

NO. A04-2033

State of Minnesota
 In Supreme Court

In the Matter of the Cities of Annandale and Maple Lake
 NPDES/SDS Permit Issuance for the Discharge of Treated
 Wastewater and Request for Contested Case Hearing

**BRIEF OF AMICI CURIAE CLEAN UP THE RIVER ENVIRONMENT,
 COALITION FOR A CLEAN MINNESOTA RIVER, NEW ULM AREA
 SPORTSFISHERMEN AND FRIENDS OF THE MINNESOTA VALLEY**

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**BRIEF OF *AMICUS CURIAE*
CLEAN UP THE RIVER ENVIRONMENT,
COALITION FOR A CLEAN MINNESOTA RIVER, NEW ULM
SPORTSFISHERMAN AND FRIENDS OF THE MINNESOTA
VALLEY**

Interest of Amici

Clean Up The River Environment (CURE), the Coalition for A Clean Minnesota River (CCMR), the New Ulm Sportsfisherman (NUS) and Friends of the Minnesota Valley are non-profit organizations comprised of hundreds of individual citizens and small businesses, most of whom live and work along the entire length of the Minnesota River. The organizations share a goal of cleaning up the Minnesota River and its watershed, halting and reversing its pollution and restoring its biological integrity.¹

¹ The undersigned counsel for CURE, CCMR, NUS and Friends of the Minnesota Valley certifies, pursuant to Rule 129.03 of the Minnesota Rules of Appellate Procedure, that no counsel for any other party authored this brief in whole or in part and that no one made a monetary contribution to the preparation or submission of this brief other than CURE, CCMR, NUS and Friends of the Minnesota Valley.

THE MINNESOTA POLLUTION CONTROL AGENCY SHOULD ESTABLISH THE TOTAL MAXIMUM DAILY LOADS FOR OUR WATERS AND NOT COLLABORATE IN MORE POLLUTION.

Progress is slowly beginning on reducing the pollution in the Minnesota, albeit years after the deadline demanded by the people of the United States in the Clean Water Act. Some Total Maximum Daily Loads (TMDL's) have been established for our watershed. See <http://www.pca.state.mn.us/water/basins/mnriver/>, and the "Basin Phosphorus Permit" link. It is obvious that the Minnesota Pollution Control Agency can establish a TMDL for an impaired water, specifically the Minnesota River, particularly when it is spurred by the demands of citizens, political leaders and organizations of citizens like CURE, CCMR, NUS and Friends of the Minnesota Valley. We now have phosphorus discharges from over 150 wastewater treatment plants regulated toward the goal of stopping this pollution. Interestingly, the plan allows trading among phosphorus point sources, once the goal of establishing the TMDL for the Minnesota River was scientifically reached.

Our citizen organizations are extremely concerned that the PCA will allow pollution increases, as it attempted for the cities in this case. If it is allowed to permit pollution increases at points A, on the excuse that someone else is cutting pollution at points B, how can we trust that the overall pollution

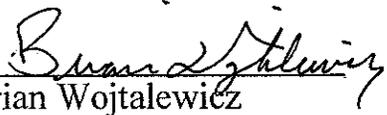
of our Minnesota waters will decrease? The Clean Water Act mandated the TMDL program as a logical method to prevent this very danger. The failure of the Minnesota PCA to establish the mandated TMDL's in too many of our watersheds is a failure of Minnesota's executive branch. Whether it is a product of mismanagement, or a product of succumbing to short-sited local political pressures, the dangerous and illegal result is obvious.

We citizens want our Clean Water Act enforced. We want our pollution control agency to do its job, and not be an accessory to more pollution. Will there be a political clamor if the judicial branch orders the executive to truly execute the mandate of cleaning up our waters? Perhaps. Will that clamor include small governments and industry demanding permits? Perhaps. Are these legitimate reasons for the executive branch to refuse to enforce the law? No. Hopefully, any political clamor will compel the executive branch in Minnesota to complete what it has failed to accomplish for decades -- establishing TMDL's for the watersheds. With these TMDL programs established, cities and businesses can participate in legitimate trading programs that are truly focused on stopping the growth of pollution and reducing it to the point of elimination. This is the intent of the Clean Water Act.

CONCLUSION

CURE, the CCMR, the NUS and Friends of the Minnesota Valley
request that the Minnesota Court of Appeals decision be affirmed.

RESPECTFULLY SUBMITTED,



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