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July 6, 2011

Commissioner Paul Aasen (Paul.Aasen@state.mn.us)
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155

Jeff Udd, P.E. (Jeff.Udd@state.mn.us)
Minnesota Pollution Control Agency
Duluth Regional Office
525 Lake Avenue South – Suite 400
Duluth, MN 55802

RE: NPDES/SDS) PERMIT MN0055662ent
Proposed to be issued to Aitkin Agri-Peat Inc. for
AITKIN AGR-PEAT INC. – CROMWELL FACILITY

Dear Commissioner Aasen, Mr. Udd:

These comments are submitted on behalf of WaterLegacy, a Minnesota non-profit organization formed to protect Minnesota's water resources and the communities that rely on them. WaterLegacy is concerned that re-opening of hundreds of acres of bogs and wetlands for peat harvesting and reclamation activities under the proposed National Pollutant Discharge Elimination System/State Disposal System ("NPDES/SDS") permit for the Aitkin Agri-Peat Inc. Cromwell Facility ("Aitkin Peat Mine") has the reasonable potential to discharge mercury to waters that are already impaired for mercury and that the permit, in failing to provide any mercury discharge limit, violates the federal Clean Water Act ("CWA") and applicable state laws, fails to protect water quality from degradation and fails to prevent contamination of the aquatic system, including fish, with toxic mercury.

WaterLegacy requests a meeting with the Commissioner pursuant to Minn. R. 7001.0125, a contested case hearing pursuant to Minn. R. 7000.1800 if the matter is not resolved by such a meeting, and that this matter come before the Board of the Minnesota Pollution Control Agency ("MPCA") for decision pursuant to Minn. Stat. §116.02, Subp. 6(4).

In compliance with applicable Minn. R. 7001.0110, Subp. 2, WaterLegacy's comments are summarized as follows:

A. WaterLegacy's Interests

WaterLegacy's interests in the Aitkin Peat Mine NPDES/SDS Permit are as follows:

- 1) Protection of Minnesota's water resources from potential discharge of mercury. Mercury is a potent neurotoxic, and concentration of methyl mercury in fish creates neurological damage to the fetus, infants and children as well as to animal species at the top of the

food chain, such as Minnesota's state bird, the common loon.

- 2) Protection of the integrity of non-degradation review and the NPDES/SDS process so that the MPCA's permitting and enforcement will impose limits on mercury effluent that prevent violation of water quality standards, prevent degradation of mercury-impaired waters and avoid backsliding, particularly where permits relate to mining activities and disruptions of bogs and wetlands.
- 3) Protection of WaterLegacy's mission to ensure effective public participation in government and regulatory processes that impact the quality of fresh water and the health of communities dependent on that water by requiring greater transparency and accountability to the public by the MPCA.

B. Agency Actions Sought by WaterLegacy

The actions that WaterLegacy wishes the Agency to take in connection with the Aitkin Peat Mine proposed NPDES/SDS permit are as follows:

- 1) Provide members of the public with adequate public notice and opportunity for effective participation regarding the Draft/Proposed Aitkin Peat Mine NPDES/SDS Permit by taking the following actions:
 - a) Reissue the MPCA Public Notice of Intent to Reissue NPDES/SDS Permit MN0055662 for Aitkin agri-peat Inc. – Cromwell Facility, June 7, 2011 ("MPCA Aitkin Peat Mine Notice," attached as Exhibit B) so that the Notice includes facts that members of the public would need to know to decide whether or not to comment on the permit in order to prevent pollution waters with toxic mercury.
 - b) Reissue the Draft/Proposed NPDES/SDS Permit MN0055662 for Aitkin agri-peat Inc. – Cromwell Facility ("MPCA Aitkin Peat Mine Draft Permit" attached as Exhibit C) to include pertinent facts needed to describe the project, the prior NPDES/SDS permit, the prior mercury exceedances, the Agency's non-degradation analysis and the reasoning for failing to include a mercury discharge limit in the draft permit.
 - c) Post the Statement of Basis for the Aitkin Peat Mine Draft Permit (attached as Exhibit D) or a more rigorous revision of this document on line and accessible to the public.
 - d) Provide a public and transparent record for the Draft/Proposed Aitkin Peat Mine NPDES/SDS, clearly setting forth the following facts in the Public Notice and Draft/Proposed Permit:
 - i. That the Aitkin Peat Mine has proposed to re-open 385 acres of open bog and wetlands to peat mining over the next 20 to 25 years as well as to conduct reclamation activities from previous mining on another 185 acres of wetlands. (See U.S. Army Corps of Engineers, Public Notice for Aitkin Agri-Peat, Inc. 2010-01360-DWW, November 2, 2010, p. 1, "USACE Aitkin Peat Mine Notice," Exhibit A).

- ii. That the wastewater discharged from Aitkin Peat Mine will impact waters that are on the section 303(d) list as impaired for mercury, including the Kettle River. (See MPCA, Statement of Basis, Aitkin agri-peat, Inc. – Cromwell Location, June 1, 2011, p. 4 “MPCA Aitkin Peat Mine Statement of Basis,” attached as Exhibit D).
 - iii. That the prior NPDES/SDS permit for the Aitkin Peat Mine contained a limit on mercury effluent. (See MPCA Aitkin Peat Mine Statement of Basis, Ex. D, p. 3)
 - iv. That the Aitkin Peat Mine has previously exceeded mercury discharge limits by an order of magnitude greater than Minnesota’s applicable water quality standard of 0.0069 µg/L. (See MPCA Aitkin Peat Mine Statement of Basis, Ex. D, p. 3; U.S. EPA, Detailed Report on NPDES MN0055662, Aitkin Agri-Peat Inc. Cromwell Location, data extracted on May 16, 2011, pp.16, 25, “USEPA Aitkin NPDES Detailed Report” attached as Exhibit E).
 - v. That the draft/proposed NPDES/SDS Permit for the Aitkin Peat Mine includes no effluent limitation for mercury, but only that mercury will be monitored. (See Draft/Proposed NPDES/SDS Permit MN0055662 for Aitkin agri-peat Inc. – Cromwell Facility “MPCA Aitkin Peat Mine Draft Permit,” attached as Exhibit C; MPCA Aitkin Peat Mine Statement of Basis, Ex. D, p. 3).
- e) Extend the time for public comment on the re-opening of the Aitkin Peat Mine until August 15, 2011 to allow members of the public to review the updated Public Notice, Draft/Proposed NPDES/SDS Permit and Statement of Basis and evaluate whether they have concerns about increased mercury discharge and degradation of water quality in waters that are already impaired for mercury.
- 2) Conduct a meeting with the Commissioner with respect to the Aitkin Peat Mine NPDES/SDS Permit pursuant to Minn. R. 7001.0125, Subp. 1, to resolve this matter by requiring that the NPDES/SDS permit include and enforce a mercury effluent limit of 0.0069 µg/L and require mercury monitoring on a more frequent and timely basis.
 - 3) Should a meeting with the Commissioner with respect to the Aitkin Peat Mine NPDES/SDS Permit fail to resolve WaterLegacy’s concerns, conduct a contested case hearing on the Aitkin Peat Mine NPDES/SDS Permit pursuant to Minnesota Rules 7000.1800 and 7000.1900.
 - 4) Amend the Draft/Proposed Aitkin Peat Mine NPDES/SDS Permit to provide a mercury effluent limit of 0.0069 µg/L, to specify actions that must be taken if mercury discharge exceeds this limit and to increase the frequency and timeliness of monitoring.

C. Support for WaterLegacy’s Position

- 1) In support of each and all of its positions, WaterLegacy incorporates by reference all statements of fact reflected in the preceding Sections A and B. WaterLegacy further incorporates the information contained in the attached Exhibits A through H and states that, should this matter not be resolved prior to a contested case hearing, WaterLegacy

intends to supplement these Exhibits and call at least one expert witness as to the reasonable potential of peat mining and reclamation activities to result in mercury discharge to surface waters and degradation of mercury impaired waters.

- 2) In support of WaterLegacy's position that the Public Notice and release of the Draft NPDES/SDS Permit for the Aitkin Peat Mine failed to provide transparency and accountability to the public, WaterLegacy further states the following:
 - a) The MPCA Aitkin Peat Mine Notice (Ex. B) failed to disclose any of the facts contained in Section B above, never using the word "mercury" or advising the public that a peat mine was proposed to be re-opened.
 - b) The MPCA Aitkin Peat Mine Draft Permit (Ex. C) failed to disclose pertinent facts outlined in Section B above, including but not limited to the following: i) the nature of activities that would result if the permit were issued, such as the fact that a peat mine was proposed to be re-opened and the number of acres of bog and wetland that would be impacted by mining and reclamation activities; ii) the fact that the prior permit for the facility had contained an effluent limit for mercury; iii) the fact that, during its prior operations, the facility had reported exceedances of state mercury discharge limits; and iv) the potential increase in the actual maximum daily flow as a result of re-opening a peat mine.
 - c) The MPCA Aitkin Peat Mine Statement of Basis (Ex. D) did not explain the grounds for its conclusions that re-opening of the Aitkin Peat Mine has no reasonable potential to discharge mercury in excess of water quality standards or to degrade water quality and that removing a mercury effluent limit would not constitute backsliding under the Clean Water Act. This Statement of Basis, further, was not readily accessible for public review.
- 3) In support of our petition for a contested case hearing, request for a meeting with the Commissioner and request that the Aitkin Peat Mine Draft Permit be amended or revised (Section B above) WaterLegacy states that there are material issues of fact in dispute concerning the re-opening of the Aitkin Peat Mine and mixed issues of fact and law making a contested case hearing and Board review appropriate.

Material issues of fact include the following:

- The nature of extent of activities covered by the Aitkin Peat Mine Draft Permit, including activities entailed in re-opening peat mining and reclamation and the number of acres of bog and wetland impacted by mining and reclamation activity;
- The history of the Aitkin Peat Mine site, including times when the site was previously operated by the Michigan Peat Company, years during which the site was mined, years since it has been mined, and changes in flow levels, mercury loading and mercury discharge levels during operations and since mining operations ceased.
- The timing, nature, extent of prior violations of mercury standards from the Aitkin Peat Mine, the nature of testing that established those violations and the actions, if any, taken in order to address the violations.

- The appropriate frequency and timing of mercury monitoring given the seasonality of peat mining and reclamation activities and the timing of past mercury violations from the Aitkin Peat Mine facility.
- Whether scientific and technical information indicates that peat mining and reclamation activities proposed for the Aitkin Peat Mine are actions that have the reasonable potential to cause excursions from mercury water quality standards.
- Whether receiving surface waters for industrial discharge from the Aitkin Peat Mine are waters which are impaired for mercury not covered by the Statewide mercury TMDL.
- Whether the lack of a mercury limit in the Draft Aitkin Peat Mine Permit MPCA is unreasonable and inconsistent with MPCA precedent, including the denial of Clean Water Act Section 401 certification for a peat mine expansion on the grounds that it was likely to violate an applicable state mercury discharge limit.

Mixed issues of fact and law include the following:

- Whether re-opening of peat mining and reclamation activities proposed at the Aitkin Peat Mine have the potential to degrade water quality of mercury-impaired waters.
- Whether scientific and technical information regarding peat mining and mercury as well as the history of prior violations of numeric limitations for mercury from the Aitkin Peat Mine justify a permit limitation for mercury due to the reasonable potential to cause or contribute to an excursion of water quality standards.
- Whether a mercury discharge limitation of 0.0069 µg/L is required for the Aitkin Peat Mine NPDES permit to ensure that the activities proposed under the NPDES permit will not add or contribute to pollution of an impaired water body until after a TMDL has been approved for the impairment and to ensure that effluent limits for the facility comply with and protect water quality standards.
- Whether removal of the mercury limitation from the Aitkin Peat Mine NPDES/SDS Permit is backsliding prohibited under the Clean Water Act that does not fit within any of the exceptions that would allow elimination of water quality based effluent limitation.

4) Pursuant to Minn. R. 7000.1900, Subp. 1C, WaterLegacy states the following:

- a) The MPCA Aitkin Peat Mine Notice was issued on June 7, 2011, with a public comment period ending on July 6, 2011. The prior NPDES/SDS permit for this facility had been issued on March 4, 1997 and had expired on December 31, 2001. The principal activity at this facility is the mining of peat (fibric sphagnum and hemic reed-sedge) for horticultural uses, at a maximum rate of 130,000 cubic yards per year. (MPCA Aitkin Peat Mine Notice, Ex. B, p. 1)

- b) The USACE Aitkin Peat Mine Notice issued on November 2, 2010 states that the permittee is proposing to “re-open previously mined peat areas for harvesting peat over the next 20 to 25 years”:

The applicant is applying for a permit to re-open a 220 acres of open bog (Type 8) and 165 acres of sedge meadow (Type 2) wetlands for the purpose of harvesting (mining) Sphagnum moss peat and sedge peat at the former Michigan Peat Company horticultural peat harvesting operation located within the Corona Bog east of Cromwell, Minnesota. The applicant is also proposing to complete wetland restoration/peat reclamation of 185 acres of sedge wet meadow wetlands from the previous operation. (USACE Aitkin Peat Mine Notice, Ex. A, p. 1)

The USACE Notice further explains that the work proposed by Aitkin Agri-Peat, Inc. was previously authorized by a 1996 Army wetlands permit, but that the Michigan Peat Company had stopped its peat harvesting operation prior to the December 31, 2005, expiration date of the permit and no further work has been done since then. (USACE Aitkin Peat Mine Notice, Ex. A, p. 2). It appears from the USACE notice that the Aitkin Peat Mine NPDES/SDS permit would represent new peat mining activity.

- c) Neither the MPCA Aitkin Peat Mine Notice nor the MPCA Draft/Proposed Permit explicitly describe the extent and nature of new, re-opened or expanded peat mining activities that would be allowed under the NPDES/SDS permit. The Notice and Draft/Proposed permit imply that new peat mining is contemplated. These documents state that mining from the area that drains to outfall SD-002 and SD-001 has ceased and that if, “in the future, mining becomes active” or “the area becomes actively mined in the future” the permittee will notify the MPCA and monitoring will resume. (MPCA Aitkin Peat Mine Notice, Ex. B, p. 2; MPCA Aitkin Peat Mine Draft Permit, Ex. C., p. 3).
- d) The MPCA Aitkin Peat Mine Draft Permit contains monitoring requirements for mercury, but imposes no limitations on the discharge of mercury from the facility, whether or not mining becomes active in the future. (*See* MPCA Aitkin Peat Mine Draft Permit, Ex. C, pp. 3, 7, 8, 9). The Statement of Basis makes it clear that the MPCA does not intend to impose mercury limits during the life of the permit, but only to evaluate the reasonable potential for mercury excursion above water quality standards upon permit reissuance:

The MPCA will evaluate mercury data throughout the life of the permit as it is submitted by the Permittee. Upon permit reissuance, the data collected throughout the life of the permit will be evaluated to conduct a reasonable potential analysis. If necessary, the permit may be reopened by the MPCA based on mercury data received pursuant to Minn. R. 7001.0170. (MPCA Aitkin Peat Mine Statement of Basis, Ex. D, p. 2).

- e) Minnesota water quality standards limit mercury in the water column to 0.0069 µg/L in Class 2B waters, such as the Kettle River, and limit mercury in edible fish tissue to 0.2 parts per million. Minn. R. 7050.0220, Subp. 4a (16), (17). Minnesota Rules also

provide, "If the standards in this chapter are exceeded, it is considered indicative of a polluted condition which is actually or potentially deleterious, harmful, detrimental, or injurious with respect to designated uses or established classes of the waters of the state." Minn. R. 7050.0220, Subp. 1.

- f) The USEPA Aitkin NPDES Detailed Report identifies violations of numeric mercury limits in the existing permit for the Aitkin Agri-Peat Facility. These violations were detected in monitoring during April and July of 1998, with concentration maximum and average levels as high as .08 µg/L. (See USEPA Aitkin NPDES Detailed Report, Ex. E, pp. 16, 25). The MPCA's Statement of Basis questions the accuracy of the mercury testing methods, but acknowledges "Reported mercury concentrations in the discharge were an order of magnitude greater than the limit of 0.007 µg/L required by the current permit as well as the current standard of 0.0069 µg/L (dissolved)." (MPCA Aitkin Peat Mine Statement of Basis, Ex. D, p. 3).
- g) The MPCA Aitkin Peat Mine Draft Permit contains inadequate monitoring requirements to determine whether the proposed activities will result in additional violations of Minnesota's mercury water quality standards. The Draft/Proposed Permit requires only two grab samples a year, and permits sampling to be taken any time from January through December (MPCA Aitkin Peat Mine Draft Permit, Ex. C, pp. 7, 8, 9) although primary peat mining activities and prior mercury violations from the facility are seasonal during spring and summer. Neither the Draft Permit nor the Statement of Basis provides justification for the infrequent monitoring schedule or lack of specificity regarding seasonality.
- h) The receiving waters for the Aitkin Agri-peat facility include the Kettle River, which is listed on the 303(d) list of impaired waters and has been identified as being impaired for mercury. (MPCA Aitkin Peat Mine Statement of Basis, Ex. D, p. 3). Current listing of this river on the 303(d) list as impaired for mercury means that the Statewide Mercury TMDL limits on air emissions are insufficient to bring the Kettle River into compliance with mercury standards.
- i) The MPCA Aitkin Peat Mine Statement of Basis states, "MPCA Staff were unable to find justification in the previous permit to support a mercury effluent limitation. At the time of the previous permit issuance there was no data available to conduct a reasonable potential analysis. . Without a reasonable potential analysis, it would not be possible to assign an effluent limit." (MPCA Aitkin Peat Mine Statement of Basis, Ex. D, p. 3). The document cites no scientific or technical references to support the Agency's conclusion that proposed peat mining and reclamation activities have no reasonable potential to result in excursions above Minnesota's mercury standard or to justify removal of a mercury effluent limit in response to technical concerns about mercury data collection.
- j) It is recognized in scientific and technical literature that peat mining results in discharge of industrial process wastewater and that discharge waters must meet numerical limits, including mercury limits, to insure that receiving waters are not degraded. A recent publication of the Natural Resources Research Institute at the University of Minnesota, Duluth states the following:

Any water discharged from a peat mining operation is classified as industrial process wastewater by the MPCA. The conventional pollutants of concern in discharge from peat mining operations are typically suspended solids, phosphorus, and acidic pH. Discharge water that is outside the limits for any of these pollutants can be detrimental to fish and other aquatic organisms. Another pollutant of concern is mercury. Mercury accumulates in Minnesota peatlands as a result of atmospheric deposition. Elemental mercury can be converted to methyl mercury, a toxic form, by aquatic bacteria in lake sediments and wetlands. Methyl mercury is concentrated as it moves up the aquatic food chain with large game fish such as walleye and northern pike having the highest concentrations. When these concentrations become too high, fish consumption advisories are posted to protect human health. "Impaired waters" are classified as water bodies where the fish consumption advisory is more restrictive than one meal per week (MPCA 2005).

To protect receiving waters from these potential pollutants, the MPCA is now requiring additional water sampling to detect phosphorus and mercury for any new or existing operations. Discharge waters must meet strict limits to insure that receiving waters are not further degraded. The current limit for phosphorus is 1.0 mg/L. The non-Lake Superior Basin water-column standard for mercury is 6.9 ng/L. Within the Lake Superior Basin the standard is 1.3 ng/L (MPCA 2006).

Johnson, K.W. 2008. Permitting horticultural peat operations in Minnesota, USA - New and emerging issues. In: C. Farrell and J. Feehan (eds.) *After Wise Use – The Future of Peatlands, Proceedings of the 13th International Peat Congress, Volume 2 - Poster Presentations*, Tullamore, Ireland 8-13 June 2008, International Peat Society, Jyväskylä, Finland, 83-85, "Johnson Peat 2008," attached as Exhibit G.

- k) It is recognized in the MPCA's own documents that peat mine drainage has the potential to release mercury and that mercury is a bioaccumulative toxin. The MPCA Fact Sheet, Peat Operations and Environmental Protection, attached as Exhibit F states with respect to peat mine drainage, "Mercury: Mercury can be released during peat drainage. It is very toxic to fish, and accumulates through the food chain."
- l) The MPCA Aitkin Peat Mine Draft Permit implies that the NPDES/SDS permit would comply with the non-degradation requirements of Minnesota Rule 7050.0185. (MPCA Aitkin Mine Draft Permit, Ex. C, p. 4) However, neither the Draft/Proposed Permit nor the Statement of Basis analyzes whether the re-opening of the Aitkin Peat Mine would result in a significant discharge under Minn. R. 7050.0185, Subp. 2, whether the cessation of mining activities at the Aitkin Peat Mine requires an adjustment of baseline quality under Minn. R. 7050.0185, Subp. 6 or whether requiring compliance with mercury effluent limits is the minimum required under Minn. R. 7050.0185, Subp. 3.
- m) MPCA precedent supports the requirement that peat mining comply with state numerical limits on mercury discharge. Clean Water Act Section 401 certification of a peat mining expansion was rejected by the MPCA in 2008 based on the potential

that the project would fail to comply with state numerical limits on mercury discharge. (MPCA, Denial of Section 401 Certification, Waupaca Northwoods, LLC. CEMVP-OP-R 2007-1073-TWP, February 13, 2008, attached as Exhibit H). The Aitkin Peat Mine is, similarly, seeking a federal permit to dredge and fill wetlands, for which the MPCA has Section 401 jurisdiction.

- n) The U.S. EPA has oversight authority to review and object to State permits, 40 C.F.R. § 123.44. As noted in the MPCA Aitkin Peat Mine Statement of Basis, the main thrust of §402(o) of the Clean Water Act is to bar the U.S. EPA from allowing permit holders to “backslide” or weaken water quality based effluent limitations (“WQBELS”) contained in an NPDES permit except under very limited circumstances. Generally, anti-backsliding regulations prohibit EPA from reissuing NPDES permits containing effluent limitations less stringent than the final limits contained in the previous permit, with limited exceptions. 40 C.F.R. §122.44(l). NPDES permits may not be reissued or renewed to contain less stringent effluent limitations than the previous permit unless the proposed new limitations comply with the anti-degradation rule contained in §303(d)(4) of the CWA, or the permit falls into one of the statutory exceptions to this ban on backsliding.

Neither the MPCA Aitkin Peat Mine Draft Permit or the Statement of Basis have provided any factual basis or analysis to demonstrate that the Aitkin Peat Mine NPDES/SDS falls within the narrow exceptions to backsliding. The MPCA has not demonstrated that the designated use of Minnesota’s waters for fishing and eating uncontaminated fish has been removed in accordance with EPA regulations so that non-degradation no longer applies, 33 U.S.C. §1313(d)(4)(ii); that Minnesota’s 0.2 parts per million standard for mercury in fish tissue in the Kettle River will be attained irrespective of the removal of the NPDES/SDS permit mercury limit, 33 U.S.C. §1313(d)(4)(A)(i); or that removing the NPDES/SDS permit mercury limit will not result in a violation of Minnesota’s water quality standards limiting mercury in fish tissue and mercury in the water column 33 U.S.C. §1342(o)(3). In addition, federal law explicitly prohibits a “technical mistake” exception (MPCA Aitkin Peat Mine Statement of Basis, Ex. D, p. 3) from applying to effluent limitations except where the cumulative effect of such revised allocations results in a decrease in the amount of pollutants discharged into the concerned waters. 33 U.S.C. §1342(o)(2).

Based on the above discussion, the cited and attached documents and other records on file with the MPCA with respect to the MPCA Aitkin Peat Mine Draft/Proposed NPDES/SDS Permit, WaterLegacy respectfully requests the following actions be taken by the MPCA, as more specifically stated in Section B above:

- Provide members of the public with adequate public notice and opportunity for participation by reissuing the Public Notice and Draft/Proposed Permit, posting the Statement of Basis on line and extending the comment period on the permit until August 15, 2011;
- Conduct a meeting with the Commissioner to amend the Draft/Proposed Aitkin Peat Mine NPDES/SDS Permit to impose and enforce a mercury effluent limit of 0.0069 µg/L consistent with state and federal law, including federal anti-backsliding

provisions and require more frequent and timely monitoring of mercury discharge;

- Should a meeting with the Commissioner with respect to the Aitkin Peat Mine NPDES/SDS Permit fail to resolve WaterLegacy's concerns, conduct a contested case hearing on the Aitkin Peat Mine NPDES/SDS Permit pursuant to Minnesota Rules 7000.1800 and 7000.1900.
- Amend the Draft/Proposed Aitkin Peat Mine NPDES/SDS Permit to impose and enforce a mercury effluent limit of 0.0069 µg/L consistent with state and federal law, including federal anti-backsliding provisions and require more frequent and timely monitoring of mercury discharge.

Please feel free to contact me at 651-646-8890 if you have any questions regarding the above comments or if you would like to receive an electronic copy of this filing. We look forward to hearing from you with respect to WaterLegacy's requests for agency action.

Respectfully,



Paula Goodman Maccabee
Counsel for WaterLegacy

Enclosure

cc: Susan Hedman, Administrator for EPA Region 5 (Hedman.Susan@epa.gov)
Tinka Hyde, Water Division Director for EPA Region 5 (Hyde.Tinka@epa.gov)

AITKIN AGRI-PEAT NPDES/SDS PERMIT LETTER EXHIBITS

WaterLegacy expressly reserves the right to submit additional exhibits and provide testimony of expert witnesses should a contested case be required in order to resolve our concerns regarding the Aitkin Agri-Peat NPDES/SDS Permit.

The following Exhibits are attached with WaterLegacy's comments dated July 6, 2011 and are incorporated in this record.

- Exhibit A U.S. Army Corps of Engineers, Public Notice for Aitkin Agri-Peat, Inc. 2010-01360-DWW, November 2, 2010.
- Exhibit B MPCA, Public Notice of Intent to Reissue NPDES/SDS Permit MN0055662 for Aitkin agri-peat Inc. – Cromwell Facility, June 7, 2011.
- Exhibit C MPCA, Draft/Proposed NPDES/SDS Permit MN0055662 for Aitkin agri-peat Inc. – Cromwell Facility, Undated.
- Exhibit D MPCA, Statement of Basis, Aitkin agri-peat, Inc. – Cromwell Location, June 1, 2011.
- Exhibit E U.S. EPA, Detailed Report on NPDES MN0055662, Aitkin Agri-Peat Inc. Cromwell Location, data extracted on May 16, 2011.
- Exhibit F MPCA, Peat Operations and Environmental Protection (1996).
- Exhibit G Johnson, K.W. 2008. Permitting horticultural peat operations in Minnesota, USA - New and emerging issues, in C. Farrell and J. Feehan (eds.) *After Wise Use – The Future of Peatlands, Proceedings of the 13th International Peat Congress, Volume 2 - Poster Presentations*, Tullamore, Ireland 8-13 June 2008, International Peat Society, Jyväskylä, Finland, 83-85.
- Exhibit H MPCA, Denial of Section 401 Certification, Waupaca Northwoods, LLC. CEMVP-OP-R 2007-1073-TWP, February 13, 2008.