenced.

We thank you for your time and consideration in this matter.

Sincerely,

Bobbie Vickerman
Fillmore County Coordinator

Attachment 2C: Fillmore Cty Commissioner, Dist. 5

From: Prestby, Marc <mprestby@co.fillmore.mn.us>
Sent: Tuesday, July 03, 2018 10:15 AM
To: Peterson, Charles V (MPCA) <charles.peterson@state.mn.us>; Gernes, Mark P (MPCA) <mark.p.gernes@state.mn.us>
Cc: 'Marc.Prestby@gmail.com' <Marc.Prestby@gmail.com>
Subject: Catalpa LLC Permit

Morning Charles & Mark,
As the county commissioner representing the district where this proposed swine facility is looking to be permitted, I am requesting the State require an EIS for this swine facility. With the Karst topography located here and the unknown answered questions about predictable risks I ask that a full EIS be required.

Marc Prestby,
District 5 Fillmore County Commissioner

Attachment 2D: Fillmore Cty SWCD Board of Supervisors

Fillmore Soil & Water Conservation District
900 Washington St. NW, Box A, Preston, Minnesota 55965
Phone: 507-765-3878, Ext. 3; Fax: 507-765-4415

May 30, 2018

Charles Peterson
Resource Management and Assistance Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

Mark P. Gernes
East Feedlot Unit, Watershed Division
Minnesota Pollution Control Agency
18 Wood Lake Drive SE
Rochester, MN 55904

Dear Mr. Peterson and Mr. Gernes:
On behalf of the Fillmore Soil and Water Conservation District Board of Supervisors, I am submitting the following comments following their review of the Environmental Assessment Worksheet (EAW) for Catalpa, LLC, for its proposal to construct and operate a new 1,992 animal unit swine farrowing facility in sections 7 and 18 of Newburg Township.

- Preliminary results from the MN Department of Agriculture's Township Nitrate Testing Program completed in 2017 show that over 10% of the well water samples analyzed for Newburg, Amherst and Preble Townships had nitrate concentrations over 10 parts per million (ppm). This indicates that the groundwater in the area for the Catalpa facility and their manure application fields is highly susceptible to nitrate contamination. Using the most conservative numbers in the EAW, the manure produced will result in 38,814 pounds of nitrogen produced per year. Although this nitrogen is expected to replace commercial fertilizer, the quantity stresses the need for strict adherence to the agronomic nitrogen recommendations set by the University of Minnesota, which would be 140 lbs./acre for a corn-soybean rotation, and the need for detailed recordkeeping to assure that the application rates meet the plan requirements. The EAW provides some information about application methods but does not address how fall manure application will be done to minimize nitrate leaching, such as applying in the fall after soil temperatures go below 50 degrees F or utilizing N inhibitors. Conditions in the fall may not always be ideal, so there must be preparation and planning for these circumstances. There should be significant consequences for exceeding the recommended rates or for failing to take precautions to prevent nitrate leaching. Progress toward the goals in the MN Nitrogen Fertilizer Management Plan is possible but only if facilities producing manure and nutrients in these large quantities apply at the recommended agronomic rates and follow best management practices (BMPs).
- According to the Root River Stressor Identification Report prepared by the MN Pollution Control Agency, elevated nitrate concentrations in the Upper South Fork of the Root River have been identified as a stressor for macroinvertebrates. In 2014, 94.4% of the taxa were nitrate tolerant, and in 2012, 92.5% were nitrate tolerant. No nitrate intolerant taxa were identified. As a DNR designated trout stream, maintaining and improving macroinvertebrate populations is critical to maintaining healthy trout populations. This again points to the need for strict adherence to U of M nitrogen recommendations and BMPs.
- Karst geology is a key factor in the sensitivity of this area to groundwater contamination. Sinkholes, stream sinks and sieves, and springs are found in the area for the proposed facility and manure application fields, some of

which are not on the maps and have just been located with information from residents in the immediate area of the facility. A full karst survey should be completed, as required in an Environmental Impact Statement (EIS), in order to understand the precautions that must be taken to address potential impacts to both groundwater and surface water. This is necessary not only for protecting the drinking water of the neighbors but also the quality of the trout streams which are a major economic driver for Fillmore County. Assessments using such technologies as seismic studies and electrical resistivity imaging (ERI) can detect underground voids that would indicate susceptibility to sinkhole formation. This type of assessment should be done for the entire footprint of the manure storage pits before approving the permit application.

- In addition to karst features, there are numerous sensitive features (e.g. areas of biodiversity) and trout streams in the vicinity of the facility and the manure application fields which require setbacks for manure application. These setbacks reduce the number of manure application acres available, and that number needs to be calculated to assure that enough acres are available for the amount of manure produced. It does not appear that this has been done in the EAW.
- Although the EAW asks about residential development near the feedlot location, it does not consider the residential development areas near the manure application fields, specifically the rural subdivisions located in section 25 of Amherst Township and section 31 of Preble Township.
- The phosphorus calculations used in the permit application do not use MPCA book values for manure from this type of operation. If book values are used, then the phosphorus levels will build beyond acceptable levels in every cropping scenario. Modifications are needed to the cropping rotations or to the manure application rates to prevent excess phosphorus build up.
- There is no information in the EAW about how soil erosion will be controlled on highly erodible land where manure will be applied and whether conservation plans are current for those acres. According to the list of soil types, several of them have slopes of over 7% and some up to 17-18%. Calculations using RUSLE2 should be completed for all fields including all the tillage and manure application passes to assure that soil erosion does not exceed "T", the tolerable soil loss, in order to be in compliance with the Fillmore County Soil Erosion Control Ordinance. Controlling soil erosion is critical to preventing transport of excess phosphorus to concentrated flow areas and streams. Conservation practices, such as grassed waterways, buffers and filter strips, should be in place to trap and filter any soil and nutrients that may run off. These needs will be identified through the conservation planning process.
- The EAW specifically states that no expansion is planned; however, it does not explain where the pigs will be finished and whether that will require building additional facilities in the area for finishing operations. More information is needed to assure that future incremental additions to this operation or related operations do not exceed the capacity of the landscape.

Thank you for considering these comments regarding the Catalpa, LLC, swine facility. Our recommendation is to develop an Environmental Impact Statement before permitting the facility in order to answer questions that remain about the potential impacts of such a large facility in a very fragile part of our county.

Sincerely,

Donna Rasmussen

Donna Rasmussen
Administrator

Attachment 2E: Mayor & City Council of Canton (Fillmore Cty)

City of Canton
103 N. Main St.
P.O.Box 92
Canton, Minnesota 55922

July 2, 2018

Charles Peterson
Resource Management and Assistance Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN 55155

Mark P. Gernes
East Feedlot Division, Watershed Division
Minnesota Pollution Control Agency
18 Wood Lake Drive SE
Rochester, MN 55904

Subject: Catalpa, LLC
Environmental Assessment Worksheet (EAW)
Fillmore County, Minnesota

Dear Mr. Peterson and Mr. Gernes:

I am writing on behalf of the city council and the residents of the City of Canton. We find the fact, demonstrated by one of Catalpa's own exhibits, that both of the wells in Canton are considered vulnerable to pollution because of the Catalpa project to be most alarming. Even though we can only rely on the best knowledge presently available through science and technology, experts cannot predict with any degree of certainty the outcome of massive amounts of pollutants applied at the surface in a concentrated area of Karst Topography.

The fact that a project of this size could be permitted with a simple EAW, without benefit of the more extensive review requirements of an Environmental Impact Statement is simply at odds with common sense and the duty of the MPCA to protect our lands, water and the health and welfare of the people living in close proximity to a project that can only benefit a few at the expense of many.

In 2012 the City of Canton finalized a Wellhead Protection Plan. A great deal of research went into this plan and is readily available to the MPCA. Some of the exhibits from that plan regarding sink holes identified and water flow directions are attached to this letter. With regards to the sink holes identified, it is common knowledge that in the past and in the present, there are many sink holes in the area between Canton and the Catalpa project which have been improperly filled in and are now being farmed over. What happened to the setback requirements in such cases?

We strongly urge the MPCA to require an Environmental Impact Statement regarding the Catalpa project.

Sincerely,

Donivee A. Johnson, Mayor

Email: canton@acegroup.cc

Attachment 2F: Mayor of Mabel, James Westby

July 3rd, 2018

Commissioner Stine,

We are family farmers, Amish, business owners and neighbors from southeastern Minnesota who have made the journey to St. Paul today because our community is being threatened by the proposed Catalpa LLC factory hog farm.

We need you to hear our voices loud and clear: Catalpa LLC must complete an EIS.

The proposed farrowing facility will put our community's drinking water, property values, health and livelihoods at risk. As you know, southeastern Minnesota has uniquely porous karst bedrock that makes our drinking water extremely susceptible to contamination from factory farms.

The public outcry in response to this proposal has, according to MPCA staff, broken records. Over 300 comments from neighbors, farmers, Amish and government officials have already been submitted to the MPCA and we are hand delivering hundreds more today. An MPCA informational meeting in Mabel, MN on June 19th had a 400+ standing room only crowd.

Catalpa LLC's Environmental Assessment Worksheet has shown that 4,980 sows and 7.3 million gallons of manure in an active and sensitive karst area has enormous potential for significant environmental effects.

Minnesota Rule 4410.2000 Subpart 3 is unambiguous: "An EIS shall be prepared: A. when the RGU determines that, based on the EAW and any comments or additional information received during the EAW comment period, the proposed project has the potential for significant environmental effects."

We have three requests:

1. Before you make a decision on ordering an Environmental Impact Statement, we need you to come to our community. We need to show you the sinkholes that were left off the EAW, the wells that were mislabeled, and the disappearing stream where pig sewage runoff would head straight into our drinking water supply. We need you to visit Niagara Cave and see firsthand the depths manure and pollutants can travel to in a matter of hours after a rainstorm. We need you to hear how drastically the air pollution and odors will affect the thriving community

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OVER →

of Amish who can't escape the hydrogen sulfide by retreating to an air conditioned house. Visiting our community is the only way you can make a truly fair and informed decision about ordering an EIS. We look forward to scheduling this visit with your office before the EIS decision deadline.

2. We need you to instruct staff to produce a "Conclusions of Law and Findings of Fact" that calls for an EIS. Staff have historically prepared only one recommendation calling for denial of an EIS. Both options should be presented to you by staff.
3. We are determined to get an EIS. It's not right or reasonable for us to have to go to court to get the MPCA to follow the law when the evidence supporting the need for an EIS is so overwhelming. Please follow Minnesota environmental review law and order Catalpa LLC to complete an EIS.

Sincerely,

Members of Responsible Ag in Karst Country
Members of the Land Stewardship Project

Name	County and State
Mark Spande [signature]	Fillmore MN
Pam Seebach [signature]	Fillmore MN
Rev. Mark Woodward [signature]	Fillmore MN
Barton Seebach [signature]	Fillmore MN
Janice Welper	Fillmore Co MN.
Tamie Nerstad [signature]	Fillmore Co. MN.
GLENN FISHBURN	FILLMORE Co. MN.
Ermelinda Fishburn	Fillmore Co MN.
Ellen Hanum	Fillmore Co. Mn.
Sharon Haugerud Storhoff	Fillmore Co Mn
Audrey Anderson Mabel	Fillmore Co. MN
Bonnie Anderson	Fillmore Co, MN

JAMES WESTAY	Mayor of Mabel.

Pasted from Petition's third page

Attachment 3: MN DNR Comments

DEPARTMENT OF NATURAL RESOURCES

June 29, 2018

Charles Peterson
Project Manager
520 Lafayette Road North
St. Paul, MN 55155-4194

Re: Catalpa Feedlot EAW

Dear Charles Peterson,

The Minnesota Department of Natural Resources (DNR) submitted comments on May 30, 2018 regarding the Catalpa LLC feedlot Environmental Assessment Worksheet (EAW). Additional DNR staff have become aware of the proposed project and have since reviewed the EAW. Since the comment period has been extended to July 3, 2018, we felt it prudent that these additional comments be added.

In 2008, the Minnesota Pollution Control Agency (MPCA) conducted intensive watershed monitoring within the Root River watershed where the proposed hog facility would be located. This monitoring is conducted every 10 years and the second monitoring cycle began in 2018. This monitoring data was used by the MPCA in 2016 to develop a **Total Maximum Daily Load (TMDL)** for streams in the Root River watershed. A **Watershed Restoration and Protection Strategies (WRAPS)** report was then completed by the MPCA in 2016. Finally, the Root River Watershed was selected as one of five pilot watersheds for the Board of Water and Soil Resources One Watershed, One Plan program. The One Watershed, One Plan for the Root River was completed in 2016 and has received $1.2 million in funding for implementation this biennium and funding will continue. These monitoring and planning efforts have identified impaired waters in need of restoration, unimpaired waters to be protected, and strategies for addressing water quality problems. The Department of Natural Resources is concerned that these monitoring, reporting, and planning efforts have not been referenced in development of the Catalpa LLC EAW, particularly as they apply to section 2-B of the EAW. We consider the Root River Watershed WRAPS and One Watershed, One Plan as "Local Comprehensive Plans" which should be referenced when responding to question 2-B of the EAW.

One of the most commonly occurring water quality impairments in southeast Minnesota streams is bacteria impairments. The **Root River Watershed WRAPS** report summary states that "Aquatic recreation impairment from E. coli was prevalent at all AUIDs that were sampled". The summary continues to state that "Reducing the amount of bacteria throughout the watershed should be an immediate priority". We are concerned that bacteria levels remain elevated in many streams despite numerous efforts at reduction. Adding a new potential source of bacteria at the scale of this proposed facility is inconsistent with the conclusions in the WRAPS report regarding bacteria impairments in the Root River watershed. We believe that the EAW should acknowledge the conclusions of the WRAPS report and explain how the proposed project will not cause further impariments.

The central objective of the state clean water program is to improve water quality in impaired lakes and streams so they meet water quality standards and can be removed from the US-EPA 303(d) List of Impaired Waters. Excessive nutrient loading is a common water quality impairment in the Root River watershed. The **Root River Watershed Stressor Identification Report** (MPCA 2015) found that elevated nitrate concentrations and low dissolved oxygen levels are stressors to the macroinvertebrate community in the South Fork Root River subwatershed which includes Wisel Creek. Wisel Creek had macroinvertebrate index of biotic integrity (MIBI) scores near the threshold of impairment declaration in 2015. We are concerned that potential increased

nutrient loading to Wisel Creek may result in an impairment declaration for the invertebrate community. The parcels where manure spreading would occur are entirely located within subwatersheds which already receive high nutrient loading. This may exacerbate nutrient loading to the system and may decrease the likelihood that these streams will meet water quality and recreational use standards.

Regarding the content of the EAW, Minnesota rule 4410.1200 Subp. E. states that the major issues section of an EAW must identify potential environmental impacts and issues that may require further investigation before the project is commenced, including identification of **cumulative potential effects**. Given that there are 82 registered feedlots within the Wisel Creek watershed, the cumulative impact of the project on bacteria and nutrient loading to Wisel Creek and the South Fork Root River should be examined in the EAW.

Subp. H of rule 4410.1200 states that an assessment of the compatibility of the project with approved plans of local units of government must be done. The **Root River Watershed One Watershed, One Plan** contains four strategies and associated actions which focus on nutrient loading and stormwater management. This plan was developed by and is being implemented by local units of government that include Fillmore, Houston, Winona, Mower, and Olmsted counties. The EAW should examine whether the proposed facility is compatible with the goals of this plan. On behalf of the DNR, thank you for consideration of these comments.

Sincerely,

/s/ Rebecca Horton
Region Environmental Assessment Ecologist

CC: Jeff Weiss, Clean Water Hydrologist

Attachment 4: Dr. Calvin Alexander (Part 1)

From: Loni Kemp <lonikemp@gmail.com>
Sent: Wednesday, May 30, 2018 4:48 PM
To: Peterson, Charles V (MPCA) <charles.peterson@state.mn.us>; Gernes, Mark P (MPCA) <mark.p.gernes@state.mn.us>
Cc: Calvin Alexander <alexa001@umn.edu>
Subject: Calvin Alexander's Comments on Catalpa LLC Feedlot permit and EAW

Calvin Alexander asked me to submit his comments for him (attached and below,) as he is now on the road. The fifteen minute delay in meeting the deadline is my fault, as I was actually just on the phone with your colleague Bill Sierks learning of the Commissioner's decision to hold a public informational meeting on Catalpa and to reopen the comment period at that time. I am grateful for that decision. And I hope you will include these comments now.— Loni Kemp

Dear Charles Peterson and Mark Gernes,

My name is Dr. E. Calvin Alexander Jr., Morse Alumni Professor Emeritus, Earth Sciences, University of Minnesota. I am writing to recommend a full EIS be required for the Catalpa, LLC swine feedlot in Fillmore County, and that the permit not be issued.

I hereby submit my comments on the proposed Catalpa swine farrowing facility in Fillmore County. I was contacted by a group of concerned citizens who live close to the proposed site and spreading fields, and asked if I could comment on the suitability of the proposal in view of the karst geology in the area. This particular proposal had not undergone a detailed karst hydrogeologic investigation up until this time. When I looked at the available data it was quickly obvious that there were potential karst features that had not been recorded. A short desktop study of LiDAR images revealed eleven potential sinkholes and three sinkholes not noted in the EAW located in the sections where the feedlot was being proposed. We attempted to schedule a field investigation of these two sections with the landowner, Al Hein, and after initially being granted permission, that permission was canceled at the last moment last night, just before we were to tour the site today, the last day in which to submit comments.

A few hours of field work with concerned local citizens today reveals additional sinkholes, filled sinkholes, springs a stream sink and other karst features in the

immediate vicinity of the proposed facility but not noted in the EAW. We were not allowed to go on the actual site. This information illustrates the need for access to the site by a neutral karst expert, as would be required in a full Environmental Impact Statement.

From a karst perspective there are two issues: sinkhole formation under the facility causing catastrophic failure of the manure pits or other infrastructure; and diverse karst features under manure spreading fields increasing pollution of surface and groundwater. The facility would be sited at the intersection of the Galena and Prairie du Chien karst layers, on the remnants of the St. Peter sandstone. The St. Peter in turn sits on top of a paleo karst surface on top of the Prairie du Chien. Major voids are well known to occur at this paleokarst surface and collapse upward into the St. Peter. This is a complex, high risk location to build a major facility.

Just today we found four sinkholes along a grass waterway on land immediately adjacent to the facility and at same elevation. Thus, sinkholes are actively forming in the environment and will pose an ongoing threat to the integrity of the hog barn pits.

Three of these sinkholes had been filled. The fourth was open and functioned as a stream sink in high flow. The same neighbor near the proposed site showed me a fifth now filled sinkhole located at the same elevation and stratigraphic elevation as the proposed facility. This situation was not discussed in the EAW.

If Catalpa builds this facility, they need to do a lot more investigation of all the faclities and foundation sites than would normally be expected. I would recommend high resolution, three dimensional electrical resistivity tests under the barns and any of the other structures. Location of such structures will always be risky in this karst environment.

It would be interesting to know the history of the landowners existing large corn bins, as regards to foundation problems or settling. has the land owner filled any sinkholes either at the facility site or in any of the proposed spreading fields?

We want it entered into the record that careful examination of the LiDAR imagery of the site and surroundings indicates that a possible sinkhole exists right along the section line between section 7 and 18. There is enough evidence

that it should be investigated by an independent study by a neutral person with karst credentials. It could be the fourth sinkhole within 1000 feet of the site.

This feedlot will produce as much swine feces in a year as a city of 50,000 people. Spreading it twice a year on the surrounding fields which have very rapid connection to surface and groundwater is a significant risk. It is apparent that there are many sinkholes which could provide conduits for antibiotics, swine diseases, or viruses to be carried to the groundwater. Such organisms have been proven to survive for a very long time in groundwater, moving faster than anyone imagined.

Two short periods in the spring and fall are proposed for manure spreading, and if anything interferes, the owners still have to dump it somewhere, because it has to go somewhere since letting the pit overflow might be worse. There is no "Plan B" for emptying full manure pits if the weather or other conditions do not permit scheduled spreading.

I recall in Olmsted County, when August corn was eight feet high, with wide alfalfa contour strips that were covered with manure, because the farmer had to put it somewhere. And the feedlot officer I was riding with did nothing, because they have to either take manure out and spread it anywhere, or let the pit be overtopped with manure. A cow reportedly opened a pit valve and the lagoon poured out in another Olmsted County location, while here in Fillmore county a wall gave way in a relatively new dairy lagoon and released the manure.

Three municipal lagoons in SE Minnesota drained catastrophically in years past, releasing sewage directly into groundwater.

In conclusion, it is necessary to withhold the feedlot permit and require an EIS to fully investigate the karst dangers posed by this proposal.

E. Calvin Alexander

Attachment 4: Dr. Calvin Alexander (Part 2)

Comments on the Catalpa LLC Hog Farrowing EAW

from
E. Calvin Alexander, Jr.
Morse-Alumni Professor Emeritus
University of Minnesota
Earth Sciences Dept.
Minneapolis, MN 55455

The following comments are directed at a subset of the environmental issues raised by the Catalpa LLC EAW concerning a proposed hog farrowing Concentrated Animal Feeding Operation (CAFO) in Newburg Township of Fillmore County. These comments focus on the area's karst hydrogeology which imposes major constraints, limitations and environmental risks to any such industrial scale CAFO. Such a CAFO will inevitably inflict major, damaging, area-wide environmental impacts if permitted and constructed. The EAW is based on incomplete information, significantly misinterprets the fragmentary information it does present and fails to address obvious concerns. Other people will comment on the many other impacts that would result from the construction and operation of such a CAFO.

These comments are meant to support the request for an Environmental Impact Statement on the Catalpa proposal. There is no reasonable doubt that such a facility will significantly impact the surrounding environment in a detrimental way.

All of Newburg Township is part of the southeastern Minnesota karst. It is shown as an "active karst" in the 2006[1] Minnesota Karst Lands Map. Most recently in 2016[2] the DNR has mapped Newburg Township as "Prone to Surface Karst Feature Development" (Figure 1, Newburg Twp. is the SE most Twp. in Fillmore County).

The air, soil, surface waters and groundwaters are all profoundly influenced and interconnected by karst processes. The critical characteristics are the rapid, direct interconnections between the surface and groundwater resources. Precipitation waters rapidly infiltrate through the soil, via sinkholes and stream sinks to conduct pollutants in or on the soils into the groundwaters. Those groundwaters move very rapidly through the aquifers to wells and to springs will very little filtration. Groundwater flow velocities are often measured in miles/day - not the meters per year of Darcian Aquifers. The land surface is very dynamic. It can and does change significantly on human time scales. It is disingenuous and dangerous to pretend that some arbitrary off set distance from a "mapped karst feature" somehow ensures that a facility is safe. This is particularly true when the karst features are very incompletely mapped or inventoried.

The comments below are divided into sections on the Facilities Site and the Manure Spreading Fields but this division is artificial and overlaps. Both the proposed Facility Site and the Manure Spreading Fields are located in sites highly vulnerable to sinkhole development and groundwater and surface water pollution.

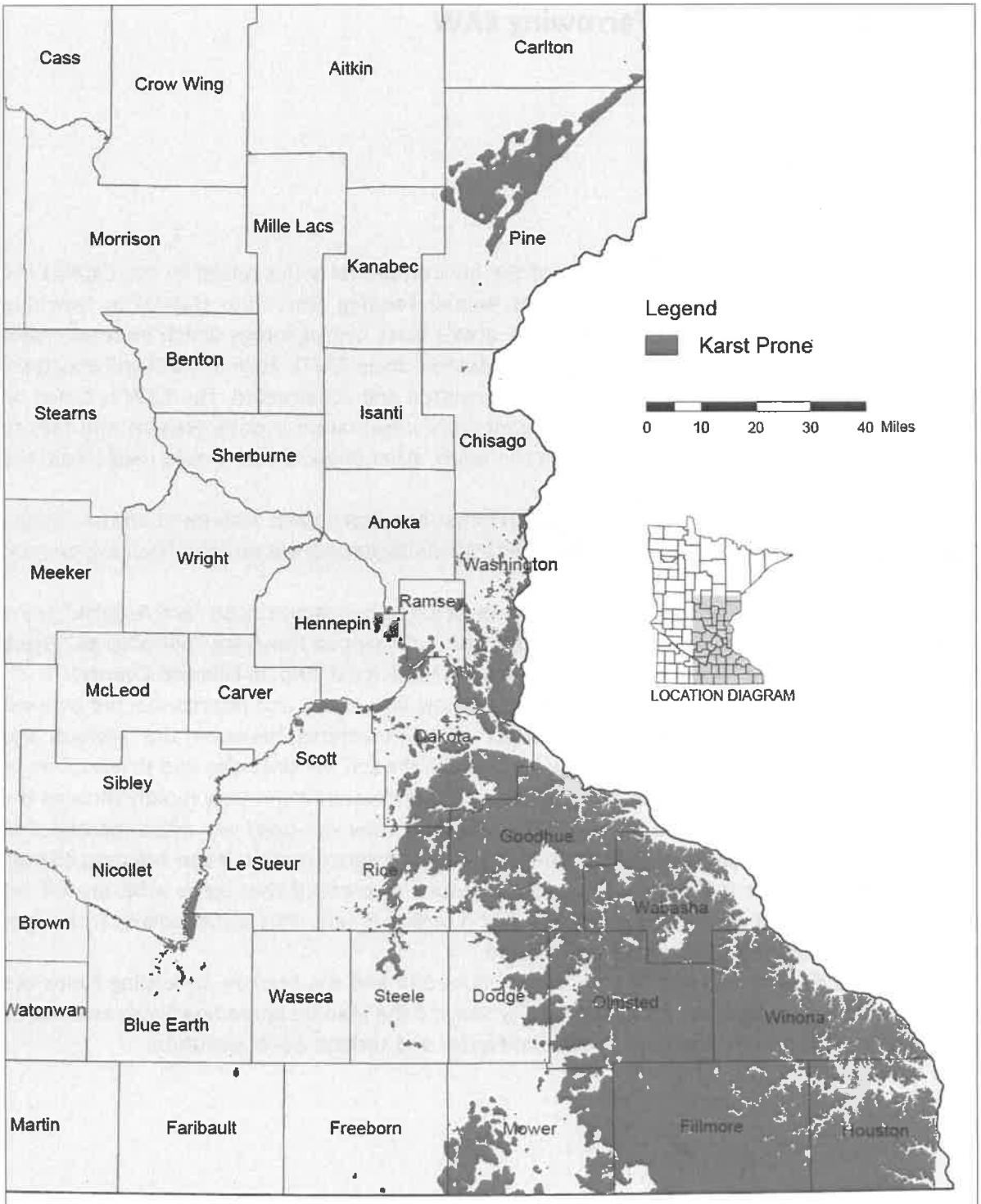
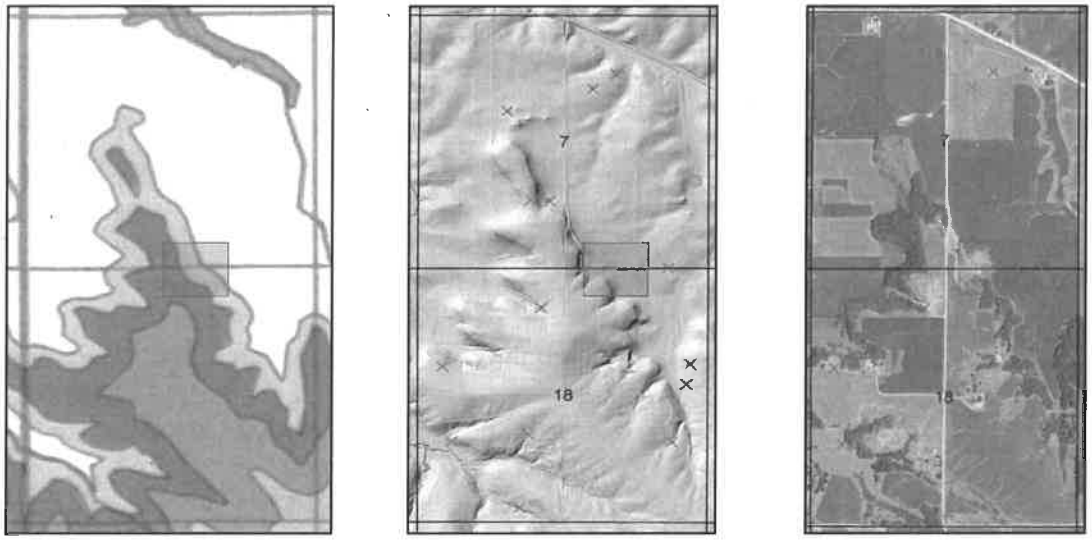


Figure 1. Minnesota Regions Prone to Surface Karst Feature Development: Series GW-01

See the County Geologic Atlas Karst and Springs webpage for additional information:
http://www.dnr.state.mn.us/waters/groundwater_section/mapping/springshed.html

I. The Proposed Facility Site:

The proposed Catalpa Facility Site is located in sections 7 and 18 of Newburg Township in Fillmore County. Figure 2 shows the location of the site (the red square overlay) on the 1995 Bedrock Geology Map[3], on a 2008 LiDAR Shaded Relief DEM and on a 2013 air photo.



1995 Bedrock Geology[3] 2008 LiDAR 2013 Air Photo

Figure 2. Left to right: Bedrock Geology (light blue in lower corner Cummingsville Limestone, darker blue in sec. 18 Prosser Limestone, green is the Decorah Shale, Platteville Limestone and Glenwood Shale, tan is the St. Peter Sandstone, white is the Shakopee Formation, dark blue in sec. 7 is the Oneota Dolomite; LiDAR and Air Photo (red "x"s are sinkholes and potential sinkholes, the green dot is a stream sieve. The red overlay is the approximated location of the facility.

Stratigraphically the Facilities Site sits on the lower St. Peter Sandstone and the upper Shakopee formation at the base of a Decorah/Platteville/Glenwood ridge immediately to the west. Figure 3 is a block diagram illustrating the topographic relationships of the proposed Catalpa Facility Site. The approximate topographic location of the proposed Facilities Site is shown by the red oval in Figure 3. Numerous unmapped springs and seeps along the Cummingsville and Platteville subcrops, drain down across the Decorah and then sink into the St. Peter Sandstone and the Shakopee Formation in the valley south of the Facilities Site. The approximate topographic position of the proposed Spreading Fields south of the proposed Facilities is indicated by the brown oval on top on the stratigraphically higher Prosser and Cummingsville Formations.

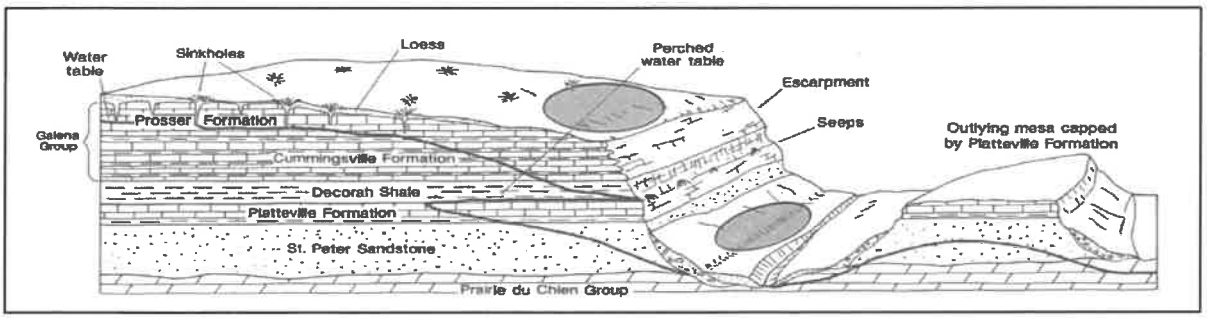


Figure 3. Block diagram showing the stratigraphic relationship between the proposed Catalpa Facility site and ridge to the west and south. The red oval is the approximate positions of the Facilities Site. The brown oval

show the stratigraphic relationship with the proposed Spreading Fields south of the Facilities Site. Modified from Mossler and Hobbs (1995)[4].

A. Sinkhole Development in Minnesota:

1. Natural Sinkholes: More than half of all of the mapped sinkholes in Minnesota are in Fillmore County - more than 10,000. Most of those have formed through natural karst processes. Those processes work not only in areas underlain by limestone and dolomite but also in areas underlain by sandstone and other siliciclastic rocks. Sinkholes continue to form. New sinkholes routinely form in Fillmore County. They often develop during or after extreme precipitation events. As the frequency of extreme precipitation events increases - so does the frequency of new, natural sinkhole development.

Sinkholes are depressions "dug from the bottom". They form as soil and bedrock are removed by solution and erosion through subsurface joints, conduits and caves. Filling sinkholes from the top does not solve the problem. Sinkholes are often ephemeral features on the land surface. They can plug and fill naturally and many are artificially filled, particularly new sinkholes that develop in or around land used by human activities. Artificial filling of sinkholes does not remove the underlying karst hydrogeological features that produce the sinkholes. Filling sinkholes does not remove or remediate the subsurface conduits, caves and joints which led to the sinkhole formation. Filled sinkholes routinely reopen and or new sinkholes form nearby.

Few of the sinkholes existing at any specific time are recorded on publically available USGS topographic maps, some of the County Soil Surveys and in some of the County Geologic Atlases. None of these sources are complete even at the time they are published and rapidly become obsolete after their publication. The advent of LiDAR technology in the first decade of the 21st century has greatly facilitated the location and inventorying of sinkholes. Sinkholes are currently being inventoried and recorded in the Minnesota Karst Features Database (KFD) and most recently springs and seeps all across Minnesota are being inventoried in the Minnesota Spring Inventory (MSI). Both the KFD and MSI are accessible on line, but neither contain all of the karst features and or springs in the vast majority of areas. Newburg Twp. had not been systematically searched for either springs or karst features. The KFD and MSI data are very incomplete for Newburg Township.

Table 1. Karst Features in Newburg Township, Fillmore County, Minnesota

	KFD #	UTM E m	UTM N m	Comments
Sec. 6	23D10317	593,945	4,826,353	Potential Sinkhole, 9 m diameter
	23D10308	593,333	4,825,195	Potential Sinkhole, 6 m diameter
	23D10309	593,374	4,825,202	Potential Sinkhole, 6 m diameter
	23D10307	593,455	4,825,233	Potential Sinkhole, 6 m diameter
	23A712*	593,454	4,825,195	Spring
	23A975*	593,347	4,826,216	Kelly Jo Spring
	23A976*	593,326	4,826,237	Donna Spring
Sec. 7	23D10285	593,598	4,824,726	Potential Sinkhole, 6 x 4 m elongate pit, other nearby pits.
	23D10286	593,830	4,824,630	Broad Shallow Sinkhole, about 32 m diameter.
	23D10287	593,360	4,824,482	Sinkhole, about 7 m diameter.
	23D3986	593,606	4,823,917	Steep sided pit, about 32 m diameter, may be a borrow pit.
	23D10289	593,552	4,823,942	Potential Sinkhole, about 3 m diameter pit, on slope.
	23D10288	593,502	4,823,920	Potential Sinkhole, about 3 m diameter pit, on ridge top.
	23D10284	594,277	4,823,504	Potential Sinkhole, about 4 m diameter.
Sec. 18	23D10295	593,574	4,823,241	Potential Sinkhole, 12 m diameter, at end of an old road.
	23D10290	593,182	4,823,050	Potential Sinkhole, 4 m diameter.
	23D10291	593,036	4,822,859	Potential Sinkhole, 4 m diameter.
	23D10292	593,094	4,822,384	Potential Sinkhole, 5 m diameter.

	23D10294	593,521	4,822,437	Potential Sinkhole, 3 m diameter.
	23D10293	593,480	4,821,972	Potential Sinkhole, 3 m diameter.
	23D10296	594,318	4,822,403	Potential Sinkhole, 2.5 m diameter.
	23D10297	594,390	4,822,771	Potential Sinkhole, 2.5 m diameter.
	23D3988	594,407	4,822,895	Sinkhole, 12 m diameter.
Sec. 17	23D3987	594,578	4,823,011	Sinkhole, 23 m dia
	23D10328	594,649	4,823,048	Filled Sinkhole, 8-10 ft dia, 2-3 ft deep, 2014-2915
	23D10325	594,749	4,823,315	Open Sinkhole in grassed waterway, 6x4x7 ft deep, 2014-2015
	23D10327	594,816	4,823,322	Two filled sinkholes in grassed waterway, 2003-2008
	23D10326	594,865	4,823,340	Large filled sinkhole in grassed waterway, after 2012
	23D10324	595,595	4,823,273	Sinkhole, about 10 m dia
	23D10322	595,432	4,822,486	Sinkhole, about 13 m dia
	23D10315	594,870	4,822,297	Potential Sinkhole, 4 m dia
	23D10314	594,637	4,822,129	Potential Sinkhole, 7 m dia
	23D10313	594,770	4,822,010	Potential Sinkhole, 4 m dia
	23D10323	595,246	4,822,041	Sinkhole, ~15 m dia
	23A977*	595,898	4,822,136	Donky Spring, Decorah Fm
	23A978*	595,717	4,822,172	Diana Spring, Decorah Fm
	23A979*	595,588	4,822,156	Bristol Spring, Decorah Fm
* The "23AXXX" # are the short versions of the MSI relate ID#s - full form would be 23A0000XXX				

Prompted by the Catalpa EAW, a very preliminary, very incomplete LiDAR exercise and a few hours of field work has identified 37 sinkholes, filled sinkholes and potential sinkholes, springs and stream sinks/sieves in the sections containing and adjacent to the Catalpa facility. These features are listed in Table 1.

Only three of the sinkholes in Table 1 are shown in the EAW. The potential sinkholes have not been field checked because the proposer has not granted access to his properties. No springs or the stream sink/sieve were mentioned in the EAW. There are a lot more springs and stream sieve/sinks in these four sections than are recorded even in Table 1.

2. Human Induced Sinkholes: In addition to sinkholes formed by natural processes, numerous studies have documented that sinkholes can be induced by a wide variety of human activities. The three major human activities that have induced sinkholes in Minnesota are:

i) Construction Activities on the land surface: The land surface in karst regions is in a delicate, dynamic equilibrium. Any activity that disturbs that equilibrium can induce sinkhole formation. Changing the grades, excavating holes and pits, filling areas, altering surface drainage, changing the rate of infiltration - either increasing or decreasing infiltration, has been shown to increase sinkhole formation.

The Catalpa Proposal will completely reshape about four acres of the landscape at the site. Many cubic yards of sediments will be excavated to create pits beneath the two major barns and the storm water infiltration basin immediately adjacent to the barns. That excavated material will probably be used on site as fill to slope the land away from the barns, construct access roads, etc.

ii) Construction of Water Impoundments: Ponds, lagoons, infiltration basins any type of water impoundments are very prone to sinkhole formation in their bottoms. Unlined or deliberately designed permeable bottomed impoundments are more dangerous, but even lined impoundments can catastrophically fail. Of the roughly 20 Municipal Waste Water Treatment Facility Lagoons constructed in Minnesota's karst lands in the 1970s, three have catastrophically failed -so far. That's a failure rate of

15% on multimillion dollar structures. A farm pond that holds water in much of SE Minnesota is the exception. There are innumerable dry ponds with sinkholes in their bottoms.

The Catalpa Proposal will construct an unlined storm water (non) retention/infiltration basin at the south end and between the two major barns. The goal is to avoid sending all of the water runoff from the roofs and other impermeable structures in the four acre site down the adjacent surface drainage by infiltrating that water into the subsurface immediately adjacent to the barns. Thereby dramatically increasing the risk of sinkhole collapses directly under the pits beneath the barns.

iii) Pumping High Capacity Wells: Pumping large amounts of water out of the ground draws down the water table thereby reducing the buoyant support of the overlying soils, unconsolidated subsoil and the bedrock. This loss of buoyance induces sinkhole collapse. This effect is exacerbated by intermittent pumping. The fluctuation in the water table literally pumps materials down through the conduit systems.

The entire water supply for the Catalpa Facility is proposed to be a high capacity well pumping and estimated 8 million gallons of water a year. That well is to be located 138 feet from the NE corner of the Farrowing Barn. The first aquifer under the site is the Prairie du Chien Aquifer - which is highly vulnerable to contamination from the site and it's spreading fields and other human activities. The well will need to be drilled to at least the Jordan Aquifer and perhaps and even deeper aquifer. Pumping of that well will pull a cone of depression in the water table of the pumped and overlying aquifers and raise the probability of induced sinkhole development.

All three of these documented ways of inducing sinkhole development would be operating and reinforcing each other at the proposed Catalpa site. None were mentioned or discussed in the EAW.

We need an Environmental Impact Statement to consider and investigate the Catalpa Proposal.

3. Distribution of Sinkhole across SE MN Stratigraphy: Figure 4 illustrates the distri- bution of the number and density of sinkholes across the bedrock stratigraphy of Southeast Minnesota. Most of the sinkholes and their highest density are developed on the Spillville through the Prosser Formation. While the distribution and number of sinkholes developed on the stratigraphically lower St. Peter Sandstone, Shakopee Formation and the Oneota Dolomite is lower, all of the eight recorded sinkhole collapse failures of major facilities have occurred at two specific stratigraphic locations in these lower formations - not among the more numerous sinkholes developed on the higher formations.

The locations of these eight catastrophic are shown by colored stars in Figure 3. Two large storm water retention ponds, the Dancing Waters storm water lagoon in Woodbury[5] and the Prairie Crossing pond[5] on the north edge of Rochester, and the irrigation pumping induced sinkhole collapses[6] in southern Dakota County, occurred through the lower St. Peter Sandstone into the Shakopee Formation. The other five failures, three municipal Waste Water Treatment Lagoons, Altura[7], Bellechester[8] and Lewiston[9] and two large flood control dams, the Watson-Warrington[10] structure in Goodhue County and the Crooked Creek S3[11] structure in Houston County occurred through the bottom of the Shakopee Formation into the Oneota Dolomite.

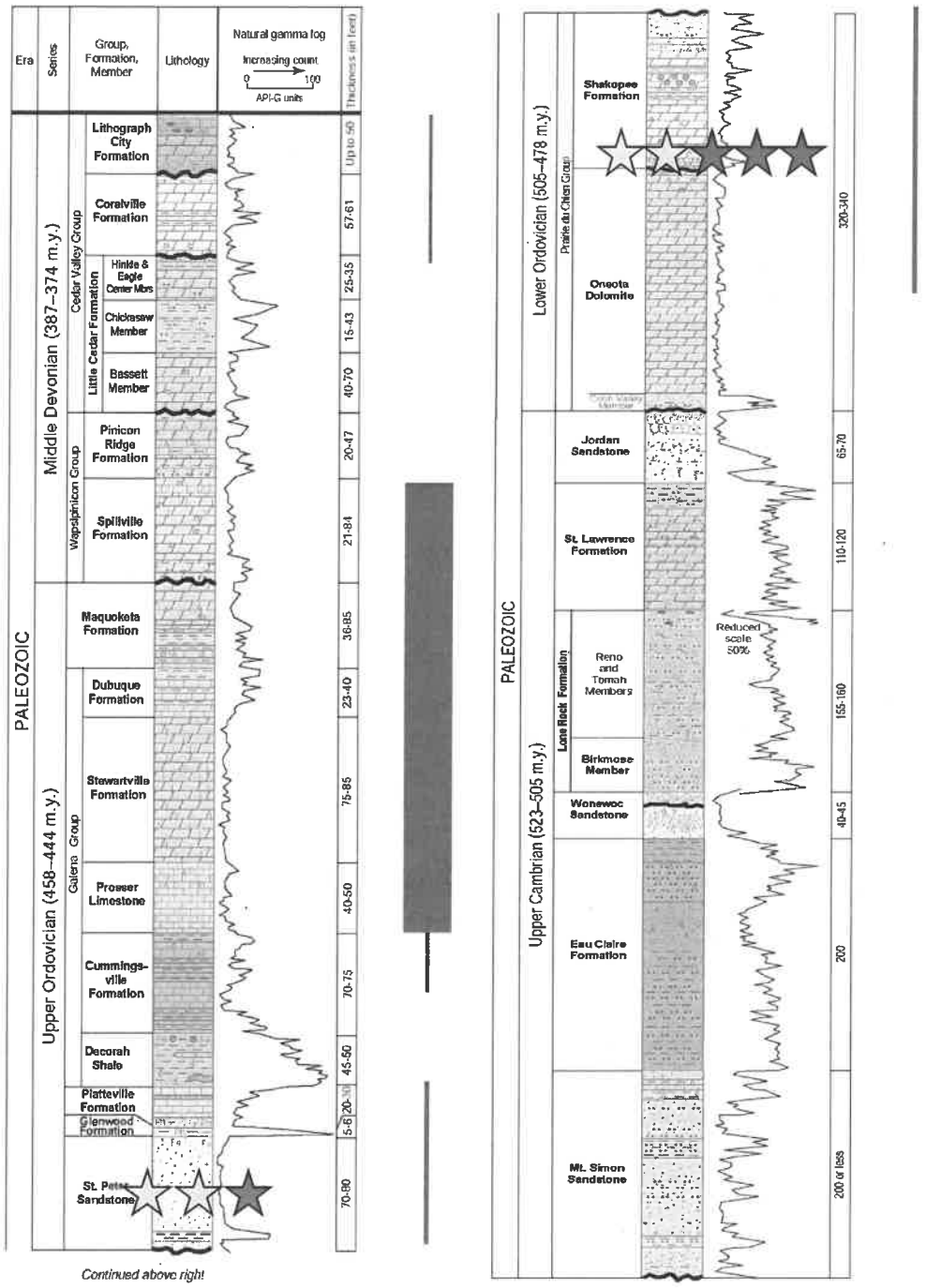


Figure 4. Minnesota distribution of sinkholes, the red bars (the width is a function of the number of sinkholes) and catastrophic collapses of large facilities, the stars. The red stars are Municipal Waste Water Lagoons, yellow stars are water retention structures, the green star was induced by irrigation pumping. Alexander (2016)[5]

The proposed Catalpa Facility will be located at the precise stratigraphic location as two of the storm water pond induced collapses and the high pumping irrigation well induced collapses. The Catalpa EAW does not mention this correlation.

B. Lack of Geotechnical Investigations of at Catalpa Facilities Site:

Conspicuous by its absence is any detailed geotechnical information about the subsurface conditions at the proposed Catalpa Facilities Site. The EAW pdf contains only one short, cryptic paragraph and one brief, equally cryptic table:

> *"Stratification logs of nearby wells, listed in the MDH County Well Index indicate topsoil and clay followed by multiple layers of limestone and sandstone to a depth of approximately 450 feet. The soil investigations performed on-site indicate layers of topsoil above varying clay and silty sand layer until the borings terminated 16-24 feet below the surface."* (EAW pdf, p. 13)

A.

Approximate depth (in feet) to:		Feedlot	Manure Storage Area	Manure Application Sites
Ground Water	(minimum)	6.6	6.6	1.5
	(average)	6.6	6.6	6.2
Bedrock	(minimum)	6.6	6.6	2.5
	(average)	6.6	6.6	6.2

(EAW pdf, p. 15)

Neither the well logs nor the soil boring logs are presented. The locations of the soil borings are not indicated on Site map. The sentence describing the soil borings is contradicted by the information in the table. The borings reportedly encountered "16-24 feet" of sediments. The table indicated the depth to bedrock is "6.6 feet". There is usually a requirement of 10 feet of soil below the bottom of the pit above bedrock. If the data in the table is correct it will be impossible to meet that requirement at the facility site.

It is impossible to make an informed judgement about the subsurface suitability of the proposed site based on the extremely limited, self-contradictory information listed in the EAW. An EIS is needed to create and present the necessary geotechnical subsurface data.

1. ERI Site Investigations: About five years ago Professor Toby Dogwiler at Winona State University Water Resources Center pioneered the application of the Electrical Resistivity Imaging (ERI) geophysical technique coupled with targeted soil borings to subsurface site investigations of proposed CAFO sites in Minnesota. His investigations of several sites are well known to the MPCA staff. One example of the utility of this technique is shown below as Figure 4.

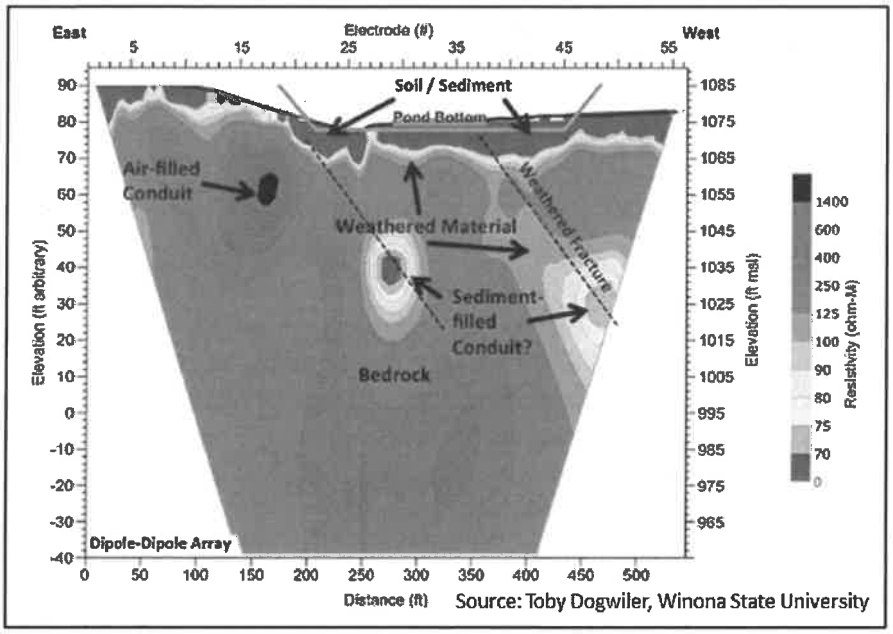


Figure 5. A 2D Electrical Resistance Imaging of a pond site in SE Minnesota by Toby Dogwiller, Winona State University.

Tony's survey was able to image the typically very irregular soil/bedrock interface, an air filled conduit and two sediment filled conduits in the bedrock and two weathered fracture zones at the proposed site. No reasonable number of bore holes would have provided this level of information.

One of the fundamental problems is that borings in this context extend only to the first rock encountered - which may be bed rock or may be a glacial erratic or a detached slab of bedrock. The phrase "solid bedrock" is a very dangerous, typically incorrect term in karst regions. The bedrock is weathered and crisscrossed fractures, solutionally enlarged joints and bedding planes, conduits and caves. None of these can be reliably identified by soil borings.

Given the high risk location of this proposed site, the lack of complete data on the surface sinkholes near the site, the fragmentary and self-contradictory data in the EAW is totally insufficient to make a permitting decision on the Catalpa Facility site. A detailed 3D ERI study should be conducted and interpreted by someone with documented experience in karst site characterizations - before any permits are issued.

II. The Spreading Fields:

As illustrated in Figure 1. and in Attachment A of the Catalpa EAW application, all of the spreading fields are in active karst regions. Most of the spreading fields are in Newburg Township but a few are in Preble, Amhurst and Canton Townships. All of these areas are characterized by very rapid interconnections between the land surfaces and the groundwaters - time scales of minutes to hours - with very little filtration. The near surface ground waters then move rapidly to springs and seeps with time scales of hours to months. Spreading manure on any of these fields will contaminate the shallow groundwater aquifers under the fields

A. Galena Karst Fields: Spreading fields, which are numbered 1, 2, 5, 8, 11, 12, 15, 24, 25 and three parcels not numbered adjacent to those numbered fields, in Attachment A of the Catalpa EAW are on the Galena Formation. They are south of the Facilities Site, all in Newburg Township and higher in the stratigraphic column. The stratigraphic relationships are illustrated in Figure 3 above.

Pollutants that infiltrate the soils on these fields will flow through shallow groundwaters to springs and seeps coming off the underlying Decorah Shale. Surface runoff from the fields will flow to the same areas. The combined surface and groundwaters will flow on the surface across the Decorah Shale over the Platteville and Glenwood and much of the water will then sink into stream sieves and sinks in the St. Peter Sandstone. Both the surface and groundwaters will be adversely impacted.

B. Prairie du Chien Fields: The bulk of the spreading fields are on the Shakopee Formation and the underlying Oneota Dolomite basically north of the Facility. They cover most of the surface of the Prairie du Chien Plateau shown diagrammatically in Figure 6. These are thin, high permeable soils. The manure pollutants will rapidly infiltrate to the shallow groundwater and then move rapidly to the Wisel Creek Trout stream and its tributaries. The stratigraphically lower of the two zones where catastrophic sinkhole collapses have will be present in many of the spreading fields. The contact between Shakopee and Oneota is an unconformity and paleokarst features have created a regional high transmissivity zone in the bedrock that transmits groundwater rapidly. Pollutants will be transmitted rapidly to springs feeding the trout streams.

All of the modern BMPs for handing manure applications will reduce but not eliminate the water and air pollution. There is fundamentally no way to avoid additional pollution of the surface waters, groundwaters and air when volumes of manure that will be generated by the Catalpa Facility are transported and spread on the surrounding fields.

The Catalpa EAW does not sufficiently address the impacts of the manure spreading operations on the spreading fields and on the adjacent residents' environments. This proposed CAFO will basically degrade its neighbors' environmental quality for its own profit. An EIS is needed to document all of the potential environmental effects.

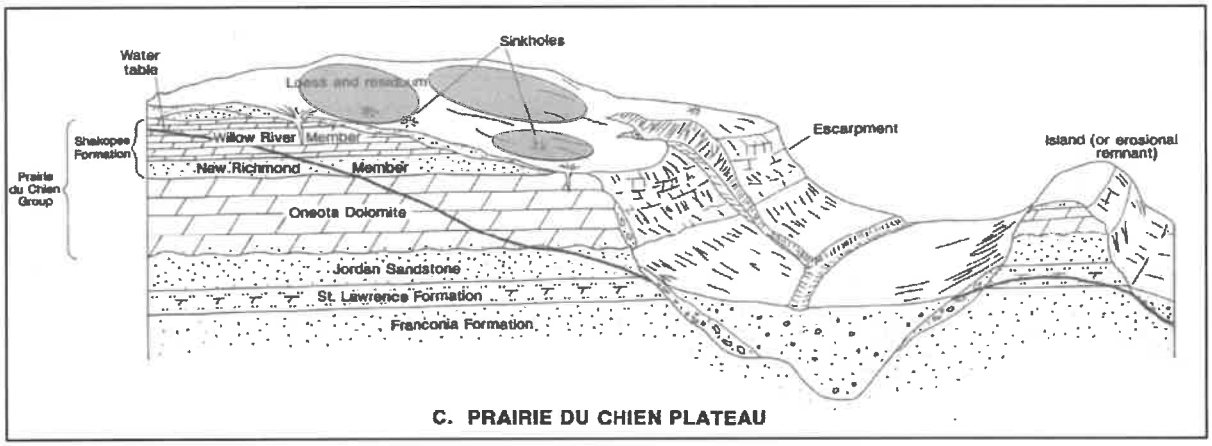


Figure 6. Block diagram showing the stratigraphic relationship the spreading fields to the north of the Facilities Site. The brown ovals illustrate that these proposed Spreading Fields will overlie various parts of the Shakopee Formation with some on the bottom part of the St. Peter and some on the top of the Oneota Dolomite. Modified from Mossler and Hobbs (1995)[4].

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Attachment 6: Land Stewardship Project, Fillmore Cty Residents v. MPCA, 2000

From: Bobby King <bking@landstewardshipproject.org>
Sent: Wednesday, May 30, 2018 4:19 PM
To: Peterson, Charles V (MPCA) <charles.peterson@state.mn.us>
Subject: EAW comments to Catalpa, LLC

Mr. Peterson:
These are comments from the Land Stewardship Project to the Environmental Assessment Worksheet on the proposed Catalpa, LLC 4,980-sow swine farrowing facility in Sections 7 and 18 of Newburg Township, Fillmore County.
The project has the potential for significant environmental impacts and an Environmental Impact Statement is required. Among others, this proposed factory hog farm contains the following potential significant environmental impacts:
A failure of the manure pit due to the areas karst geology is possible and must be analyzed through an EIS. The EAW does not acknowledge or analyze the potential for the pit failure. This possible pit failure due to the sensitive karst area would result in millions of gallons of raw liquid manure entering the groundwater. The EAW states this factory farm will generate 7.3 million gallons of liquid manure annually and the pit be emptied twice a year. This means there will be millions of gallons in the pit most of the year.
Three of southeast Minnesota's 22 municipal sewage lagoons have collapsed, the most recent in 1992. (Altura in 1976, Lewiston in 1991 and Bellchester in 1992.) The MPCA **must** analyze what the impact of a catastrophic failure of this multi-million-gallon manure pit would be. The Fillmore County District Court agreed with this in a December 2000 ruling about locating a large feedlot and manure lagoon in Fillmore County's Forestville Township. (For more information, see "Gambling on the Karst?")
In the Dec. 22, 2000 ruling on Fillmore County Residents Concerned for Health vs MPCA, District Court Judge Benson writes, "The MPCA's decision not to conduct an EIS in this matter is not supported by the record and is arbitrary and capricious. The Court finds that the MPCA failed to consider at least one important aspect of the problem, i.e. the possibility of an underground collapse of the basin. If the basin would collapse how would ground water contamination be stopped? This Court could not find any information in the MPCA's brief to answer this disturbing question. The MPCA should have addressed this issue and they did not."
A copy of this ruling is attached and should be included as part of LSP's comments to the EAW. Much of the analysis in this ruling applies directly to this proposed factory hog farm. The fact that this is concrete pit, as opposed to an earthen basin, does not resolve this issue. The EAW does not indicate that the pit is constructed to withstand the opening of one or several sinkholes beneath it.
The impact on groundwater availability and quality must be analyzed through an EIS. This facility will use 8.8 million gallons of groundwater annually, for a total consumption of 220 million gallons over 25 years. The impact of this on the groundwater must be analyzed now through an Environmental Impact Statement. The EAW states that the issue will be dealt with as part of the DNR Water Appropriation Permit Program. This defeats the purpose of environmental review which is to inform the permitting process and determine if there are ways to mitigate potential harm. It is inappropriate to defer to the permitting process this aspect of the environmental assessment.

In addition, water quality impacts must be thoroughly examined and possible mitigation to harm explored. The EAW acknowledges on page 30 that the area is designated as posing a high risk to groundwater pollution. Fillmore County already has 15 percent of its wells exceeding the nitrate standard. The impact on the already stressed groundwater needs to be fully examined by an EIS. **Cumulative impacts of the likely finishing and nursery barns on the area must be examined through and EIS.** This facility will produce over 40,000 piglets a year that must be raised in nurseries and finishing barns. The cumulative impact of these operations on the area must be examined through an EIS.

I also request that the MPCA schedule a public informational meeting in Fillmore County on the proposed Catalpa, LLC factory hog and extend the comment period until after this meeting. The current comment period coincided with crop planting, Memorial Day weekend and end-of-school activities. Citizens need more time and an informational meeting to fully understand what is being proposed.

Sincerely,
Bobby King
Land Stewardship Project
Policy and Organizing Director
612-722-6377
bking@landstewardshipproject.org

STATE OF MINNESOTA IN DISTRICT COURT

COUNTY OF FILLMORE THIRD JUDICIAL DISTRICT

File No. CX-00-306

Fillmore County Residents
Concerned For Health, Janice Poldervaard,
Loren Poldervaard, Erwin Tart, Robert
Wood, Eloda Wood, George Heidtke,
Thomas Schulz, Larry Schulz, Otto Meyer,
Judy Tart, David Applen, Donovan Ruesink,
Jeff Tart, Joyce Tart, Sandy Oeltjen, Mark Oeltjen,
Karen Angell, Arlen Angell, Laurie Applen, Gene
Merkel, Darlene Merkel, Lois VanderPlas,
Verlyn Johnson, Sara Poldervaard, Robert K.
Johnson, Judy Bly-Smith,

Plaintiffs,

vs.

**ORDER AND
MEMORANDUM OF LAW**

Minnesota Pollution Control Agency,

Defendant,

Reiland Farms,

Intervenor.

This matter came on for hearing before the Honorable Robert R. Benson on September 25, 2000, on cross-motions for summary judgment.

James P. Peters and Karna M. Peters of Peters and Peters, PLC, 20020 S. Lakeshore Dr., Glenwood, Minnesota 56334, appeared on behalf of the Plaintiffs.

Ann E. Cohen, Assistant Attorney General, 445 Minnesota Street, Suite 900, St. Paul, Minnesota 55101-2127, appeared on behalf of Defendant Minnesota Pollution Control Agency (MPCA).

Michael S. Dove, 2700 South Broadway, P.O. Box 458, New Ulm, Minnesota 56073-3111, appeared on behalf of Defendant-Intervenor Reiland Farms.

This Court, being fully advised, and based on the files, records, and proceedings herein hereby finds and orders as

follows:

1. Plaintiff Fillmore County Residents Concerned for Health's motion for summary judgment is granted;
2. Defendant Minnesota Pollution Control Agency's motion for summary judgment is denied;
3. The attached Memorandum is incorporated by reference.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT

Dated: December 22, 2000 /s/ Robert R. Benson

Robert R. Benson

Judge of District Court

JUDGMENT

The foregoing Order and Memorandum of Law dated the 22nd day of December, 2000 constitutes the Judgment of the Court.

Judgment is hereby entered this 22nd day of December, 2000.

JAMES ATTWOOD

COURT ADMINISTRATOR

/s/ James D. Attwood

MEMORANDUM OF LAW

Introduction

This Court, like most courts, is concerned about inserting the power of our third branch of government into areas that are primarily and appropriately within the realm of the legislative or executive branches. In the instant case, a statute was propounded by the legislature, but the enforcement and interpretation of that law was delegated by the legislature to the executive branch. Defendant MPCA argues that Plaintiffs seek to have this Court second-guess the technical judgment of the MPCA on the strength of popular opinion. "Boiled down" (to borrow another phrase from Defendant's brief) Defendant essentially argues that this issue is none of the Court's business. This Court wishes it were so. However, the same legislature that delegated responsibility to the MPCA also specifies by law (Minn. Stat. §116D.04 subd. 10) that an executive decision on the need for an EIS is reviewable in the District Court. Plaintiffs have properly sought the review of this Court.

Fillmore County Residents Concerned for Health has filed a motion for summary judgment, which challenges MPCA's negative declaration concerning the need for an environmental impact statement (EIS) regarding Reiland Farms' proposal to develop a dairy feedlot in the karst area of southeastern Minnesota. Defendant MPCA has filed a cross motion for summary judgment. The Court finds that the Plaintiffs are entitled to summary judgment. The motion of Defendants for summary judgment is denied.

There has also been disagreement over the Plaintiff's offer of proof to the Court. The Court finds that some of these items will be allowed into evidence as stated below in greater detail.

Plaintiff's Offer of Proof

The Court may consider evidence outside the administrative record when 1) the agency's failure to explain its action frustrates judicial review; 2) additional evidence is necessary to explain technical terms of complex subject matter involved in the agency action; 3) the agency failed to consider information relevant to making its decision; or 4) plaintiffs make a showing that the agency acted in bad faith. White v. Minnesota Department of Natural Resources, 567 N.W.2d 724, 735 (Minn. App. 1997). If the evidence submitted outside the administrative record demonstrates that the agency's effort was clearly inadequate or that the agency failed to set forth widely shared relevant scientific views, the Court's proper function is to remand to the agency for correction of the agency's error. Id.

It should be noted that the Court is only addressing the offers of proof which are being admitted and which were initially contested in this decision.

Peters Exhibit C:

This exhibit shall not be admitted. Exhibit C is unclear in its comments, and there are sufficient viewpoints from Dr. E. Calvin Alexander, Jr. present in the official record.

Peters Exhibit I:

The Guidelines for Alternative EAW form for Animal Feedlots provide general guidance on the EAW form and explains how the MPCA interprets the technical terms of "phased actions" established by EQB (Environmental Quality Board) rules. Under White and Audubon (National Audubon Society v. Minnesota Pollution Control Agency, 569 N.W.2d 211 (Minn. App. 1997)), the information is relevant to explain technical terms and is therefore admitted for this purpose.

Peters Exhibit J:

This exhibit is admitted because it is not objected to by the MPCA.

Peters Exhibit N:

This exhibit shall not be admitted. It does appear to the Court that this document, which is essentially a memo from one person in the Department of Health to another person in the Department of Health, is strictly an internal memorandum, and accordingly its admission would appear to the Court to be in violation of Audubon.

Peters Exhibit O:

This exhibit has been withdrawn by the plaintiff and shall not be considered.

Peters Exhibit S:

This exhibit is withdrawn by plaintiff and shall not be considered.

Peters Exhibit W:

The MPCA does not object to this document and it shall be considered.

Peters Exhibit CC:

The Court finds that this exhibit should not be admitted. It appears to be cumulative and it does not constitute such additional evidence that would meet the White criteria.

Peters Exhibit DD:

This exhibit does discuss a report of the MPCA (the RGU (Responsible Government Unit)) and it would appear to the Court that the data in this report is something that should have been considered by the MPCA. Clearly it does discuss the information which was in the hands of the MPCA and which it should have considered. This Court finds that this information is admissible under Audubon.

Peters Exhibit EE:

This exhibit demonstrates the scientific view that manure application can cause serious bacteria contamination of groundwater, thereby meeting the standard for consideration of the evidence. It is clear, however, that the document was available to the MPCA during its deliberations. The MPCA should recognize its own studies, and it is not necessary for plaintiff in this case to submit into the administrative record information generated by the MPCA. Accordingly the Court admits this exhibit.

Peters Exhibit FF:

The Court finds that this exhibit is appropriate to include. It contains detailed information on MPCA staff reasoning on a project that is similar even though not the same as the currently proposed project. In many ways, the Court agrees that it is not the same as the proposed project but there are parts of it that contain MPCA staff reasoning. The staff reasoning in some cases relates to the types of problems that are foreseen in the current project. Therefore, the Court finds that this exhibit does meet the White criteria. The Court understands that in the above case the MPCA board did not recommend an EIS, but some of the MPCA staff certainly did.

Peters Exhibit HH:

The MPCA does not object to this document and so it shall be admitted.

Peters Exhibit II:

The MPCA does not object to this document and so it shall be admitted.

Peters Exhibit JJ:

The Court finds that this exhibit does not meet any of the White criteria and is not otherwise helpful to the Court and it therefore shall not be admitted.

Peters Exhibit KK:

The notes shown in this exhibit are not explained to the Court in any manner. These notes are also undated and do not met any of the criteria listed in White. This Court cannot determine how these notes would be helpful to it and therefore denies admission.

Tart, Poldervaard and Heidtke affidavits and pictures:

Essentially these affidavits and pictures deal with water problems alleged in the general area where the project is to be located, but not where the lagoon would actually be located. These documents do not meet any of the criteria set forth in White. This Court finds that this information is cumulative and shall not be admitted.

Facts

The parties have essentially agreed upon the facts. The Court finds the pertinent facts to be as follows:

This project is proposed to occur in the karst regions of Southeastern Minnesota. Karst is a geological term for a landscape area created over soluble rock with efficient drainage. Constructing New Manure Storage Systems in the Karst Region, Interim Guidelines Document, pg. 2 (March 2000). The underlying carbonate bedrock in a karst region dissolves over time to produce solution-enlarged joints and cracks. Id. These features can result in rapid transmission of contaminants from the land surface to the groundwater below. Id. Groundwater contamination from excessive levels of nitrates and bacteria, which exceed state health standards, is already higher in Fillmore County than in other counties in the area.

Reiland Farms is a third-generation family farm. In an effort to compete in an ever-changing agricultural arena Reiland Farms proposed to develop a dairy feedlot near their home in Fillmore County. Reiland Farms agreed to voluntarily prepare an Environmental Assessment Worksheet (EAW) to ensure the environmental integrity of its proposed dairy.

The Feedlot expands upon and aggregates with an existing feedlot at their Home site, which is permitted for 390 animal units. According to the EAW, the Feedlot proposes to use the Home site to feed replacement heifers for the new facility and may expand. The Home site sits in an area of high risk for sinkhole formation. The EAW also affirmatively states in a check-off box that the Feedlot includes a planned and likely expansion of 560 animal units.

The Feedlot includes plans for two open manure basins holding a total of 7.3 million gallons of liquid manure with capacity to serve 1,260 animal units. The Feedlot is proposed for the karst region with nearby blind valleys and sinkholes.

The Feedlot is proposed near the North Branch of the Forestville Creek, a high quality trout stream, near the South Branch Root River, near groundwater resources in the area and near a state park.

In February 2000, the MPCA published an EAW that summarized environmental information relative to Reiland Farms' proposal to develop a Feedlot. After review of geological and engineering information regarding the proposed facility, the MPCA concluded that location and design of the facility were adequately protective of the environment and that the Reilands would not be required to prepare an EIS.

Analysis

THE MPCA'S NEGATIVE DECISION INVOLVING AN EIS

This Court has jurisdiction over this matter under Minn. Stat. §116D.04, subd. 10, which provides that decisions on the need for an EIS may be reviewed in the District Court of the County where the action is proposed to be taken.

Summary judgment shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law. Minn. R.Civ.P. 56.03. In ruling on a summary judgment motion, the Court must view the facts in the light most favorable to the non-moving party, and resolve doubts and factual inferences against the moving party. Hopkins v. Empire Fire & Marine Ins., 474 N.W.2d 209, 212 (Minn. App. 1991). The trial court's obligation is to determine whether issues of fact exist, not to weigh the evidence, determine credibility of the witnesses or resolve the issues of fact. Schumancher v. Heig, 454 N.W.2d 446, 448 (Minn. App. 1990); Nord v. Herreid, 305 N.W.2d 337 (Minn. 1981).

When reviewing a responsible government agency's negative declaration of need for an EIS, this Court reviews the decision to determine if it is "unreasonable, arbitrary or capricious, with review focused on the legal sufficiency of and factual basis for the reasons given." Iron Rangers for Responsible Ridge Action v. Iron Range Resources, 531 N.W.2d 874, 880 (Minn. App. 1995) (quoting Swanson v. City of Bloomington, 421 N.W.2d 307, 303 (Minn. 1988)). An agency's decision is arbitrary and capricious if it represents its will and not its judgment. Trout Unlimited, Inc. v. Minnesota Dep't of Agriculture, 528 N.W.2d 903, 907 (Minn. App. 1995).

An agency ruling is arbitrary and capricious if the agency: 1) relies on factors not intended by the legislature; 2) entirely failed to consider an important aspect of the problem; 3) offered an explanation that runs counter to the evidence; or 4) the decision is so implausible that it could not be explained as a difference in view or the result of the agency's expertise. White at 730.

Agency decisions are reversed only when they reflect an error of law, the findings are arbitrary or capricious, or the findings are unsupported by substantial evidence. Id. The Courts have endorsed the following definition of "substantial evidence": 1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2) more than a scintilla of evidence; 3) more than some evidence; 4) more than any evidence; 5) evidence considered in its entirety. Id. The Court will intervene, however, where there is combination of danger signals which suggest the agency has not taken a hard look at the salient problems and the decision lacks articulated standards and reflective findings. Id.

An EIS is required where there is potential for significant environmental effects. Audubon at 216. In determining whether a project has the potential for significant environmental effects, the agency must consider four factors: 1) type, extent, and reversibility of environmental effects; 2) cumulative potential effects of related or anticipated future projects; 3) the extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and 4) the extent to which the environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or of EIS's previously prepared on similar projects. Id. and Rule 4410.1700 Subp. 7 Minnesota Rules (1999). The Court will address each of the four factors in turn.

1. **Type, extent, and reversibility of environmental effects**

   The Plaintiffs claim that the MPCA's Findings: (1) do not address the substantive comments in violation of Minn. R. 4410.1700, subp. 4; (2) contain conclusions that are contrary to the comments and the evidence in the record; (3) fail to consider MPCA's studies that show groundwater contamination from intensive agriculture; and (4) fail to consider the incremental impacts from this operation upon the already existing contamination of ground and

surface water.

The Plaintiffs state that there is a wealth of evidence in the record that suggests a significant potential for groundwater contamination at this particular proposed feedlot site. They also claim that during the spring melting periods and during heavy rainfall, wide channels of water run off the land around the Feedlot. The MPCA has acknowledged the close proximity of the groundwater to the surface by requiring that the land around the basins must undergo a dewatering procedure to artificially bring down the water table. The Plaintiffs also point out the concern about contaminated groundwater and claim that the MPCA did not address these concerns, making their decision arbitrary.

One of the most significant environmental impacts posed by the planned facility, according to the Plaintiffs, is the catastrophic level of water pollution that would result from a sinkhole developing under the manure storage basin and breaching the structure. If such an event were to occur, 7.3 million gallon of liquid waste could flow into groundwater through the sinkhole breach. Plaintiffs also argue that because of the close connection between groundwater flows and surface water flows in this area, it is also highly likely that liquid waste flowing into the groundwater due to a sinkhole breach would quickly reach the surface water such as Forestville Creek, one of the premier trout streams in the state, and eventually flow through Forestville State Park and nearby campground where thousands of visitors will come into direct contact with the manure- polluted water through swimming and fishing activities.

Various individuals, especially those who live closest to the proposed feedlot, commented with concerns about air emissions and odors. The Plaintiffs claim that the MPCA made no findings on air emissions and odor and allowed the project to go forward without an EIS even where the preliminary modeling predicted air emissions would exceed allowable levels. They claim that the belated permit conditions to reduce or eliminate the potential failures in air quality demonstrate MPCA's concern for air emissions and constitute an abandonment of MPCA's duty to determine the potential for significant effects before they occur.

The MPCA reviewed an air emissions modeling study of the facility performed by Gantzer Environmental Software and Services, Inc. The MPCA concluded that the facility could comply with ambient standards and Health Risk Values, and that it would not cause nuisance odor that could be detected by receptors beyond the property line, although some odorous emissions could be detected at the property line. Also based on their investigations the MPCA concluded that cumulative impacts should not be significant. When dealing with air emissions this Court finds that the MPCA's findings were based on some evidence, as discussed above.

The MPCA reviewed a manure management plan submitted by the Reilands. Based on the analysis in this plan, the MPCA concluded that the manure spreading would not result in additional loading of either phosphorus or nitrates. The MPCA found no information that would support the conclusion that manure has harsher environmental impacts than chemical fertilizers. When dealing with manure management the Court finds that the MPCA's findings were based on some evidence, as discussed above.

The MPCA states that three prongs support its conclusion that the proposed facility would not cause significant environmental impacts as the result of karst-related failure. First, the MPCA evaluated the geological evidence regarding the proposed site. This information, it claims, suggested that the land proposed for the facility "has relatively little evidence of soil collapse problems..." even though in a moderate to high- risk area. The MPCA also considered the engineering of the proposed facility, its liner system, and depth to bedrock, claiming that this information suggested that the proposed facility would not accelerate sinkhole formation.

The MPCA claims that they followed the guidelines put in place for minimum separation distances in the karst area. They state that two factors are considered: the number of animal units to be handled at the facility and the type of storage system (liner). For facilities between 300 to 999 animal units with a composite liner, the guidance proposes that there be five feet separation between the liquid manure and the bedrock. The MPCA did find the minimum of 5 feet separation required for a facility consisting of 300 to 999 animal units.

The record shows that the MPCA did research the area of environmental effects, however, this Court finds that not all major issues were discussed by this agency. The agency neglected to talk about the possibility of the storage basin being breached underground. There were discussions about a spill above ground and what could be done in this situation, but none about underground spills. The Court agrees that there was information stating that there would be limited seepage, but that does not resolve the issue of mitigation of a spill larger than limited seepage.

There should be a plan put into effect to encompass the problem of a spill underground. How would this be contained? How would the groundwater be protected? How would Forestville State Park and the trout streams be protected? This Court is concerned because these areas were not addressed and they should have been. The Plaintiffs were correct in questioning the possible contamination of the groundwater and the trout streams located in the area.

A reviewing Court will intervene only where there is a "combination of danger signals (that) suggest the agency has not taken a 'hard look' at the salient problems and "has not genuinely engaged in reasoned decision-making." Pope County Mothers v. Minnesota Pollution Control Agency, 594 N.W.2d 233, 236 (Minn. App. 1999). This Court finds that this is the situation in the case at hand. When asked about spills the Agency would respond by talking about above ground spills and by assuring people that there would not be an underground spill or only a little leakage because of the durability of composite liners, but this does not answer the question.

This Court finds that this is a very real issue and one that should have been addressed by the Agency before finding that an EIS was not in order in this case. The MPCA neglected its duties when it did not discuss the type, extent, and reversibility of the environmental effects of an underground spill. The MPCA did make a conscious effort to discuss other issues that caused concern, but completely avoided this issue. The MPCA's neglect in discussing this issue shows that their decision was arbitrary and capricious.

Essentially this Court finds that the MPCA considered all the concerns except how to mitigate the problem of an underground spill from the pond. If a collapse occurs, how would the pollution be mitigated? There is no discussion of this and thus the MPCA did not fulfill its requirement. On all the other issues discussed, the MPCA made a decision based on some evidence. The Court might disagree with the decision, but it is bound to honor that decision.

One of the problems also not discussed is the problem of water (from the higher water table or from precipitation) migrating downward along the outside of the liner. After reviewing studies contained in the record, it appears such water would likely travel along the liner to the bottom of the lined lagoon. Would this then carry the risk of accelerated failure of the ground under the lagoon? Is this risk greater if less than 10 feet of soil is not present between the bedrock and the liner above it?

2. **Cumulative potential effects of related or anticipated future projects.**

The EQB rules provide that "multiple projects and multiple stages of a single project that are connected actions or phased actions must be considered in total when...preparing the EAW, and determining the need for an EIS." Minn. R. 4410.1000, subp. 4. The EQB rules define "phased action" as meaning "two or more projects to be undertaken by the same proposer that a RGU determines: (1) will have environmental effects on the same geographic area; and (2) are substantially certain to be undertaken sequentially over a limited period of time." Minn. R. 4410.0200, subp. 60.

The Plaintiffs state they have submitted evidence that the expansion is substantially certain to occur in a limited period of time, including: 1) MPCA's own certified admission at pages 4 and 19 of the EAW; 2) the Project site map showing the exact location of the future freestall barn on Exhibit 3a, page 1 to the EAW; and 3) the May 23, 2000 Findings of MPCA verifying that the manure settling basin and the manure storage basin are designed for manure from 1,000 mature dairy cows (1,400 animal units).

The MPCA states that the definition of "phased action" in the EQB rules ensures that environmental review is not undertaken on expansions of projects that are speculative. The MPCA argues that although the EAW notes that the Reilands have designed their new dairy facility to accommodate future expansion, the MPCA would have been on solid ground had it decided not to include any information in the EAW regarding the impacts from the expansion because it was not "substantially certain" to occur in a "limited period of time."

The Court disagrees with the MPCA. This Court finds that there is a strong possibility that there will be an expansion within a limited period of time. The new freestall barn will encompass the same land as what is in dispute in this action. The Court also finds that this barn will be constructed in a limited period of time. Although there is no guidance on what "limited period of time" means, this Court finds that it is relatively certain that a barn will be constructed in the near future. This information is supported by the fact that the plans do have the freestall barn listed on them. This information is also supported by the fact that the storage basin is large enough to hold

manure for at least 1,000 animal units.

The law is explicit that large projects must not be broken up into smaller units in order to avoid environmental review. Pope County Mothers at 237. The rules governing environmental review recognize that cumulative impacts can result from individually minor but collectively significant projects taking place over a "period of time." Id.

The Court's decision that this is actually a phased action will also impact the minimum separation distance that is mentioned under the first factor. To determine whether the minimum separation distance will be met, the owner must conduct soil thickness investigations at a minimum of four locations for the first one-half acre of manure storage area surface and a minimum of two additional locations for each additional acre. Constructing New Manure Storage Systems at 8. According to Table 1 of this article a minimum separation distance of 10 feet is needed when the basin is serving over 1000 animal units. Id. at 9.

The Court is also perplexed by the fact that the MPCA and the Reilands argue that they can store manure in these basins for up to a year, and very well may do so, but this would not force them to have 10 feet minimum separation. Would this not be the same volume and amount of weight that would be caused by having over 1,000 animal units and emptying the basin twice a year? At any rate, this Court finds that since the current project and the anticipated freestall barn shall be considered as a phased action this project would still need to have at least a minimum separation of 10 feet between the bedrock to meet the MPCA's own guidelines.

3. The Extent to Which the Environmental Effects are Subject to Mitigation by Ongoing Public Regulatory Authority.

The extent to which environmental effects are subject to mitigation is an important consideration when determining whether a project has the potential for significant environmental effects. Pope County Mothers at 238. The MPCA must consider the extent of the environmental effects likely to result and how those effects could be mitigated. Id. Mitigation includes avoiding or limiting the size of a project, repairing or restoring the environment, working to preserve or maintain the environment during the life of the project, or replacing or substituting resources. Trout Unlimited at 907.

The Plaintiffs state that the MPCA is improperly deferring key issues to the permitting phase; one of them being whether this proposed operation poses a significant environmental impact. The Plaintiffs claim that the MPCA is relying on soil inspections during the construction of the manure storage basin to determine whether there is subsurface evidence that suggest a possibility of sinkhole development under the manure storage basin. They state that deferring the gathering of key information to the post-permitting stage is an abandonment of the agency's duty in an EIS determination.

The Plaintiffs are concerned because the MPCA did not seek additional Ground Penetrating Radar tests in better conditions to obtain a thorough investigation of the subsurface conditions under the manure basin before allowing the project to proceed. They state such soil investigation during construction will not provide the kind of subsurface investigation that Dr. Alexander and the DNR insist are necessary. Dr. Alexander stated that the additional investigation was easy to redo and the DNR stated that additional information was necessary and could be obtained reasonably. The Plaintiffs state that the MPCA's negative decision was premature and based on inadequate information.

The MPCA states that the case at hand does not have the same problems as Trout Unlimited and their decision should be upheld. In Trout Unlimited, the Court struck down the Department of Agriculture's decision to identify significant impacts associated with pesticide and fertilizer application by monitoring after permits for the use of those chemicals were issued, instead of examining whether such impacts had the potential to be significant during the environmental review process. The Court found that the purpose of environmental review was to ensure that risks were identified before they occur, and that unspecified "monitoring and permit conditions" required after the deleterious effects occurred would not suffice. Id. at 909.

The Defendant states that the Court did not hold, however, that it was improper to consider mitigation of risks by specified emission limits and operating requirements proposed for facility permits. The Defendant points out that the Court has in other cases specifically noted that consideration of such mitigation measures during environmental review is appropriate so long as they are "more than mere vague statements of good intentions." Iron Rangers at

881. The MPCA concludes that the problem in Trout Unlimited was that the Commissioner of Agriculture both failed to examine the environmental effects likely to result from the project and how any effects could be mitigated; thus, so long as the EAW sets forth specific mitigation measures to address specific environmental effect, such consideration is proper.

The very purpose of an EIS is to determine the potential for significant environmental effects before they occur. Trout Unlimited at 909. By deferring issues to later permitting and monitoring decisions, the Commissioner abandoned his duty to require an EIS where there exists a "potential for significant environmental effects." Id.

Both Plaintiff and Defendant have offered logical arguments to support their respective positions. After a thorough review of case law and the facts, the Court finds that the MPCA did not address the mitigating factors. As in Trout Unlimited, the project here would go forward without an EIS and in the event significant environmental effects did occur, the project may be cancelled. The MPCA is relying on permitting and monitoring just as the RGU did in Trout Unlimited. As stated above the MPCA does not even address certain issues, much less talk about how to mitigate them. It is the MPCA's duty to determine the possible environmental effects; they have neglected this duty in the case at hand.

The Court also questions the fact that the basin is larger than the capacity needed at this time, which supports the finding that this project is a phased action. One of the factors to consider when looking at mitigation includes limiting the size of the project. It would make sense for the MPCA to have limited the size of the storage basin, given the sensitive karst region and the claim that there is not any immediate plan to expand. This reaffirms the Court's finding that the MPCA did not fulfill its duty when dealing with the issue of mitigation.

4. **The extent to which the environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or of EIS's previously prepared on similar projects**

The Plaintiffs claim that the MPCA had relevant information and disregarded it. The MPCA has been studying nitrates in Minnesota groundwater beneath agricultural land for years. In March 1999, the MPCA identified groundwater impacts from land application of manure as one of three objectives for examination in a study entitled "Effects of Manure Management on Ground Water Quality." The MPCA was also provided a copy of the Iowa Department of Public Health's article on the chemical and microbial constituents of ground and surface water proximal to large-scale swine operations. Plaintiffs claim that this study shows that pathogens in manure break down more slowly when incorporated in the ground. The Plaintiffs also state that the MPCA omitted the most pertinent studies in an arbitrary fashion.

The Interim Guidelines are established by the MPCA to define the measures and conditions generally needed to ensure that, to the maximum extent practicable, groundwater is protected when new liquid manure storage systems are constructed in the karst region. Constructing New Manure Storage Systems at 1. Minnesota Rule 7060.0500 states that it is the "policy of the Minnesota Pollution Control Agency to control wastes as may be necessary to ensure that to the maximum practicable extent the underground waters of the state are maintained at their natural quality." Id. Maintaining high quality ground water supplies is challenging in the karst region of southeastern Minnesota due to the rapid transport of contaminants from the land surface to ground water in this unique geologic setting. Id.

Three potential water quality risks associated with liquid manure storage systems in the karst region are described below. Two of the risk factors could lead to long-term (chronic) problems, whereas the third risk factor is associated with catastrophic failure. Id. at 3. The water quality risks include: 1) seepage of contaminants through the liner and underlying soil to fractured bedrock and subsequently to ground water; 2) gradual soil subsidence of formation of a shallow sinkhole below the storage structure that breaches the integrity of the liner, causing slow and perhaps indetectable leaking of manure from the storage system to ground water; and 3) larger sinkhole forming below a manure storage system leading to a rapid flow of manure into ground water or causing a collapse in a basin sidewall and a release of manure onto the ground surface. Id. at 3.

Manure entering ground water will discharge into streams within a period of time ranging from hours to decades depending on the site-specific hydrogeology. Id. The karst region of Minnesota maintains a large number of high quality trout streams. A rapid discharge of a large quantity of manure into a stream will destroy the aquatic life for a stretch of the stream and also result in increased nutrient loading into the receiving waters of the Mississippi River system. Id. Manure that travels in the ground water for a longer period before discharging into streams will be more diluted and may not destroy aquatic life, but will threaten drinking water supplies as it travels toward the stream, and then still contribute to

stream pollution upon discharge. Id.

Using liners with very low seepage rates can reduce the probability of a soil collapse below a manure storage system. Id. at 4. Risks of failure can also be reduced by such measures as proper siting of the storage facility on the landscape; minimizing the manure storage capacity; preventing excess infiltration of runoff water around the storage facility; and maintaining a certain separation distance between the manure and fractured bedrock. Id.

Between 1974 and 1992, sinkholes opened below three of the twenty-two municipal wastewater treatment ponds in Minnesota's karst region. Id. at 4. These failures demonstrate the potential for sinkholes to develop in southeastern Minnesota when large quantities of liquids are stored in sinkhole prone areas with minimum barriers between the liquid and underlying materials. Id. It is important to consider that the contamination concentration of manure lagoons are often over 100 times greater than municipal wastewater pond liquids, and thus the environmental consequences of a catastrophic manure release could be much worse than municipal pond failures. Id.

Most sinkholes in southeastern Minnesota appear where there is less than 50 feet of soil cover over carbonate and sandstone bedrock. Id. at 5. The risk of soil collapse has generally been found to increase in areas of ponded or intermittently flowing water, and in areas with indication of more extensive karstification, including areas with disappearing streams, caves, springs and solution cavities. Id.

After reading the interim guidelines and reading over the briefs of counsel this Court finds that leaks and seepage can be anticipated. As a matter of fact, it seems to be the norm that these basins do have seepage. This Court finds that the MPCA did not take advantage of some of the data that was available to them. The Guidelines state that there is concern about protecting the groundwater, but there is not a plan to mitigate (or at least none was mentioned) if a sinkhole would form underneath the basin. As stated above, the MPCA does discuss an above ground spill and does have a plan if this were to occur, but nothing is mentioned about below ground spills. As the guidelines point out, the streams, as well as drinking water could be harmed if this were to occur.

As stated above, this Court does find that this is a phased action and therefore, the proposed freestall barn should be included in the evaluation of this site. Given this information and the MPCA's own guidelines, there is not enough separation distance between liquid manure and fractured bedrock to erect these basins on the proposed site.

Conclusions

An RGU's decision is arbitrary and capricious if it: (1) relied on factors the legislature never intended it to consider; (2) entirely failed to consider an important aspect of the problem; (3) offered an explanation for its decision that runs counter to the evidence; or (4) is so implausible that it could not be ascribed to a difference in view or the result of agency expertise. Pope County Mothers at 236. If the RGU's decision represents its will rather than its judgment, that decision is arbitrary and capricious. Id.

The MPCA's decision not to conduct an EIS in this matter is not supported by the record and is arbitrary and capricious. This Court finds that the MPCA failed to consider at least one important aspect of the problem, i.e., the possibility of an underground collapse of the basin. If the basin would collapse how would ground water contamination be stopped? This Court could not find any information in the MPCA's brief to answer this disturbing question. The MPCA should have addressed this issue and they did not.

This Court also finds that the MPCA violated its own interim guidelines by only requiring five feet of separation distance when using a composite liner, instead of the 10 feet required for a facility designed for over 1,000 animal units. This Court, as stated earlier, finds that this is a phased action and therefore it should be held to the standards applied for a project comprised of over 1,000 animal units instead of the 300 to 999 animal units this study was based on.

Plaintiffs have argued that the MPCA decision was improperly influenced by the threats of members of the legislative branch to change the law. Writing and rewriting of the law is what legislatures do. It is not the function of the Court to determine what is or is not proper in discussions between the legislative and executive branches of our government. Furthermore, this Court suspects that the executive branch is fully capable of protecting itself from the legislative branch. This Court doubts that the executive branch needs judicial protection from the legislature.

Obviously this decision does not bar the completion of the proposed project. It does, however, require further evaluation

by the RGU. This Court is mindful that the preparation of an EIS is costly and time consuming, but then, so is litigation. Based on all the information in the file and the law, the Plaintiff's motion for summary judgment is granted, and Defendant's motion for summary judgment is denied.

This decision is not meant to, and should not be read as a denigration of the work and investigation completed by the MPCA on this issue. Most of the disputed issues have been resolved in favor of the MPCA. While the Court may not have reached the same conclusions as the MPCA, where these conclusions were based on some reasonable evidence this Court should not intervene. RRB

Attachment 9A: Farmer, Newburg Township

[redacted]

Mark Spande
15802 403rd Ave.
Canton MN 55922

July, 3 2018

By Hand delivery

Mr. Charles Peterson
Resource Management and Assistance Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155

Mr. Mark P. Gernes
East Feedlot Unit, Watershed Division
Minnesota Pollution Control Agency
18 Wood Lake Drive SE
Rochester, Minnesota 55904

Re: Catalpa LLC hog operation in Newburg Township

Dear Mr. Peterson and Mr. Gernes:

I am a farmer and a neighbor to the proposed Catalpa LLC swine farrowing facility in Section 7 of Newburg Township. I grew up nearby and I know the land and the roads very well. I have reviewed the Environmental Assessment Worksheet and it misses or is just wrong about quite a few important facts. It's also pretty misleading about whether additional concentrated feeding and finishing operations are going to be built. I already know there's a plan for some of the same people involved with this proposal to put up a finishing operation near the Scheie Lutheran Church, where my family goes to church and near some of the Sites where Catalpa plans to spread manure. And the piglets produced by Catalpa LLC are going to be so many that additional finishing operations will be required. So the EAW is just misleading about how it's going to affect people in the Newburg area.

I'm especially bothered that the feedlot is going to be operated by a company, not an individual, and that there are no guarantees that the operator and owner are going to have to live with all the stink and environmental risks that I and other neighbors will have to put up with. I know the landowner where the feedlot will be built, I know he's been upset about environmental regulations in the past, and I know he's near retirement age. I don't think this project would be built if he planned to keep living there and I don't believe he's going to protect me and other neighbors from the problems this feedlot will cause. I don't think he'll be able to protect the neighbors even if he wanted to. We have other feedlots in the area, but the owners live there and don't hide behind a company with headquarters in the Twin Cities and operators from Iowa. Also, the other

local feedlots are nothing even close to this size and nothing that would have near the impact this one would have.

My home is located along the north bank of Wisel Creek and my well is only 90 feet deep and is across the road and southeast from Site 16 and just northeast of Site 20 on the EAW maps. In fact, my well is not in the location shown in the EAW at all, it's in the field several hundred feet north of my house, and I know there's a neighbor's residential well just south of Site 16 that isn't shown in the EAW at all. That's a place owned by Quintin Pettigrew. Given how sloppy the EAW is about locating wells near me, I have no confidence at all that they have well locations correct in the rest of their worksheet and maps.

The ground in this area is porous and there are springs on my property and my neighbor's property, close to Site 20 and nearby and north of Site 21, that are not shown on the map. In fact, there's a spring near or in the northeast corner of Site 4 and close to where the confinement, manure storage, and composting facilities will be built, that isn't shown on the EAW and that Catalpa's karst report says is just a pond. It's a spring and the water from there flows right down to my property and the neighboring property that I farm. The floods we get several times a year bring runoff right to my place.

Karst is basically a funnel into our groundwater. The waste from hogs is going to go right into our drinking water and that waste will have antibiotics in it. Big operators like the one involved here have veterinarians on staff whose job is to write prescriptions for their employer so that the rules restricting use of antibiotics in livestock don't actually restrict the use of antibiotics for their animals. The antibiotics will be in our groundwater.

On still days and nights, the stink from this proposed confinement operation is going to follow the topography right down to my house along the streambed that runs from near the proposed hog buildings northward and into Wisel Creek. The EAW pretends that the odor will be gone by the time it gets to my place. Experience tells me that's not true.

I just built a new house a couple of years ago and I have a lot invested in the local area. Several new residential places have been built near me and in the wooded acres between Sites 16, 17, and 20 in the past 10 years. They are all going to be affected by this hog operation. Property values are going to drop a lot because of it. Nothing in the EAW takes that into account, but it's a big deal to a lot of people living here. We have a lot of neighbors who are not farming and people who've invested in the area as a place to retire or raise their families. A lot of people have moved here because it's a beautiful and pleasant place to live. That's going to change if this hog feeding operation gets built.

A lot of the neighbors near me are also Amish. The way this MPCA process works is almost designed to go too fast for them to hear about it and participate in the

process. They don't have internet access. They have a lot of kids who will be affected by the environmental damage that's going to happen.

The township roads are going to be ruined by trucks carrying liquid manure from this operation. Township roads especially are not built for the heavy traffic. The EAW doesn't mention use of township roads at all—it only refers to the better built county and state roads. But looking at the Sites where liquid manure is proposed to be applied, I can see that Sites 6, 7, 9, 10, and 18 are all fields where the typical access is from a township road and the only road access to Sites 13, 20, 21, 23, and 24 is from a township road. Even the county roads, which are usually better built, can suffer a lot of damage from heavy trucks in a short time. We saw a closure of County 18 a few years ago after a local quarry was reopened briefly for a road project. County 18 runs past Sites 14, 17, and 18 on the EAW maps and would probably also be used to get to Site 13.

The EAW doesn't look like it was very carefully done at all. It even refers in a couple of places to the wrong county's rules. This project isn't going to be in Waseca County.

I am pretty sure there are rare plants in this area that aren't described in the EAW. I live along Wisel Creek, which is a DNR trout stream, and my property is subject to very low limits on animal units placed on it by the DNR easement. The DNR has been talking about upgrading the stream so fishermen can get in and out easier and to protect the trout habitat better. I walked it with DNR people last year and they identified a stand of a rare plant along the creek that they said was the biggest stand they'd ever seen. I do not remember the name they called it. My property and my neighbors' property has bluffs along Wisel Creek that are probably home to the timber rattlesnakes identified in the EAW and probably other rare plants.

This proposed feedlot plans to use over 8 million gallons of water every year. Nothing like this big an operation has been done around here. That's likely to have a huge impact on groundwater and other people's wells and it needs a careful study. It needs an environmental impact study. I know that's expensive, but this feedlot is going to be just enormous. Life around here won't be the same if this thing is approved and built. People deserve to know everything they can learn about how it'll change things and they deserve to know it ahead of time. Make this company do the complete EIS study.

The only people who know their costs from the Catalpa proposal are the people proposing it. I do not know my costs, e.g., drilling a new well, loss of property value, air quality, and quality of life, and my neighbors don't know their costs either. The MPCA should require enough study so that my community and neighbors know in advance what will happen to us. How can the MPCA consciously, morally and ethically permit something like this Catalpa project to be built when the neighbors, the community, and even the people of MPCA do not know the impacts on neighbors and the community?

Sincerely,

Mark Spande

Attachment 9B: Farmer, Mabel (Beef)

From: Gayle Kleppe <gaylekleppe@gmail.com>
Sent: Tuesday, July 03, 2018 4:22 PM
To: Peterson, Charles V (MPCA) <charles.peterson@state.mn.us>
Subject: Hog Confinement, NewburgTownship ,MN

Dear Mr. Peterson,

We are Mabel area farmers/land owners/residents who attended the informational meeting at the Mabel Community Center on June 19, 2018. We want to thank MPCA for holding the meeting and for extending the comment time until July 3 so area residents and land owners have the opportunity to submit additional comments about the proposed hog confinement facility in Newburg Township.

Our environment is what controls our quality of life; our health, our ability to make a comfortable living, our pleasure to interact with a well balanced environment that promotes human life, farm animals, wildlife, and landscapes that sustain them. Our resulting happiness of where we reside, and our efforts to live in harmony with the community that surrounds us is very important to us. The proposed Catalpa LLC facility has the potential to threaten the quality of life of the residents and land owners of Fillmore Co. and surrounding areas, short and long term. It is always better to proceed cautiously with in depth analysis before decisions are made regarding the environment that we call home. Let us approach the future with intelligent and well-investigated information, and not act in haste, when it comes to protecting our fragile and priceless, local environment. We are requesting that additional studies be completed to evaluate the potential impact this facility has on the environment and people in and around Newburg Township, Fillmore Co., MN. Please order an EIS to be conducted and completed before any decisions are made regarding the Catalpa LLC hog confinement facility.

Concerns that we have about the proposed hog confinement facility are its impact on water and air quality. It is vital that we have clean water and healthy air that is free of odors and contaminants. Landscapes must be protected and sustained for all living organisms in addition to humans. We are also concerned about the impact this facility will have on roads and local property values.

The Karst bedrock that exists in Newburg township and surrounding areas needs to be analyzed thoroughly since this proposed hog confinement facility could have significant, negative impacts on the environment. Be proactive! Take time to do additional studies before you engage in decisions that can/will affect many future generations. Have an EIS done! Please be responsible and make good decisions for all citizens that call this part of MN home!!!

Thank you for your consideration of our request to have an EIS conducted before any other decisions regarding the proposed hog confinement facility are made. You will be glad an EIS is done! It is the responsible way to respond to the many concerns of area citizens!!! We have spoken! We believe you are listening and will make decisions based on community input!

Sincerely,
Beau Wold
Gayle Wold kleppe
Wold Sundown Valley Farms, Inc. (Producers of Natural,Grass-fed Beef)
23870 Stateline Rd.
Mabel,MN 55954

Attachment 9c: Dairy Farmer, Canton Township, Fillmore Cty

From: Bonnie Haugen <bonnie.haugen@gmail.com>
Sent: Tuesday, May 29, 2018 7:24 PM
To: Peterson, Charles V (MPCA) <charles.peterson@state.mn.us>; Gernes, Mark (MPCA) <mark.gernes@state.mn.us>; Stine, John (MPCA) <john.stine@state.mn.us>; Govenor Dayton <govenor@state.mn.us>
Subject: Fillmore County Caltalpa LLC Proposal Needs EIS

To: MPCA Contact Persons Charles Peterson and Mark Gernes

MPCA Commissioner Stine and Governor Dayton,

I am a dairy farmer living and working in Fillmore County, Canton Township, Section 24. Our home and business is close to the site of the proposed Catalpa, LLC Sow Confinement feedlot. I request that an EIS (Environmental Impact Statement) be completed before any of this planned business is allowed to operate.

I have many concerns, but my top concern is for our water, my neighbors water, the regions water, and wherever water from this area travels to. The karst factors need to be thoroughly studied to protect our water. Water quality and quantity issues are at stake. Can a business really take 8.8 million gallons per year without negatively affecting area springs and wells? The water in these karst areas move up, down, and sideways. We need to be very alert for water withdrawals as well as any contaminations. Even if the manure containment structures do not crack or break and leak or spill, this amount of manure is significant. Even though the proposal shows there are enough acres for this manure to be spread on, there are many streams, springs, sink holes, and other water bodies very close to the anticipated application fields. A failure to properly apply manure and leave plenty of buffering area next to a water source, can cause damage that a fine cannot repair.

Other concerns include but are not limited to: responsibility and liability issues in case of serious contaminations, are there future plans for more swine facilities in the region, air pollution, road repair costs and heavy traffic concerns, lack of a public informational meeting, and since no public meeting has happened, a longer comment period would be fair.

Our farm is described in the Environmental Assessment Worksheet. It is Figure 14 -Offsite Feedlot 11. I see false descriptions. My neighbors noticed wells either missing or wrongly reported in the EAW. Having correct and verifiable information for this proposal should be extremely important, and I would expect an EIS to correct, verify and find more detailed answers for myself, my family, my neighbors, and anyone else affected by our farming choices.

Farming truly is everybody's bread, butter, and water.

Respectfully,

Bonnie Haugen

12620 Deer Rd., Canton, Mn., 55922-1600

bonnie.haugen@gmail.com

9D: Local Resident, Mabel

From: Rodney & Carol Thompson <rodthom@mabeltel.coop>
Sent: Tuesday, July 03, 2018 5:35 AM
To: Peterson, Charles V (MPCA) <charles.peterson@state.mn.us>; Gernes, Mark P (MPCA) <mark.p.gernes@state.mn.us>
Subject: Catalpa LLC

I'm Carol Thompson I'm a local resident of Fillmore County and was born and raised in Newburg (Fillmore County/Newburg township) currently living only a few miles from Newburg on a family farm for the last 38 years. I have wore many hats in the community, a farmer, registered nurse, Scheie church council member, and Responsible Ag in Karst County community organizer are my most current. I'm writing this letter opposing Catalpa LLC to move forward with the massive nearly 5,000 sow farrowing facility until a COMPLETE ENVIRONMENTAL IMPACT STUDY is completed.

We the people of this community in Fillmore county deserve this., and No less.

Its no secret southeastern Mn is full of karst land. As a local that has lived my entire life of 58 years in this area. I see this everyday. My parents in the late 50's tried to drill a well in a Newburg, while drilling "drill drop" happened, that is what well drillers refer to when the drill enters a cavern or cave. The spot was abandoned and another location was used to drill a well. My father was a logger and tried to fill the space with logs but was unable to. He said "the earth ate them." They were forced to cap the hole another way. Just north of Newburg there was a large hole in a ravine, we always believed to be the entrance of a cave. To the northwest about mile or so of this there is a cave that the DNR has named the Newburg Cave. You can see this on you tube: Exploring a secret cave in Fillmore County. Our land is full of karst stuff, locals know about and see. We just need a Complete Environmental Impact Statement to document it.

Information provided by Catalpa LLC in the Environmental Assessment Worksheet is hiding most of the known karst in the area. Locals remember sinkholes that we believe have been filled in, and other karst features on the proposed building site, and the fields proposed to dispose of the manure. We attempted to verify this by having Dr. Carl Alexander the karst expert from the University of Minnesota inspect the properties, but Catalpa LLC denied Dr Alexander access. What are they hiding? We need access to the land a Complete Environmental Impact Study to document what is actually there.

As a local is see how the drainage from the proposed Catalpa LLC site and the surrounding fields runs down a sink near the edge of the property and does not reappear. Runoff from the furthest south fields proposed to spread manure runs down a sink within a mile of the water tower for the city of Mabel. The amount of contamination running into the groundwater should be considered unacceptable as there is a high likelihood that it will be contaminating drinking water. In karst areas like this there is no way to know how far the contamination will be traveling underground or what direction it will flow. Who is going to be responsible for the contaminated drinking water caused by Catalpa LLC after the project has been approved by the state? Will they clean it up after it has been contaminated? How long would it even take? How many people could be severely injured or worse? Clean water and air should be a right of all residents of Minnesota. No one should be forced to drink and bathe in water containing hog manure, antibiotics, and bacteria. What other health risks are there from airborne contaminants? Asthma and other respiratory illness, bacteria, and viruses? Drug resistant diseases are created in these type of buildings. The runoff from virtually all of the other proposed fields to spread the manure runs directly into designated trout streams. We can not allow this project to go forward without a Complete Environment Impact Study. It is to large and risk is to great.

Thank you,

Carol Thompson

Mabel, MN

Attachment 9E: Local Resident, Canton (Fillmore Cty)

May 30, 2018

Loni Kemp and Richard Nethercut
14083 County 23
Canton MN 55922

Mr. Charles Peterson and Mr. Mark Gernes,

The proposed Catalpa LLC feedlot project has the potential for significant environmental effects, and we strongly urge MPCA to demand an Environmental Impact Statement, for the reasons stated below. Furthermore, phased actions regarding feedlots that will grow the sows for this proposal, and feedlots that will grow out the piglets produced by this proposal, must be considered in determining the need for and content of an EIS. (MN Administrative Rules 4410.2000)

My husband, Richard Nethercut, and I and have lived and owned farmland and woodland for 36 years in Canton Township, a mile south of Lenora and two miles west of this site. As a former member of the MPCA Citizens Board 1990-1994, and with 40 years of nonprofit experience as a policy analyst in the fields of local and national environment and agriculture issues, I am quite familiar with the potential threats that CAFOs can pose. Richard is an attorney in Harmony.

We support the Environmental Review process, which, when done well, provides the avenue for citizens to ask questions and raise troubling facts about the Environmental Assessment Worksheet, upon which the responsible government unit should then decide to order an Environment Impact Statement. This project should not be issued an NPDES permit until a full EIS answers the questions below.

1. Phased Actions have not been evaluated, although required by law. An EIS should be required to analyze additional phased feedlots. This 4,980 sow farrowing operation would be the largest hog CAFO in Fillmore County. It was sized at 1,992 animal units, barely under the 2000 animal limit in the Fillmore County Feedlot Ordinance. But that surely is not the total project. One glaring omission in the EAW which needs to be answered in an EIS: Are there phased actions being planned to build additional CAFOs for the piglets produced, or to raise gilts which populate the farrowing unit? This particular farrowing proposal is only one part of a more extensive production system. The EAW fails to explore the impacts and locations of additional CAFOs which logically and predictably will be constructed. Additional feedlots may be secretly being planned for this region. In an EIS, Catalpa should state specifically the locations of the existing or new CAFOs, either in Minnesota or elsewhere, where they will ship their piglets, and where they will obtain their sows. I do not understand why on page 3 the EAW says Catalpa is planning to construct a swine "finishing feedlot" in Sections 7 and 18, the same location as the sow farrowing unit - does this announce a second phased facility?

The impact of phased additional hog feedlots is exemplified in neighboring Winneshiek County, just a few mile south of this site, where 25,000 animals are now being raised within five miles of a rural school, introduced gradually over the last twenty years. Now those students and families living all around are suffering from the stench and health effects of manure air pollution. The hogs would die from the fumes of living over the anaerobic manure pit, so the air is blown out of the building, to move with prevailing winds to nearby homes and the school. The point is that the full extent of this operation was never evaluated in Iowa, but instead was approved piecemeal.[1] Minnesota law requires that an EIS be completed on all phases of a development before such an operation is permitted.

2. The Identity of Catalpa, LLC, is unknown and should be disclosed. An EIS should be required to explain the identity, track record and business plan for Catalpa. Who is responsible and liable for the proposed operation? Rumors abound, but MPCA staff Mark Gernes returned my call on May 22 and answered that MPCA neither knows who is involved in this entity, nor will they inquire, beyond the contact person listed for the LLC. I have cross-referenced the EAW maps to the county platbook learn that nearly all the land for the operation is owned by Alvin Hein, but he is not named publicly anywhere. At a community meeting on May 27, Mr. Hein said that he owned 51% of Catalpa. Mr. Gernes also told me that a "parcel split" will transfer ownership of the land under the facility from Hein to Catalpa. Future land ownership and responsibility for all aspects of the operation must be disclosed. The idea that an unnamed, invisible entity would get a complicated permit from MPCA or Fillmore County is appalling.

I traced the contact person, Brad Herman, through his address to the website of Waukon Feed Ranch, a large out-of-state agribusiness that markets feed, does construction and "manages over 24,000 sows in three states." How many other owners are there? Do they have good track records of environmental performance, or are they trailing a string of enforcement actions, fines and lawsuits? An EIS should answer these questions.

Who will own the site and the manure management fields after the facility is built? Will the current Catalpa mambers, whoever they are, sell a partnership to an international mega-hog corporation as soon as the permit is issued? These are speculations, obviously, but with absolutely no public information as to who Catalpa LLC is and who controls it, what else can we think? An EIS should be required to disclose the facts.

Another consideration for Catalpa is finding out whether the actual owners of Catalpa LLC are in compliance with MN's prohibition on corporate ownership of farmland. MN Department of Agriculture states the corporate farm law restricts business entities (including limited liability companies) from engaging in farming or having any type of interest in agricultural land unless they satisfy certain requirements, as certified annually by MDA (https://www.mda.state.mn.us/

[1] (https://civileats.com/2018/05/16/iowa-residents-to-sue-state-over-air-emissions-from-industrial-hog-farms/)

licensing/licensetypes/corpfarmreport.aspx.) For example, it appears that any LLC member must not own more than 1,500 acres of agricultural land, including farmland owned by other LLCs of which they are members. (MN Statutes, Section 500.24 Farming by Business Organizations, https://www.revisor.mn.gov/statutes/?id=500.24.) An EIS should research whether Catalpa with its current partners are in compliance with the state restriction on corporate ownership of farmland.

3. The EAW is deficient in its study of the danger and extent of odors and air pollution on surrounding citizens. A full EIS should be done to examine the content, extent, as well as health and property impacts of odors. MPCA is currently incapable of monitoring the devastating effect of potent odors. National news coverage has focused on this property-value-robbing environmental impact of hog CAFOS. On May 28 the StarTribune reported on a hog finishing barn in Pennsylvania with a nearly identical number of hogs as Catalpa proposes. Shielded from nuisance suits, Will-O-Bert Farm points its gigantic ventilating fans out toward the neighboring town. Of course the pigs would die living in such a stench, so the polluted air is pushed out to the surrounding area, whereupon residents are forced indoors, unable to tend their gardens or have cookouts. They can't hang wash out to dry or leave their windows open. Complaints to the authorities are ignored. People around Catalpa are terrified of losing their enjoyment of their properties, which is even more tragic when we have chosen beautiful rural lands dotted with streams, forests and family farms to spend our lives on.[2]

Closer to home, last week the StarTribune reported on the complete inability of MPCA to formulate a monitoring plan to respond to desperate Goodhue County neighbors of the Kolnhofer hog feedlot. In fact MPCA has apparently done no hydrogen sulfide monitoring since 2009. Citizens took it into their own hands, since hydrogen sulfide is a human health threat and there are state health risk limits in place.[3] This experience shows dramatically that an EIS must be required to evaluate whether to allow a feedlot to be built if its air pollution cannot be regulated.

A similar experience in Todd County reveals that neighbors to a hog farm experiences noise, dust and "soul crushing smells, which were ignored by public officials and the feedlot.

Just as bad as the way of life and health impacts like asthma in children due to manure air pollution is the devastation that such pollution can cause to property values. People who do give up and want to move find that their primary life asset has declined greatly in value, if they can sell it at all. An EIS should study CAFO impacts on property values.

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[2] http://www.startribune.com/last-gasp-for-hog-farm-suit-we-don-t-want-to-be-hostages/483856921/

[3] http://www.startribune.com/they-asked-state-to-monitor-feedlot-and-they-re-still-waiting/483752081/

A number of optional practices are mentioned in the EAW, such as biofilters on barn ventilators, but the public has a right to find out if these are part of the permit, would be enforceable practices, and the proof of their effectiveness as covered in an EIS.

Widely reported impacts on children

4. The inadequacy of the application's karst investigation, both for the facility and the manure application sites, must be remedied in a full EIS. Neighboring landowners and karst experts are identifying numerous sinkholes, caves, springs and potential sinkholes both within the project and on lands immediately adjacent which would receive contaminated water under certain common conditions. The one mile radius for sensitive features was only studied for the site itself (and numerous mistakes were made which need to be corrected and added. See comments from Calvin Alexander, Bart Seebach Gaand Mark Spande,) However, we also need identification of sensitive features within and adjacent to all manure application fields in order to understand the potential impacts on wells, sinkholes, springs, creeks, trout streams, etc.

Several sinkholes and potential sinkholes were omitted from the EAW. A full karst analysis must be done in an EIS. Most significant, this site is located in a karst area, rich with sinkholes, springs, creeks, and near a trout stream, Calvin Alexander, Professor Emeritus at the University of Minnesota and renowned karst expert, did a search of LiDAR images and discovered three additional sinkholes and eleven potential sinkholes that were missed in the EAW. As we sought permission from the landowner for Dr. Alexander to walk the land and verify sinkholes, Mr. Hein put us off until Wednesday, May 30, the very day comments are due, making it impossible for this important information to be entered in comments.

"As several commenters pointed out, sinkholes can develop suddenly and unexpectedly. In Minnesota, there are at least three known cases where sinkholes have developed directly under existing sewage lagoons (see Finding 63, below). Other commentors pointed out that other karst features, such as near-surface caves. resurgent springs, disappearing streams, and karsted bedrock are as likely as sinkholes to lead to groundwater contamination. also Cal other karst features are just as likely to lead to groundwater contamination as a sinkhole. Each of them argues that in order to protect groundwater from contamination, what is needed is adequate depth of soil and slow percolation rates."[4]

I was told by the Fillmore County Feedlot office that the big manure pit in fact does not have the required 15 feet of soil above bedrock. Instead alternative measures will allow their pit to be only 12 feet deep, further increasing the risk of leaks or catastrophic failure causing devastating groundwater or surface water pollution. Further, on page 30 it is clearly recognized that Catalpa with its facility and manure application sites "are in an area designated as having a high risk to groundwater pollution." This is the most important fact in this entire EAW. What is the impact and response if the pit, which does not have required depth to bedrock, is breached or drains into

[4] https://mn.gov/oah/assets/290111995.rr_tcm19-164957.pdf

ground or surface water? With climate change and weather variability in combination with the karst features, it is a sure bet that manure application practices will fail frequently. A full karst analysis is needed in an EIS to map out all water flowage pathways, and an assessment of the likelihood of failure to contain manure.

Only a few miles from this site the Solberg dairy farm experienced complete failure of a wall of a relatively new dairy lagoon. In spring at the height of manure volumes, the liquid manure flowed away from the site, making its way to Weisel Creek, a designated trout stream, and on to the Root and Mississippi Rivers and Gulf of Mexico. Even modern engineering systems can mysteriously fail. Proper siting is the first rule of engineering.

Complete failures of large scale lagoons and pits is inevitable, and in a designated high groundwater pollution risk area, this proposal is poses unacceptable risk. An EIS should do probability studies of various failure mechanisms in a karst area and their likelihood to help decide if the risk is acceptable. Sensitive areas are defined in Environmental Review Rules and include delineated floodplains and areas within 1000 feed of a karst feature - which includes sinkholes, caves, disappearing springs, resurgent springs, karst window, dry valley or blind valleys.[5]

Neighbors and Calvin Alexander have identified a number of these karst features which are omitted, intentionally or not, from the EAW. Sinkholes, caves, disappearing springs and blind valleys are present in and around this site. Unfortunately the land owner, Al Hein, denied permission for Dr. Alexander and others in the community to walk on his land. We wonder, what does he have to hide? Clearly an unbiased research team needs to carry out a karst analysis in t full EIS.

7020.2003 WATER QUALITY DISCHARGE STANDARDS require that Manure and manure-contaminated runoff or process wastewater from feedlots or manure storage areas is prohibited from entering a sinkhole, fractured bedrock, a well, a surface tile intake, a mine or a quarry. Further, no discharge is allowed to waters of the state from a CAFO or any feedlot or manure storage area with 1,000 animal units or more.[6] Full compliance with these provisions should be ascertained in an EIS.

7020.2005 LOCATION RESTRICTIONS AND EXPANSION LIMITATIONS require that new feedlots are prohibited in: within 300 feet of a sinkhole, within 100 feet of a private well or within 1,000 feet of a community water supply well.[7] Impartial experts must be given access to the entire site and all manure application fields to prove that these requirements are met.

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[5] http://www.mda.state.mn.us/animals/feedlots/feedlot-dmt/feedlot-dmt-cafo.aspx

[6] https://www.pca.state.mn.us/sites/default/files/wq-f1-20.pdf

[7] https://www.pca.state.mn.us/sites/default/files/wq-f1-20.pdf

A number of discrepancies related to water: On page 3 there is a footnote number 3 regarding the stormwater infiltration basin which has no citation. Also there is no number 2 footnote. Other commenters are identifying dozens of mistakes in this EAW.

6. The scale of this proposal introduces a volume of manure that is highly likely to pollute groundwater and surface water in this karst area. and the cumulative effects should be evaluated in an EIS. It will produce as much feces as a city of 50,000 people, in a county of only 21,000 people. Manure application at this scale will inevitably cause water pollution due to weather factors including increasingly severe rainstorms, early plantings, delayed harvests, late and early snowfalls, wet soils and frozen ground, which add up to unrealistic promises. Fillmore County already has 15% of wells exceeding the nitrate standard. The public well at the Newburg Methodist Church, located next to a proposed manure application field, has nitrates exceeding the nitrate standard.

We are extremely concerned about our own well, if it becomes polluted due to leaks or catastrophic losses at the storage pit, or if it becomes polluted from infiltration and runoff on proposed manure application fields.

Fillmore County SWCD has invested decades of work and huge investments of money in helping our farmers reduce erosion and runoff into our waters. All of this hard work by farmers could be wiped out by a single operation dedicated to massive manure applications or a leaking pit.

This is what Karst means: Any pollution released, whether infiltrated through the soil or runoff to a sinkhole or ditch to creek, can become a pollutant to anyone's groundwater. Sinkholes lead to underground passageways and re-emerge as springs. Infiltration sinks into aquifers, runs laterally, and enters wells or waterways. water flows downward, upward and laterally. There is no protective separation of aquifers, as we have seen wells drilled ever deeper in the karst area seeking clean water. An EIS should do a thorough karst analysis with dye trace studies.

7. Water withdrawal at this scale in a karst area demands a rigorous assessment to ensure existing wells are not impacted. Furthermore, DNR and MDH raise strong concerns about the impact of a new feedlot well with high withdrawal rates on trout streams, wetlands, rare species, and existing public water supply wells at two rural churches, two Canton city wells, and two businesses. An EIS should examine the likelihood of such impacts and whether applicants should reduce the size of their well. An even bigger concern is whether pollution from manure from the proposal would contaminate those neighboring wells.

8. Develop an Individual NPDES permit specifically tailored for the proposed karst sites, rather than a General NPDES permit. Because there are so many unanswered questions about whether the proposed CAFO can physically meet criteria for a general NPDES permit due to the highly complex flow of water on the surface and underground, an EIS must be conducted to evaluate whether and in what manner this proposal in a complicated and sensitive karst area can actually meet the criteria. According to the MN Department of Agriculture, "Individual Permit

Description: "For Concentrated Animal Feeding Operations (CAFOs) where the owners have agreed to permit conditions not covered by general permit conditions, and certain other CAFOs with past rule violations or pollution hazards, or those have been determined to required individual public noticing." EPA's NPDES Permit Writer's Manual for CAFO's says on page 3-4, "Alternatively, a permitting authority may elect to use a general permit for some CAFOs and individual permits for other CAFOs. For example, the permitting authority might prefer to use an individual permit for a CAFO that presents unique circumstances best addressed through the individual permitting process."[8]

In conclusion, it must be noted that the proposer and landowner Al Hein refused permission on May 29, 2018 to members of the public, even though he had previously agreed we could walk his land to explore karst features. As the public comment period draws to a close, there is deep suspicion that Catalpa is hiding information about dangerous karst features that contraindicate placement of a large hog operation in this area. Only an EIS can fully disclose all the facts needed for MPA and Fillmore County to use in consideration of permit issuance or denial.

Loni Kemp and Richard Nethercut
14083 County 23
Canton MN 55922

[8] https://www3.epa.gov/npdes/pubs/cafo_permitmanual_chapter3.pdf

Attachment 9F: Local Resident, Newburg Township

From: BART SEEBACH <blseebach@msn.com>
Sent: Monday, May 28, 2018 11:58 AM
To: Peterson, Charles V (MPCA) <charles.peterson@state.mn.us>; Gernes, Mark P (MPCA) <mark.p.gernes@state.mn.us>
Subject: Supplemental comments on Catalpa LLC Environmental Assessment Worksheet for proposed CAFO in Newburg Township, Fillmore County

Dear Messrs. Peterson and Gernes:
Attached (and printed below) is my letter supplementing earlier comments on the Environmental Assessment Worksheet for a proposed CAFO near my home in Newburg Township, Fillmore County. This supplements a May 23, 2018 letter my wife and I submitted. I hope you will also grant an extension of time for other neighbors and citizens to comment—the community is only beginning to be aware of this proposed CAFO and it has the potential to disrupt many people's lives and opportunities.
Thank you for your attention to our concerns.
Bart Seebach
15534 403rd Avenue
Canton, MN 55922
(507) 272-1644

Barton Seebach
15534 403rd Ave.
Canton MN 55922

May 28, 2018

By email to:
Mr. Charles Peterson
Resource Management and Assistance Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
Charles.peterson@state.mn.us

Mr. Mark P. Gernes
East Feedlot Unit, Watershed Division
Minnesota Pollution Control Agency
18 Wood Lake Drive SE
Rochester, Minnesota 55904
Mark.p.gernes@state.mn.us

Re: Supplemental Letter Analyzing Catalpa EAW—Reasons an Environmental Impact Statement Should Be Required for Proposed CAFO in Newburg Township, Fillmore County

Dear Mr. Peterson and Mr. Gernes:

"Measure twice, cut once."

Good advice. A valid measurement is especially necessary when the stakes are high. The Catalpa proposal, if approved, could degrade an entire rural community and a sensitive landscape. To me, serious degradation looks likely and my family and property are directly at risk. The first measurement was the environmental assessment worksheet (EAW), which upon review is more alarming than assuring. We need the more valid measurement of an environmental impact statement (EIS). Please require the EIS.

I am a neighbor with a 150-acre farm and residential property a little more than one mile north of the proposed Catalpa LLC CAFO in Newburg Township, Fillmore County. My property also adjoins the northern border of Site 21, one of the identified fields for application of liquid manure in the EAW. I am writing to supplement a letter my wife and I sent to you, dated May 23, 2018. I have now reviewed the EAW thoroughly and also reviewed some of the application materials filed with MPCA. The more I read, the more obvious it becomes that the proposal was minimally researched, leaves out important information, gets a lot of other important information wrong, and is a bad fit in our ecologically sensitive area. The project shouldn't go forward without an EIS that demonstrates its probable consequences clearly.

We told you in our May 23, 2018 letter that the EAW got our wellhead location badly wrong. In fact, of the three wells nearest my home, none are correctly located in the attachments to the EAW. Our well is within 30 feet of the tilled cropland on Site 21 and my home office, where I sit right this minute, is the same distance from Site 21. According to the EAW, our well is 170 feet away from Site 21. The EAW does not recognize any setbacks for application of manure, regardless of whether it is knifed in or sprayed then incorporated. Catalpa LLC would need a setback of 100 feet from my well if it knifes in the manure and 500 feet if it sprays it on. The choice of methods is critical to me and other neighbors, but Catalpa is not making that choice in the EAW.

My nearest neighbor is Mark Spande, whose well is incorrectly located in the EAW by several hundred feet. He has a shallow well not far from Site 16. The next nearest neighbor to the north has a new seasonal residence is named Pettigrew (sp?) and his well is adjacent to Site 16 and is not marked on the EAW at all. Amish neighbors to the south and southwest of Site 17, west of us along Wisel Creek, have no wells marked in the EAW at all. The nearest neighbor to my south is unlikely to share any concerns—they are related to the guy who wants to put up the CAFO. It appears to me that the consultant who prepared the EAW made no real effort to locate wells accurately. In my case, they marked the location of my well as being where my septic field is. That's lousy fieldwork. Based on what I can verify on personal knowledge, there is good cause to question whether sensitive areas are accurately identified by Catalpa LLC in its EAW.

Our property is subject to runoff flooding several times every year to the west and to the east of our house. The local landscape is sloped or highly sloped in many places, including many of the fields proposed for liquid manure application near my home. Flooding occurs during any season and has been far more common since Fillmore County did some roadwork on Highway 24 a few years ago. Before and after the crop growing season, it takes only about 2 inches of rain to have a flood. If the ground is frozen, it takes only about half an inch of rain or a day of quick snowmelt. The EAW says Catalpa LLC plans to spread liquid manure in late fall. But exceptions seem likely to be common. One exception apparently is to spread manure to prevent overflows at the CAFO site when liquid storage capacity would be exceeded. It appears liquid storage capacity might be exceeded due to a significant rainfall.

- To the west of my home, a tributary to Wisel Creek that, according to the Minnesota DNR, is spring fed from a source near the proposed CAFO on the property of Mr. Hein, drains runoff from Sites 3, 4, 20, and 21. Possibly it also drains from Site 2, but I am not sure of that. The flood that runs under and sometimes over my driveway several times a year comes, in part, directly from the proposed CAFO site on Site 3.
- To the east of my home, runoff from Site 21 floods down to Wisel Creek through a woodland marked even in the EAW as an area of biodiversity significance. I personally observed a timber rattlesnake sunning itself in that woodland along my fenceline adjoining Site 21 several years ago.
- Wisel Creek itself is a DNR trout stream for its entire length across my property and it drains, directly or indirectly, most of the liquid manure application sites in the proposed EAW. On my property and further downstream, Wisel Creek goes through sensitive areas of biodiversity significance in the EAW.

The DNR is so sensitive about protecting Wisel Creek that it restricts my ability to reduce flood damage by replacing the culvert under my driveway on the tributary noted above. I find it hard to believe that MPCA would not insist on a careful study of the proposed CAFO, whose construction would obviously create far more risk to the local environment and the Wisel Creek ecosystem.

We have sensitive karst landscape features on our property, including a surface spring on the south side of Wisel Creek, within about 200 feet east of Site 20 and 400 feet north of Site 21, and more springs in the streambed. We have a limestone bluff near that spring and taller limestone bluffs along Wisel Creek on the east one-half of our property. The Iowa Environmental Council has studied wells in karst and non-karst geologic zones in Iowa and found that

contamination in wells in our neighboring Iowa counties is significantly higher than in non-karst geologic zones. Our groundwater is at risk and should not be overstressed with concentrated sources of contaminants such as the proposed CAFO.

I am quite concerned not only about the quantity of waste created by the CAFO and put into the environment, but also about what will be in the runoff from this CAFO and the liquid manure that has not been in the runoff before—antibiotics. This CAFO will be a concentrated source of antibiotics and it will be in the manure and also in the decomposed bodies of sows and piglets. CAFOs are a business model that use antibiotics as a necessary means to sustain the extremely concentrated population of animals, and those antibiotics are a known hazard to humans and wildlife. We are only beginning to understand their consequences in the food chain. Lower density agricultural activities do not use antibiotics as heavily as CAFOs. I expect health risks to my family, my neighbors, and future generations from antibiotics used by the proposed CAFO and then spread across the landscape and introduced into groundwater. I want a study of those potential consequences.

My wife and I raise organic vegetables and one of our children has entertained hopes of raising organic produce on our farm. Our organic garden is less than 100 feet downslope from the north edge of Site 21. We don't want runoff with antibiotics and other contaminants from swine manure running through our garden during a heavy rainstorm. Meeting the demanding standards for organic agricultural is difficult. It may be impossible if the Catalpa LLC proposal is approved without significant restrictions.

We live on a fragile township road. It is the shortest distance between the proposed CAFO and several of the Sites where liquid manure will be applied. The road regularly suffers blowouts in the springtime and muddy, soft spots during wet weather at other times of the year. Heavy vehicles hauling and spreading liquid manure will cause damage to our road. How much damage is hard for me to estimate. Again, a study is needed to have a valid projection of the impact. The EAW pretty much blows off any concern about road damage, but it also completely ignores the fact that township roads are vulnerable. A lot of the roads that will be used to during application of liquid manure in our area are township roads.

Our region has a developing tourist and recreational economy (trout fishing, hunting, cycling) that will be hurt by a large CAFO and devastated by the associated and almost certain development of hog finishing barns to take the more than 100,000 piglets raised in the proposed CAFO. Trout fishermen use a DNR easement for Wisel Creek on my property. I am a volunteer at the Lenora Pioneer Church, about 2 miles west of the proposed CAFO in the unincorporated town of Lenora. The Pioneer Church is managed by a non-profit society dedicated to local Christian history, education, and ministry. Tourist buses and vans make it a stop on the frequent Amish tours of our area. CAFOs nearby are not compatible with a pleasant tourist experience.

I expect my property value will immediately decrease if this project is approved. I expect it to decrease even further because of the finishing barns that will be next to arrive in our community. The piglets from this CAFO will go somewhere close by, and those finishing barns aren't here yet. Word in the local community, though, is that a finishing barn will be built near the Scheie Lutheran Church a few miles northeast of the proposed CAFO. The EAW says there are no plans to add more operations. That may be true for this entity (it's easy to set up another LLC to do it), but it's very misleading. We need a reliable study, one that includes ALL the consequences and doesn't let the proposer get away with this kind of misleading statement.

Additional items that concern me in the EAW include these:

- I don't see any attempt by Catalpa LLC at being neighborly. They say they plan not to notify neighbors before applying liquid manure. Their proposed facility will dramatically change the neighborhood. We have feedlots around the area, but they are not comparable to this proposed CAFO. This one is simply huge, so huge and concentrated that it's not traditional agriculture at all and so concentrated that it seems likely to overwhelm the environment.
- This proposal is made by an entity, not a farmer. The environmental consequences are not going to be shared by the LLC that owns the operation or gets the approval to proceed. The farmer has an Iowa operator who will own the hogs and manage the operation. The involvement of an Iowa operator is a major concern because the

same operator appears to be involved in the severe degradation of rural environments and communities in nearby Iowa counties such as the area near the North Winneshiek School in Winneshiek County. Even in Iowa, where the swine industry is so dominant, there have been lawsuits over CAFOs that damage people's lives and property values.

- The EAW does not identify steeply sloped lands. Application of manure has to be done differently on steeply sloped lands, some of which will contribute runoff that crosses my land. An analysis and plan need to be done and carefully regulated to assure people like me that runoff is appropriately limited.
- The EAW does not identify high water tables soils. As mentioned above, I am aware of several springs in the area—and I have not gone looking for them. But high water tables obviously do exist in the area. This information needs to be developed to assess risks.
- Water withdrawal at the proposed rate seems bound to impact other wells in the area. Because of the karst geology, even deep wells are at risk more than in other parts of the state.
- We are concerned about odors from the CAFO itself and the liquid manure application, which is proposed to happen on Site 21 practically up to our house. In still weather, the odors from the CAFO are likely to follow the watershed drainage right down to our property and settle on us.

I will not restate at length the concerns already expressed in our May 23, 2018 letter, which included our observations of the impact of a manure spill from a much smaller feedlot on Wisel Creek, odors from manure application near our home, and impact on the public water source at the Newburg Norwegian Methodist Church.

The first meeting of neighbors was held at the Scheie Lutheran Church last night on a few hours notice posted on Facebook. Fifty or sixty people attended and were just beginning to learn about the proposed CAFO. Nearly all expressed deep concerns about this proposal. It seems clear that many more people will want questions answered and concerns addressed when they learn about the proposed CAFO. The proposed CAFO landowner attended and even he seemed to agree more study may be needed. Please require an environmental impact statement. The submitted EAW is materially faulty and incomplete. It is important we know the risks before this project is built.

Sincerely,

Barton Seebach

9G: Executive Director, Eagle Bluff Environmental Learning Center

From: Joe Deden <director@eagle-bluff.org>
Sent: Tuesday, May 22, 2018 8:35 AM
To: Peterson, Charles V (MPCA) <charles.peterson@state.mn.us>
Subject: Catalpa LLC Proposal Needs EIS

My name is Jerome Deden. I am the Executive Director of Eagle Bluff Environmental Learning Center, which is located in Fillmore County.

I believe that there is a need for an EIS for this project because it is located in a karst area. Please remember that several local towns in the karst area have had sink holes open up under their municipal sewage treatment facilities over the years. Kelvin Alexander from the UofM did dye tests that showed how dye poured into sink holes emerged miles away in local springs and showed up in shallow, local wells.

After the Pro-Corn ethanol plant came on line in Preston, we had to deepen our wells here, seven miles away as the crow flies, due to aquifer draw down.

Because of these past experiences, I would also like to know:

1. This farrowing operation would be the largest hog CAFO in Fillmore County. Are there connected phases planned to build CAFOs for the piglets produced?

2. Who is Catalpa LLC, who is responsible and liable for the operation, and is MN's prohibition on corporate ownership of farmland met?

3. The danger and extent of odors and air pollution on surrounding citizens was deficient.

4. What is the impact and response if the pit, which does not have required depth to bedrock, is breached or drains into ground or surface water?

5. Several sinkholes and potential sinkholes were omitted from the EAW. A full karst analysis must be done in an EIS.

6. Manure application at this scale will inevitably cause water pollution due to weather factors including increasingly severe rainstorms, early plantings, delayed harvests, late and early snowfalls, wet soils and frozen ground, which add up to unrealistic promises.

7. Odors and air pollution that cause diseases, especially in children, were not fully evaluated. Equally important are the rights of rural neighbors to enjoy their homes and property.

8. Water withdrawal at this scale in a karst area demands a rigorous assessment to ensure existing wells are not impacted.

I await your reply.

Sincerely,

Jerome Deden, Executive Director
Eagle Bluff Environmental Learning Center

9H: Aaron Bishop, Niagara Cave

From: Aaron Bishop <ajbishop34@gmail.com>
Sent: Friday, May 18, 2018 12:57 PM
To: Peterson, Charles V (MPCA) <charles.peterson@state.mn.us>
Subject: Catalpa LLC

Greetings Charles,
I am writing this letter to address the Catalpa LLC (and any other industrial sized CAFO in karst country). I help manage the most visited cave in Minnesota with my family. We have a pig CAFO just on the Iowa side of the border and that affects our business in several ways.

The odor, hydrogen sulfide and ammonia that we are forced to breathe cause problems . we draw 30,000+ people per year just for the cave and most of them come from the cities, Rochester, La Crosse, Dubuque, etc., and the odor can create an unpleasant me mory of our area.

What's more important, in my opinion, is the concentration of so much sewage in such a small area. we are in karst country. If you want a fantastic lecture on how outrageously dangerous it is to increase the number of CAFOs in southeast Minnesota, please speak with Dr. Calvin Alexander, one of the leading karst geologists in the world, right here from our state. I'm sure you've heard of him, and I am confident he would repeat to you what he's spoken about before concerning the hazards and risks of such products in our fragile geology.

I'll summarize: Water here can go from surface to depths of nearly 200 feet in a couple hours. Deeper than well water for some. Nitrate levels have penetrated further down, even in our area where the manure is applied to fields. We had to spend thousands of dollars to dig a deeper well, or our business could have been shut down.

The fact that we are in such a heavily concentrated area for sinkholes, fracture joints (many of which have not been officially mapped), disappearing streams, caves, and springs should be enough to prevent any more large scale CAFO operations. Because future outlooks for water quality aren't good. If we have to keep going deeper and deeper for well water, something people in this area may not be able to afford to do, we could see adverse health effects from those who aren't aware of their water quality.

To what end will this bring us? Rising healthcare costs for more sick people, southeast Minnesota's tourism declining (something our towns are heavily dependent upon), declining property values, and worsening water quality.

Some may say the containment vessel will be up to par. 1) that ignores what spreading so much manure near sinkholes and above cave fissures does, and 2) it's always up to par until it isn't. Some day, the containment will fail, because nothing humans build lasts forever, and we can't foresee when that will be. What then? Who is responsible? It's too risky in karst topography. Money can't clean up karst water very well, if at all. If it could, we wouldn't have the problems we have with nitrate contamination at our business, our home.

Please, I urge you to think ahead at the negative impacts and how they far outweigh the short term gains from such an operation.

If you have any questions, please feel free to email me back here or at niagaracave@gmail.com.
Thanks,
Aaron Bishop

9I: Local Business Owner, Eric Luoma, Karst Brewing

From: erluoma@frontiernet.net <erluoma@frontiernet.net>
Sent: Wednesday, May 30, 2018 8:07 AM
To: Peterson, Charles V (MPCA) <charles.peterson@state.mn.us>
Subject: Catalpa EAW, proposed hog confinement in Fillmore County: public comment

Dear Mr. Peterson,

I apologize for this last minute comment, but I've just become aware of the proposed hog feedlot in Fillmore County. The combined expansion of livestock confinement and increased tilling in this part of Minnesota is very damaging to our water quality and ecosystem diversity because of the unique karst topography upon which we sit. Although the geology of karst, and its uniquely delicate ecosystem should be obvious to all of us who live in Fillmore County, it is often misunderstood or ignored to favor the economics of those proposing these feedlots (very few of whom will see real financial benefit). However, there are other very important and immediate concerns regarding both the economy of this area and proper representation of its citizens as well.

First, from a citizen standpoint, I do appreciate the public comment period --and shame on me for missing the info until the last day! However, there is also a very large Amish population in Fillmore County who are not "plugged-in" and who are much less likely to actively seek direct involvement in such discussions. For this particular proposal, these people will be directly impacted and may have important feedback, should the state seek it directly. I know this adds a bit of a logistical burden, but I would expect community meetings directed toward the Amish could be arranged to properly explain the proposal and allow feedback based on a complete understanding -- from multiple views-- of the proposal.

From an economic standpoint, this feedlot proposal-- by threatening the karst geology and ecosystem; the air quality and visual quality; the value of neighboring property -- also threatens both the tourist economy and the growing farm-to-table and grow-local-eat-local economies of the area. The karst driven economy benefits many more people than Catalpa ever will and has a much greater long term potential as well. For example, my wife and I have started Karst Brewing, in Fountain, MN. We pride ourselves on being the smallest (successful) brewery in MN that is also a true "mom & pop" brewery. Our business model -- in addition to good beer -- relies on the unique karst topography of the area. Where Fountain, MN was a drive-by, now many more people stop. We see dozens, if not hundreds, of tourists every weekend: trout fishermen, campers, bicyclists, Amish tourists, etc. We also use local hops -- where a multi-generation farm has set aside a few acres for a hop-growing endeavor that adds diversity to what was a monoculture farm, sustainability, and increased economic vitality. We recommend places in Harmony for our customers to eat . . . and places like Rock-Filter Distillery in Spring Grove and Metz Dairy in Rushford. People from all over Minnesota, Iowa, Chicago, and even other countries visit this area to experience the karst landscape and to frequent the growing amount of small grow local, eat local, create local establishments. There is also a growing organic farm and family-owned free-range (or almost free-range) pork and beef trend in this area as well. In fact, we give our spent grains to one such family operated farmer. All of these smaller and locally sustainable endeavors simultaneously minimize environmental impact, while leveraging the local karst ecosystem for maximum economic vitality.

The Catalpa proposal puts all this at risk: the water we drink, the local ecosystems, the smell, the sight, the value of the smaller more sustainable, family-owned neighboring farms, and the small businesses that cater to tourists by leverage the unique topography that this project threatens.

Thank you for your thoughtful consideration.

Most Sincerely,

Eric Luoma
Karst Brewing, LLC
Fountain, MN
612-747-6367

9J: Newburg United Methodist Church

From: Karen Brown <kbeth@acegroup.cc>
Sent: Thursday, June 28, 2018 5:11 AM
To: Peterson, Charles V (MPCA) <charles.peterson@state.mn.us>; Gernes, Mark P (MPCA) <mark.p.gernes@state.mn.us>
Subject: FW: Newburg United Methodist Church letter of opposition

Charles and Mark,
Please acknowledge that you received this letter.
Thanks very much,
Jim and Karen Brown

May 30, 2018

Mr. Charles Peterson
Resource Management and Assistance Division
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155

Mr. Mark P. Gernes
East Feedlot Unit, Watershed Division
Minnesota Pollution Control Agency
18 Wood Lake Drive SE
Rochester, Minnesota 55904

Re: Proposed Catalpa feedlot in Newburg Township
Delivered via email

Dear Mr. Peterson and Mr. Gernes:
The Newburg United Methodist Church opposes the construction of the proposed swine farrowing facility in Section 7 of Newburg Township. The church is approximately 1 mile from this proposed facility. If the Catalpa operation uses 8.8 million gallons of water each year, it's going to potentially deplete the water resources available for our shared well. We also oppose the spreading of 7.8 million gallons of manure all around our neighborhood. With manure application sites adjacent to, directly across the gravel road by our church and north and south of our church, we will be completely surrounded by manure! This will have a huge negative effect on the air quality in our church and cemetery. Our church is very small and we, like most rural churches, are struggling just to survive these days. Catalpa may mean the end of our little country church.

We respectfully ask that you not approve their request for building and operating permits. Thank you for your consideration.

Sincerely,

Dennis Hansen, Chair
Newburg United Methodist Church Admin. Board