

**BEFORE THE MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS**

100 Washington Square, Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE PUBLIC UTILITIES COMMISSION

121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Application of Minnesota
Pipe Line Company for a Routing Permit for a
Crude Oil Pipeline

MPUC Docket No. PL-5/PPL-05-2003
OAH Docket No. 15-2500-17136-2

**GARDENS OF EAGAN PROPOSED
FINDINGS OF FACT AND
CONCLUSIONS**

INTRODUCTION

The Minnesota Pipe Line Company (MPL) filed an application for a certificate of need for a crude oil pipeline, the “MinnCan” Project, with the Public Utilities Commission on January 3, 2006 and filed its application for a routing permit with the Public Utilities Commission on January 5, 2006. The Public Utilities Commission referred both the certificate of need and the application for a routing permit to the Office of Administrative Hearings in its Order dated February 16, 2006.

The route alignment filed by MPL cut through the center of the Gardens of Eagan, a 120-acre federally registered, certified organic farm in the Township of Eureka, County of Dakota owned by Atina and Martin Diffley. On May 30, 2006, Atina and Martin Diffley moved to intervene in the routing proceeding pursuant to Minnesota Rule 1400.6200 on the grounds that the proposed route for MPL’s crude oil pipeline would have a substantial and potentially irreparable impact upon the Gardens of Eagan and would interfere with the Diffleys’ ability to earn a livelihood from their organic farm. Intervention was sought to ensure: (i) selection of a route alignment that does not cross the Gardens of Eagan organic farm, and (ii) modification of MPL’s Agricultural Impact Mitigation Plan, submitted as part of its Environmental Assessment Supplement, to require additional permit conditions protecting organic farms during right-of-way construction, restoration and maintenance.

Along with the Motion to Intervene, Gardens of Eagan filed a Proposal for Alternative Route Alignment to Avoid Organic Farm and a Proposal for Modification of Agricultural Impact Mitigation Plan and Environmental Assessment setting forth their legal and factual claims.

On June 9, 2006, Administrative Law Judge Beverly Jones Heydinger granted the Motion to Intervene of Atina and Martin Diffley as Gardens of Eagan. On July 14, 2006, Judge Heydinger granted the Garden of Eagan's request for an exemption to Minn. R. 1405.1900, providing that Gardens of Eagan expert witnesses would appear at the public hearing scheduled for Dakota County and would otherwise respond in writing to any cross-examination. The public hearing in Dakota County was scheduled for September 5, 2006.

Gardens of Eagan timely filed direct testimony of experts with supporting exhibits on August 7, 2006. On August 24, 2006, the Direct Testimony of Deborah L. Allan, the Direct Testimony of James A. Riddle and Exhibits for the Direct Testimony of James A. Riddle and Deborah L. Allan were entered into the record as Exhibits 20, 21 and 22, respectively. (Transcript (TR), Vol. 1, 8/24/06, p. 35).

On September 5, 2006, with the agreement of MPL, the Minnesota Department of Commerce and the Minnesota Department of Agriculture, Judge Heydinger released the Gardens of Eagan expert witnesses from attendance at the Dakota County hearing, stating that arrangements would be made if any person at the hearing sought to cross-examine these witnesses. This release is reflected in an electronic mail sent to the Judge and parties by counsel for the Gardens of Eagan dated September 5, 2006. No person asked to cross-examine Gardens of Eagan expert witnesses on September 5, 2006 or at any other public hearing in this matter.

Minnesota Rule 4415.0100 sets forth the criteria for selection of a pipeline route. Impacts on human settlement and land use, the natural environment, lands of cultural significance, agricultural and other economies, and natural resources shall be considered, along with use of existing rights-of-way, mitigation by permit conditions and relevant local, state and federal policies and laws. Minn. R. 4415.0100, Subp. 3.

Minnesota Rules provide that precautions to minimize compaction, protect and segregate topsoil, protect crops, and restore the area affected by the pipeline to its natural state are conditions that apply to pipeline right-of-way construction and restoration. Minn. R. 4415.0195. Minnesota Statutes provide that in certificate of need proceedings, the commissioner of the Department of Agriculture may advise the Public Utilities Commission as to whether to grant a permit for the project and "the best options for mitigating adverse impacts to agricultural lands if the permit is granted." The Department of Agriculture is the lead agency on the development of any agricultural mitigation plan required for the project. Minn. Stat. 216B.243, subd. 7.

Based on the record of this proceeding, Gardens of Eagan submits Findings of Fact and Conclusions regarding selection of a route alternative to avoid their organic farm and regarding conditions to mitigate adverse impacts of the pipeline as a whole on organic farms.

FINDINGS OF FACT

1. Gardens of Eagan is a certified organic farm located at 25498 Highview Avenue in Farmington, Minnesota with a total of 72.5 organic cultivated acres and another 47.5 acres devoted to woods, ecological set aside and the farmstead. Gardens of Eagan's crops are wholly organic mixed vegetables – broccoli, cabbage, kale, tomatoes, cucumbers, cauliflower, peppers, sweet corn, squash and watermelon. These crops are sold primarily to cooperatives in the Minneapolis/St. Paul area -- a market that is highly sensitive to the quality of production. (*Exhibit 20, Testimony of D. Allan (hereinafter "Ex. 20") p. 9; Exhibit 22, Exhibits for Direct Testimony of D. Allan and J. Riddle (hereinafter "Ex.22") (GOE Ex. 4) Gardens of Eagan Organic Management Plan*).
2. The Administrative Law Judge has received more than 3,000 letters and emails in this proceeding from cooperatives selling Gardens of Eagan produce, organic produce consumers, medical health professionals, organic certifiers, experts in agriculture, and other members of the public requesting that the route for the Minnesota Pipe Line Company pipeline avoid the Gardens of Eagan organic farm.
3. The Organic Consumers Association, representing over 850,000 members, submitted testimony that organic consumers seeking to maintain a supply of healthy, locally-grown organic food have an interest in preventing the loss of the Gardens of Eagan organic farm and in protection of other organic farms from the risk of lost production or decertification. (*Exhibit 23, Direct Testimony of Craig Minowa*),
4. Gardens of Eagan is a model of sound sustainable organic practices and serves as a role model, mentor and teacher for other farmers. This organic farm is an important agricultural and cultural resource for the region. (*Ex. 20, p. 4, pp.14-15*).
5. Organic farms are governed by the federal Organic Foods Production Act and the National Organic Program (NOP) standards contained in federal regulations, 7 C.F. R. §205 et seq. In order to represent that farm products are organic, an organic farmer must comply with NOP standards, prepare and follow a detailed organic management plan that specifies all of the inputs and practices used at the farm and undergo inspection by an accredited certifier who will both inspect the farm and review the organic management plan in detail to determine if NOP standards are being met. (*Exhibit 21, Testimony of James A. Riddle (hereinafter "Ex. 21")*, p. 6)
6. Organic farms, unlike conventional farms, are intended to be maintained as a natural environment. The physical and biological features of an organic farm are defined in federal regulation as natural resources. (*Ex. 21, p. 6-7, NOP, 7 C.F. R. §205.2*)
7. Pipeline construction and maintenance practices that may not be significant for conventional commodity agriculture may contaminate soils and threaten organic certification. NOP standards preclude prohibited substances for a period of 3 years before

harvest of an organic crop and require buffer zones and diversion to prevent unintended application of prohibited substances. Plant nutrients, fuels, hydraulic fluids, pesticides, herbicides, heavy metals or residues of prohibited substances released or carried in runoff during pipeline construction, operation or maintenance create a risk of contamination and organic decertification. (*Ex. 21, pp. 6-8*)

8. Impacts of pipeline construction on acreage are greater for organic than conventional farms due to the need to establish buffer areas in addition to construction easements to prevent prohibited substances from entering onto organic lands. (*Ex. 20, p. 8, Ex. 21, p. 8*)
9. Pipeline construction is perceived by organic certifiers like an industrial usage. Delays before land can be placed back into organic production may exceed the 3-year period that prepares land for certification after use as conventional farmland. (*Ex. 21, p. 8*)
10. Organic crops are more vulnerable to pipeline construction impacts than conventional crops, since they do not use synthetic fertilizers, insecticides, fungicides and herbicides to stimulate plant growth and prevent vulnerability to pests and weeds. Conventional crops will show less loss of quality and yield when soils are disrupted, because chemical inputs can compensate for poorer soil conditions. (*Ex. 20, p. 7, Ex. 21, pp. 5, 9*)
11. Organic crop production relies almost entirely upon the soil's properties. The quality of the soil and the level of biological activity in the soil, rather than chemical inputs used in conventional farming, determine whether crops will be healthy and free from disease. Healthy soil structure takes many years to build through incorporation of cover crops, crop rotation, sheet composting, application of finished compost and other crop management practices to build the top horizons of the soil and, especially the few top inches that are richest in organic matter. If that top soil horizon is disturbed, the farmer's investment is placed in jeopardy. (*Ex. 20, pp. 5-6, Ex. 21, p. 5*)
12. Digging and trenching for pipeline construction removes and disrupts the topsoil horizons which are critical to organic farming. Compaction from pipeline construction destroys organic soil fertility. Mitigation by tillage, which may be effective for conventional crops, does not restore organic soil quality and biological life. (*Ex. 20, p. 8*)
13. Among organic crops, organic vegetables are most sensitive to soil quality. Substandard soil quality produces substandard products, which cannot be marketed. If crops fall below quality standards they must be considered a total loss. (*Ex. 20, pp. 7-8*)
14. Gardens of Eagan's productivity results from 15 years of soil building in its current location. If this farm's organic soils were to be disturbed by pipeline construction, it is unknown how long it would take to restore the soil to current productive levels or even if such restoration would be possible. (*Ex. 21, pp. 10-11*)
15. Gardens of Eagan vegetables are planted in small fields on slightly rolling topography. With these small fields and the requirement of organic buffer zones, the initial route alignment would have taken several small vegetable fields out of production. The initial route alignment filed by MPL would also have destroyed ecological habitat critical to support beneficial insects and control weeds and pests on the entire Gardens of Eagan organic farm and would have disrupted a graded and improved waterway that prevents

run-off from neighboring conventional farms from contaminating organic fields. Had this route been selected, the environmental and economic viability of the Gardens of Eagan farm itself would have been placed in jeopardy. (*Ex. 20, p. 10, Ex. 21, pp. 9-10*)

16. The value on a per acre basis of conventional field crops is in the range of two to three hundred dollars per acre. Gardens of Eagan yields per acre range from \$4,000 to \$70,000, with an average of \$11,500. Constructing a crude oil pipeline on the Gardens of Eagan organic vegetable farm would be far more detrimental and costly than routing the pipeline on other agricultural land. (*Ex. 20, pp. 3, 8*)
17. On May 30, 2006, Gardens of Eagan proposed an alternative route alignment that would avoid their organic farm and cross nearby conventional field crop and conservation reserve land. On the recommendation of the Minnesota Department of Commerce, the Public Utilities Commission accepted that alignment for consideration in the contested case hearing as Attachment B-5 Diffley Alignment Modification for Dakota County. (*Ex. 22 (GOE Ex.1); see also MPUC July 19, 2006 Order Accepting Alternative Route Segment Proposals for Consideration at the Contested Case Hearing, p. 6*).
18. On September 1, 2006, Gardens of Eagan and the Minnesota Pipe Line Company reached agreement on a route alignment modification to avoid the Gardens of Eagan organic farm, which provides: “The pipeline route will follow Alignment Modification B-5, with a route corridor of sufficient width to allow MPL to work with landowners on the final routing, with the final alignment placing the pipeline west of Highview Avenue where it runs south of 250th Street West and north of 250th Street West where it runs east of Highview Avenue as shown on Attachment A.” The Stipulation Between MPL and Gardens of Eagan (“Stipulation”) was entered into the record as Exhibit 56. (*TR, Vol. 9, 9/5/06, p. 17*).
19. No party or person testified in opposition to the Stipulation in any public hearing. No written public comment served on the parties opposed the Stipulation. Written comments filed on September 21, 2006 by counsel for property owners near Gardens of Eagan, requesting that MPL follow property lines or section lines to minimize impacts on the Anderson property do not conflict with the Stipulation, which allows MPL to work with landowners on routing west of Highview and south of 250th Street West. (*See Ex. 56*).
20. On September 28, 2006, MPL filed route maps showing the company’s revised alignment and revised corridor for the MinnCan Project. From Milepost 274.5 to 275.5, MPL proposed a corridor consistent with its Stipulation with the Gardens of Eagan.
21. The Gardens of Eagan Alignment Modification B-5 and other alignments within the corridor stipulated to from Milepost 274.5 to 275.5, which cross conventional crop lands and eroded conservation reserve lands not in active production, would have a far less detrimental impact upon agriculture soils, production and certification than MPL’s filed route across the Gardens of Eagan organic vegetable farm. (*Ex. 20, p. 11, Ex. 21, p. 11*) These alignments would also be far less likely to impact a sensitive environmental resource. (*Ex. 21, p. 11*)
22. As compared to the filed route, the Gardens of Eagan alternative alignment would also reduce developed areas crossed, reduce agricultural lands crossed, and reduce the number

of residences located within 300 feet of the pipeline route. (*Exhibit 57, Response of MPL to Gardens of Eagan Information Request 12*).

23. In their Stipulation on September 1, 2006 (*Ex. 56*) Gardens of Eagan and MPL also agreed on an appendix amending MPL's Agricultural Impact Mitigation Plan (AIMP) to provide additional protection to organic farms, including the following provisions:
- Organic farms will be treated with the same level of care as other sensitive environmental features and organic lands will not be used to mitigate impacts to other natural resources unless approved by the landowner.
 - MPL will work with the farmer's certifying agent or an organic consultant to identify ways to minimize impacts to organic farms.
 - MPL will take specific actions to minimize the potential for decertification, such as equipment cleaning, using drop cloths, planting a deep-rooted cover crop instead of mechanical decompaction, applying composted manure or rock phosphate, preventing tobacco use, replacing beneficial bird or insect habitat, maintaining organic buffer zones and using organic seeds for cover crops.
 - MPL will not apply prohibited substances on organic land or adjacent to organic land so as to enter organic land. No herbicides, pesticides, fertilizers or seeds will be applied unless requested. No refueling, fuel or lubricant storage or maintenance will be done on organic land and equipment will be checked to prevent leaks.
 - MPL will remove and store organic topsoil and subsoil separately and replace them in proper sequence. Organic soils will not be removed from organic land and non-organic soils will not be brought onto organic land.
 - MPL will use erosion control methods consistent with the Organic System Plan to the extent feasible and will not use prohibited materials, like treated lumber or non-organic hay bales, on organic land. MPL will prevent sediment from adjacent land from being deposited on organic farms.
 - MPL will not allow trench water from adjacent land to flow or be pumped onto organic land.
 - MPL will implement weed control methods consistent with the Organic System Plan to the extent feasible and will not use prohibited substances in weed control on or adjacent to organic land in such a way as to allow drift onto organic land.
 - MPL will hire an Agricultural Monitor trained by the Independent Organic Inspectors Association or an Organic Certifier to monitor construction and restoration on organic farms for compliance with organic mitigation measures.
 - Compensation will be based on crop yield and/or crop quality determinations and the need for additional restoration activities. MPL will pay for a professional agronomist and any needed soil sampling, testing and additional restoration.

- Damages will include losses from decertification of any portion of organic agricultural land so long as a good faith effort is made to regain certification.
24. Amendments to the AIMP to define organic agricultural lands, increase preservation of organic soils, control erosion, prevent contamination of organic lands with prohibited substances, provide soil restoration more consistent with organic management practices, minimize the potential for decertification, mitigate conflicts with organic management plans and provide compensation for crop yield and crop quality losses as well as organic decertification reflect prudent and reasonable protections of organic agriculture and organic certification. (*Ex. 20, pp. 12-13, Ex. 21, pp.13-15*)
 25. The Minnesota Department of Agriculture (MDA) recommends that the provisions mitigating impacts on organic farms to which Gardens of Eagan and MPL stipulated be adopted as amendments to MPL's AIMP to address substantive differences between organic and conventional farms. The MDA also recommends that the AIMP, along with this amendment, be incorporated as a condition of the routing permit. (*TR Vol. 9, 9/5/06 at pp. 27, 48; Exhibit 78, 9/5/06 Letter of Bob Patton*).

CONCLUSIONS

1. The revised alignment and revised corridor for the MinnCan Project from Milepost 274.5 to 275.5 filed by MPL on September 28, 2006 consistent with its Stipulation with the Gardens of Eagan minimizes human impacts and impacts on the natural environment, lands of cultural significance, agricultural economies and sensitive natural resources. This revised alignment and revised corridor should be designated if the Public Utilities Commission issues a routing permit for the MinnCan pipeline project.
2. The *Appendix to Agricultural Impact Mitigation Plan: Mitigative Actions for Organic Agricultural Land* Stipulated to by MPL and Gardens of Eagan and recommended by the MDA reflects reasonable and prudent ways to mitigate impacts of the MinnCan Project on organic agriculture and responds to substantive differences between conventional and organic agriculture. The AIMP, along with this *Appendix*, should be adopted as permit conditions if the Public Utilities Commission issues a routing permit for the Project.

DATED: October 13, 2006

Respectfully submitted,

Paula Maccabee, Esq.
Attorney for Gardens of Eagan
1961 Selby Avenue
St. Paul, Minnesota 55104
Tel: 651-646-8890
Fax: 651-646-5754
Email: pmaccabee@visi.com
Atty. Reg. No. 129550