

THOMAS E. CASEY

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April 3, 2017

Data Practices Compliance Official
c/o Ron Moorse, City Administrator
City of Afton
3033 St. Croix Trail South
P.O. Box 219
Afton, MN 55001

VIA E-MAIL AND HAND DELIVER
rmoorse@ci.afton.mn.us

RE: City of Afton Wastewater Collection and Treatment System
**Rusty Patched Bumble Bee (an “Endangered” Species) – Request to Cease Land
Disturbance**
Government Data Practices Act Request

Dear Mr. Moorse,

I represent Citizens For Valley Creek (CVC), a Minnesota non-profit corporation, organized in part to protect Valley Creek and its surrounding ecosystem, including archaeological and cultural resources. CVC is very concerned about the potential effects of the City of Afton’s proposed Wastewater Collection and Treatment System on the above resources.

RUSTY PATCHED BUMBLE BEE – “ENDANGERED” SPECIES

On January 11, 2017, the U.S. Fish and Wildlife Service (USFWS) published the final rule to list the Rusty Patched Bumble Bee (*Bombus affinis*) as an “endangered” species under the federal Endangered Species Act. The listing became effective on March 21, 2017. Mr. Christopher E. Smith, M.Sc., Wildlife Research & Consulting Services, LLC, states in his attached report that the Afton Sewage Treatment System site has a “high potential for RPBB [Rusty Patched Bumble Bee] presence ...” and “The nearest verified recent occurrence for the bee comes from approximately 1.30 miles north of the proposed site, and was found in 2016 on the Belwin Conservancy Property ...”

Mr. Smith recommends “... an additional vegetation assessment during the growing season to better assess habitat suitability.” Mr. Smith also recommends “... the City of Afton coordinate with the USFWS ... to determine if USFWS requests a bumble bee survey for this site following the USFWS Rusty Patched Bumble Bee Survey Protocol.”

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Consequently, CVC respectfully requests that the City of Afton **immediately cease all land disturbance activity on this site until the City of Afton complies with all requirements of the Endangered Species Act, including Mr. Smith's recommendations.**

GOVERNMENT DATA PRACTICES ACT REQUEST

This is a request pursuant to the Minnesota Government Data Practices Act (Minn. Stat. 13.01 et seq.) for a copy of all "public data" in the possession of the City of Afton and/or its agents (whether employed or under contract) that pertains to the subject of:

Rusty Patched Bumble Bee, including but not limited to compliance and non-compliance with the requirements of the Endangered Species Act.

This request applies to all public government data, whether in written or electronic form. Please be advised that Minn. Stat. 13.02, Subd. 7, defines "government data" as "... all data collected, created, received, maintained or disseminated ... regardless of its physical form, storage media or conditions of use."

This request is deemed **continuing**. I would appreciate your courtesy by sending, to the contact list below, a copy of all subsequent data at the time the data is generated. [Please be advised that standing requests for government data must be honored. See Minnesota Department of Administration Advisory Opinion: 04-007 (February 27, 2004).]

Please advise this office in advance if the estimated bill is over \$25.00.

Please note that Minn. Stat. 13.01, Subd. 3, states in part, "This chapter ... establishes a **presumption** that government data **are public** and are accessible by the public ..." In the unlikely event that you deny my client's request, please be advised that, pursuant to Minn. Stat. 13.03, Subd. 3(f), you must "... certify in writing that the request had been denied and cite the specific statutory section, temporary classification, or specific provision of federal law upon which the denial is based."

Please also note Minn. Stat. 13.05, Subd. 11, states in part: "Privatization. (a) If a government entity enters into a contract with a private person to perform any of its functions, all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter and the private person must comply with those requirements as if it were a government entity. All contracts entered into by a government entity must include a notice that the requirements of this subdivision apply to the contract. Failure to include the notice in the contract does not invalidate the application of this subdivision. The remedies in section 13.08 apply to the private person under this subdivision."

Please send electronic data to CVC, c/o Mr. Jim Golden's, at his e-mail address: jg37@gmail.com. For written data, please notify Mr. Jim Golden by telephone: (651) 295-5111 and he will pick up the documents at your office.

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On behalf of the Citizens For Valley Creek, I **thank you** in advance in anticipation of your prompt cooperation.

Sincerely,

Thomas E. Casey

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TEC/rf

cc: Citizens For Valley Creek, Inc.
Minnesota Pollution Control Agency
U.S. Army Corps of Engineers
Valley Branch Watershed District

Enclosures: Christopher E. Smith, M.Sc. - Habitat Suitability Assessment, 4-2-17 (7 pages)
Christopher E. Smith, M.Sc. - Curriculum Vitae (6 pages)