

## Book details farmers' legal victory over Koch Industries

by Dan Heilman

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More and more, organic and non-traditional forms of farming are gaining attention and prominence — even the Minneapolis City Council is considering an ordinance that would allow commercial vegetable farming within the city limits, 60 years after the last working farm left town.

Some of them might not realize it, but organic farmers scored a huge legal victory six years ago that helped lead to that growth. Atina and Martin Diffley, owners of the 120-acre Gardens of Eagan organic farm in Dakota County, stared down Koch Industries, the Kansas-based multinational conglomerate that is one of the largest privately owned companies in the world.

The struggle is a centerpiece of a book written by Atina Diffley and set to be published next month by the University of Minnesota Press. "Turn Here Sweet Corn: Organic Farming Works" discusses Atina Diffley's life and journey into the world of organic farming and goes into detail about the experience of facing a monolithic corporate interest.

Koch at the time was financing the development of the MinnCann crude oil pipeline by the Little Falls-based Minnesota Pipeline Co. (MPC). In April 2006, the Diffleys received a letter from MPC stating that it had filed a certificate of need and route permit application with the Minnesota Public Utilities Commission to install a crude oil pipeline and that all three parcels that compose Gardens of Eagan were in the route corridor.

### No lawyers available

The Diffleys started out by researching Minnesota statutory law regarding crude oil companies and eminent domain. For all the research they did, they couldn't figure out how a company could force its way across private property for its own profit.

"We wouldn't have continued to run Gardens of Eagan if the project had gone through," Atina Diffley told Minnesota Lawyer recently. "We know from personal experience that once land has been affected in that way, you can't grow an organic vegetable crop on it. We didn't want to start over."

As she sorted through PUC agricultural impact mitigation documents related to the pipeline application, she started to notice how unrealistic the plans were — no soil, whether on a chemical or organic farm, can return to its previous condition after such a disruption. MPC's plan, which included the removal of up to 12 inches of topsoil, seemed especially egregious.

After conversations with MinnCan project leaders went nowhere, Diffley began hunting for an attorney. But as she called them, one after the other — environmental attorneys, lawyers specializing in public utilities — begged off. Why?

"They had all told her that they worked for the pipeline or for other energy infrastructure companies," said Paula Maccabee, the St. Paul environmental justice attorney she eventually hired. "Even if she were willing to pay, they couldn't take her case (because of conflicts of interest)."



Paula Maccabee (left), an environmental justice attorney in St. Paul, with her client, Atina Diffley, co-owner of the Gardens of Eagan farm in Dakota County. Diffley's new book, "Turn Here Sweet Corn: Organic Farming Works," features the story of her legal battle against Kansas-based Koch Industries, which wanted to build a crude oil pipeline through the farm. (Staff photo: Bill Klotz)

Maccabee came to the case with experience in cases regarding transmission lines and knowing the routing law, and with an awareness of Minnesota laws having to do with the state's Environmental Rights Act.

Her initial perception was that they would approach their case as an issue of route selection and environmental protection. But the more the Diffleys talked to her about what they did, the more Maccabee began to realize that organic farms were integrated ecosystems, not just places that produce food to eat.

"I looked at it from the perspective of an environmental lawyer, as well as someone who had done work on energy infrastructure at the PUC," she said.

### **David. v. Goliath — David makes friends**

As Maccabee and the Diffleys filed a succession of documents with the PUC proposing to amend the pipeline route, pointing out ecological disasters that had befallen similar projects and beseeching MPC to modify its agricultural impact assessment, Atina Diffley also went to work building an army of supporters.

She provided an expert affidavit having to do with the nature of the Gardens of Eagan farm and why it should be avoided; helped enlist two testifying experts whose opinions were filed with the PUC; persuaded Dakota County and the nearby town of Eureka to pass resolutions asking that the pipeline avoid organic farms or else create specific mitigations for them; and got numerous co-ops, organic consumers, the Land Stewardship Project and the Organic Advisory Committee on her side. Eventually, about 4,500 public comments supporting protection of the farm poured into the PUC offices.

"It was a relatively short time between April and September, when the Koch brothers basically agreed with Atina," Maccabee said. "We put together a huge amount of resources and evidence. Atina not only was a client but also a very active expert."

MPC approached Maccabee the day there was to be a public hearing with a draft stipulation agreeing to keep the pipeline away from Gardens of Eagan and to include an organic farm appendix to the PUC Agricultural Impact Mitigation Plan. Two months later, administrative law Judge Beverly Jones Heydinger affirmed the agreement.

"What was great about the experience was that I felt Paula really had absorbed my values and beliefs," Atina Diffley said. "I felt she was acting as if she was me, not just lending her legal expertise."

The MinnCan project was completed in September 2008, but not with the cooperation of landowners who didn't want the soil on their seventh-generation farm compromised. The organic farm appendix used in the settlement is becoming a staple of similar energy infrastructure plans. For her part, Maccabee credits the Diffleys' knowledge and determination as a crucial factor in reaching the unlikely settlement described in Atina Diffley's book.

"It's a lesson for lawyers who represent parties who don't have a lot of resources," she said. "MPC settled on the eve of the hearing, and they settled because little Gardens of Eagan was no longer standing alone. When David is up against Goliath, David needs to make friends."