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August 5, 2022

Commissioner Katrina Kessler
Minnesota Pollution Control Agency
500 Lafayette Road
St. Paul, MN 55155

Commissioner Sarah Strommen
Minnesota Department of Natural Resources
520 Lafayette Road
St. Paul, MN 55155

RE: 3M Settlement with the State of Minnesota - Process and Design for Resiliency

Dear Commissioners Kessler and Strommen:

I write this letter on behalf of the citizens of the City of Woodbury to request the immediate action of the Minnesota Department of Natural Resources (MnDNR) and the Minnesota Pollution Control Agency (MPCA) on time-sensitive and critical items related to disbursement of the 2018 State of Minnesota and 3M Company (the “3M Settlement”) \$850 million that settled the State’s claims regarding 3M’s production of per- and polyfluoroalkyl substances (PFAS) that damaged the drinking water and natural resources in the east metro of the Twin Cities.

Throughout the more than three-year effort to develop the Conceptual Drinking Water Supply Plan (CDWSP), Woodbury Council, staff and resident participants have been advocating for water treatment to the lowest feasible detectable level of PFAS. To this point, the City Council passed a resolution formally stating this on October, 2019. Moreover, Woodbury Working Group representatives have consistently advocated for such a precautionary approach pointing to the emerging science, the health impacts of PFAS and the need for water systems to be resilient in the face of all threats.

Now, with the June 15, 2022 Environmental Protection Agency’s (EPA) new draft guidance – we have confirmed that PFAS science is no longer ‘emerging’ - - it’s at our doorstep and the toxicity is as feared. It is more than time to turn from falsely assuming acceptable levels of PFAS in drinking water can be achieved compared to removing all the PFAS as technically feasible with the funding as we have. The water quality and treatment imperative is not only for Woodbury, but it is for all of us in in the East Metro to regain water security. No resident of the East Metro should need to be concerned about their water quality, ever, due to this historic settlement.

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I am frustrated to say, after all of our advocacy, east metro communities are not being left whole. I feel most comfortable advocating for my own community's needs, so I would like to share more about Woodbury's specific situation and advocate for Co-Trustee immediate action on the following time-sensitive and critical items:

1. Commitment to reimburse City of Woodbury proactive actions if future wells exceed PFAS thresholds
2. Grant process clarity and ease of access to 3M funding
3. Authorize design-build and/or construction manager at risk project delivery
4. Extend expiration of temporary treatment term
5. Re-prioritization of CDWSP projects
6. Cease "re-engineering" of Woodbury plans/design

Let me now outline for you the basis for these requests.

Background

The 3M Settlement was entered into on February 20, 2018. Four and a half years later, the City of Woodbury is still waiting for clear direction on funding so we can ensure we are able to continue to provide safe and reliable drinking water to our citizens into the future. Immediately upon the MPCA and MnDNR forming working groups, to implement the 3M settlement, Woodbury joined those efforts, devoting thousands of hours of time through the combined efforts of the City Council, citizen volunteers, Woodbury staff, and its consultants. Throughout this time, Woodbury has continued to closely and carefully track developments related to PFAS and advocate for an approach under the 3M Settlement that incorporates into the CDWSP a reasonable level of precaution and resiliency for the east metro drinking water. It makes no sense to invest all this time and money only to have our systems be "out of date" or "insufficiently designed" for health standards that will change during construction and in the years after facilities are brought online. Woodbury's position has been stated strongly and repeatedly advocated to ensure the settlement is honored and meets current and future water needs:

- **May 14, 2019:** Woodbury City Administrator, Clint Gridley, reached out in writing and stated, "Identifying and selecting treatment options and the subsequent allocations of funds for treatment should include not just systems over the Health Index (HI) but also the need to inoculate all of our drinking water systems from PFAS..."
- **October 9, 2019:** Woodbury City Council adopted a resolution emphasizing the importance of expedient action to "provide the east metropolitan area's 157,000 residents and businesses with clean drinking water to meet current and future needs" and recognizing that failing to provide universal treatment of potable water "would result in untenable disparities among neighborhoods related to health risks."
- **October 31, 2019:** A meeting was held, which included: DNR and MPCA Commissioners and Assistant Commissioners, State Senator Susan Kent, Representative Steve Sandell, Woodbury's City Administrator and Public Works Director, and Ann

Lenczewski of Lockridge Grindal Nauen. During this meeting, we continued to advocate for treating to the lowest feasible threshold for all wells.

- **January 8, 2020:** Woodbury City Council adopted a resolution proclaiming an emergency declaring the need for temporary water treatment to meet summer 2020 demands after “the recent loss of six of [Woodbury’s] production wells with additional wells trending toward exceeding established MDH standards.”
- **May 20, 2020:** Woodbury City Administrator, Clint Gridley, reached out in writing and again expressed many of the same concerns Woodbury working group representatives had been sharing with the MPCA and MnDNR for many months, including universal delivery of treated water to all homes and businesses in the east metro.
- **October 5, 2020:** AE2S/Jacobs, Woodbury’s water consultants, provided extensive comments to Woodbury via a technical memorandum (which was shared at that time with the MnDNR and the MPCA) regarding the assumptions and conclusions in the draft CDWSP, including concerns about the proposed bifurcation of Woodbury’s municipal water supply.
- **October 23, 2020:** In Woodbury’s official comments and review of the CDWSP, in a letter from me, approved by City Council, it was stated:
 - Protect water quality for all residents in the settlement’s East Metropolitan area irrespective of current PFAS health-based value levels: The City of Woodbury recommends proving treatment for all existing municipal wells in the settlement area. The science and understanding of PFAS is evolving and the contamination seems to be moving, efficiencies can be made by making this forward thinking capital investment from the beginning. Additionally, this will allow agencies to provides equitable distribution to all residents
 - Health Index to the lowest threshold feasible: Funding is limited and the terms of the 2018 settlement agreement between the State and 3M (the Settlement) made clear that the highest priority is to enhance the quality, quantity, and sustainability of drinking water in the East Metro to serve current and future needs. All agencies should seek to treat water to the lowest feasible HI threshold.
- **December 1, 2020:** Staff, myself, and consultants for Woodbury met with MPCA and MnDNR representatives, including Commissioners Laura Bishop and Sarah Strommen, regarding concerns related to the wells in Woodbury that continued to trend upward in detections of PFAS chemicals and overall concerns about potential approaches under consideration by the MPCA and the MnDNR as they developed the CDWSP. This included expressing concerns with the proposal of leaving up to 30 percent of Woodbury production wells untreated for PFAS which seemed short-sighted at the time given the efficiencies that could be incorporated by planning to treat all the water at the outset to ensure universal water supplies to Woodbury homes and businesses.

- **June 11, 2021:** In a letter from myself, addressed to Kirk Koudelka and Jess Richards, I implored MnDNR and MPCA to “protect water quality for all residents” within the east metro communities and not bifurcate treatment for Woodbury residents, which is the only community where such an approach had been recommended by the MnDNR and MPCA.¹ Additionally, Woodbury requested that as “the science and understanding of PFAS is evolving and the contamination is moving and efficiencies can be made by making [a] forward-thinking capital investment now,” the CDWSP provide for treatment of all production wells used for Woodbury drinking water. Woodbury also requested that the CDWSP “[e]stablish a water treatment goal of the lowest detectible levels of PFAS feasible in order to protect . . . now and into the future.”
- **July 20, 2022:** I read a written statement at the State’s 3M Settlement working group meeting, reiterating the need for system wide treatment to the lowest feasible level.

In addition to the above examples, all Woodbury work group members have been declaring the necessity to treat to the lowest feasible standards for all municipal wells repeatedly at monthly workgroup meetings, without wavering from the importance of this need.

While the MnDNR and MPCA acted on a few of Woodbury’s requests, including re-evaluating proposed capital and operation and maintenance costs, many of the City’s requests were not reflected in the CDWSP. Most troubling is the decision to not treat to the lowest detectable limit.

Thus, today, Woodbury is faced with receiving funding that excludes some of its wells from treatment. This means that Woodbury has been left with two options, both of which have real financial and operational consequences for Woodbury. In essence, the State is forcing Woodbury to choose between:

- (1) bifurcating its system and telling some residents of our community that they will not receive water treated for PFAS for drinking, bathing, and other consumption; or
- (2) bearing, on its own, the cost of system-wide treatment of all of its production wells in order to ensure that it can tell those who live, work, and recreate in Woodbury that everyone is receiving treated and equal water quality.

The second option would force the citizens of Woodbury to shoulder the costs of system-wide treatment for PFAS to ensure that when those production wells not currently in the CDWSP treatment plan have higher detected PFAS levels (some of these wells already are showing detectible limits, albeit below the MDH standards), so Woodbury is able to deliver PFAS-free water to everyone. Yet these are costs to clean up a mess made by a private corporation for which the State of Minnesota has been deemed trustee to ensure such costs are paid from the 3M Settlement. The time is now for the MPCA and MnDNR to act on these concerns.

¹ While some communities received recommendations in the draft CDWSP that allowed for different treatment methods within each community, every east metro community remedial action recommendation from the MnDNR and MPCA’s CDWSP included *some type of treatment and removal of PFAS* for every resident, except for Woodbury, where some citizens would get no treatment whatsoever under the draft (and final) CDWSP.

As these discussions with the State have dragged on, Woodbury has continued to receive Health Advisories for production wells, requiring our community to take wells out of service due to concentrations of PFAS chemicals detected in these wells. We also have observed PFAS levels trending upward in area groundwater, including where some were previously at non-detectable limits. While we currently are able to provide drinking water for our citizens at levels below the State's current health standards, sampling trends indicate that our ability to do so may be disappearing rapidly. Woodbury and its citizens are growing weary of what feels like continued delays in the State's progress toward actual distribution of funds to continue planning and implementation of critical drinking water infrastructure.

Compounding concerns regarding drinking water in the east metro area the EPA recently-released guidelines for PFAS. While we understand that these EPA Guidelines are not currently "enforceable" limits, they are, nevertheless, instructive to where the federal standards may be heading and the dangers of PFAS. The MPCA and MnDNR should consider these guidelines as it looks toward sustainable and forward-looking treatment for potable water in the east metro consistent with the Settlement Agreement – a simple concept that Woodbury has been strongly advocating for over the last four years.

To ensure a resilient water treatment system is provided, to meet the goal of the settlement's (State of Minnesota v. 3M Company Agreement and Order Section 14.A) "highest priority work to ensure clean drinking water in sufficient supply to residents and businesses in the East Metropolitan Area to meet their current and future water needs," (emphasis added) the following is requested for immediate action:

1. Commitment to Reimburse Proactive Actions if Future Wells Exceed PFAS Thresholds

At the July 20, 2022, Working Group meeting, MPCA and MnDNR requested feedback on the potential to commit to reimburse precautionary actions taken at this time that, in a given time period, prove to have been prudent and necessary for the treatment of PFAS. *This is precisely* what Woodbury has been advocating for over the past four years and is a very welcomed development in the CDWSP and 3M Settlement allocation process.

Woodbury's preference is that the funds from the 3M Settlement be allocated in a way that allows every home and business in the defined settlement area to know that only water treated for PFAS will be delivered to any potable water source. Woodbury's alternative is that a process be established whereby east metro communities may elect to expend capital and O&M beyond what is currently included in the final CDWSP, to ensure universal PFAS treatment of potable water where the incremental costs of such capital and O&M would be reimbursable from the 3M Settlement if regulatory or groundwater contamination conditions change within 10 years of the treatment facility in-service date such that PFAS treatment would be necessary. Such an approach would ensure that only the treatment necessary under then-applicable standards would be reimbursable but would also not penalize communities for taking immediate action on treatment of production wells for PFAS.

2. Grant Process

The MnDNR and the MPCA released the final CDWSP nearly one year ago, since that time, every grant application submitted by the City of Woodbury has taken weeks, even months at times, to turn around. The delays caused by Woodbury's inability to move forward because of grant approval time is unacceptable. The solution proposed in the final CDWSP for Woodbury will take years to implement with additional time necessary should Woodbury elect to proceed with system wide production well treatment for PFAS. This is assuming that the MnDNR and MPCA are nimble and expeditious in approvals of key design, procurement, engineering, and construction milestones necessary for CDWSP implementation. However, what such approvals may look like under the CDWSP are vague and, based on Woodbury's own experience with temporary treatment, where MPCA and MnDNR approvals required an additional 10 to 12 weeks for activities minor in nature when compared to what must be undertaken to implement the CDWSP, time delays are of critical concern to Woodbury. Clarity and ease of access to fund on the grant process is crucial to allow east metro communities to plan these projects and their implementation.

3. Design-build and/or Construction Manager at Risk Project Delivery

If the MPCA and MnDNR are open to allowing design-build and/or construction management at risk project delivery methods for the work contemplated under the CDWSP, this could save east metro communities many months of time and create efficiencies in bidding and procurement. A decision is crucial within the next two months for east metro communities to develop implementation plans. With the changing nature of PFAS science and knowledge, time is of the essence and this flexibility is key.

4. Expiration of Temporary Treatment Term

Woodbury has undertaken continued monitoring for PFAS in its production wells across the community. Based on this sampling, it is not unreasonable to assume that additional wells in Woodbury may receive health advisories in the near future. Such health advisories will most assuredly occur before the permanent treatment devised in the CDWSP can be designed, procured, and brought online for our community. As a stop-gap, Woodbury has relied upon the establishment of temporary treatment, which commenced in 2020. However, the 3M Settlement puts a stop to temporary treatment five years after the execution date of the settlement and this date will arrive in only six months.

It is not unreasonable to assume that Woodbury will need additional temporary treatment for the interim period before permanent treatment can be implemented. Woodbury, therefore, requests immediate clarity from MPCA and MnDNR on how costs of such temporary treatment will be processed after February 20, 2023. MPCA and MnDNR cannot possibly expect that in six months any emergency treatment for PFAS will be through a permanent facility.

5. Re-prioritization of Projects

As Woodbury has stated repeatedly to MPCA and MnDNR, until Priority 1 under the 3M Settlement is fully satisfied, further exploration into other priorities should be avoided. Priority 1 requires that the quality, quantity, and sustainability of the drinking water in the east metro area be enhanced. As stated in the 3M Settlement, “The goal of this highest priority work is to ensure clean drinking water in sufficient supply to residents and businesses in the [east metro] to meet their current and future water needs.” (emphasis added). Until MPCA and MnDNR have ensured that the available 3M Settlement grant funds have fully met the current *and future* water needs of the east metro communities, these funds should not be expended on any other projects or priorities.

Where property is held in trust for the benefit of another, the trustee owes fiduciary duties to the beneficiaries. In the case of the grant paid by 3M pursuant to the 3M Settlement, MPCA and MnDNR have taken on the responsibilities of co-trustees, owing fiduciary duties to the beneficiaries of that trust – the east metro communities. While other beneficiaries are contemplated, they are all lower priorities under the 3M Settlement. And, until the first and highest priority is satisfied, expending funds on other priorities undermines the fiduciary duty owed under the 3M Settlement to the east metro communities, including Woodbury. Therefore, Woodbury respectfully requests that MPCA and MnDNR refrain from undertaking any financial commitments from the 3M Settlement that would support anything other than Priority 1 at this time and until Priority 1 is satisfied, including the 10-year period for reimbursement discussed in detail above.

6. Cease “Re-engineering” of Woodbury Plans/Design

The method currently employed by the State to approve Woodbury’s plans for moving is inefficient and wastes precious time. Currently, when Woodbury submits documents to the State for review, the State’s engineering firm, Wood, reviews every decision, often over many weeks, sending last-minute lists of questions and additional requests for ‘proof’ of need for most decisions, despite having already been designed by Woodbury’s engineering firm. Woodbury has employed a reputable engineering firm to work closely and collaboratively with City staff to develop a single plant water treatment system, which was included in the CDWSP many months ago. The infrastructure being built will be with the community for over a century and Woodbury already has a vested interest in the engineering and design work being completed accurately and consistent with applicable engineering and design standards and codes. Woodbury’s staff and engineering time continues to be met with delays due to the questioning of design decisions. Such interactions, where the State’s engineering firm is basically re-engineering a design that has already been developed and certified by a licensed professional engineer is untenable, wasteful of 3M Settlement dollars (as every invoice paid to the State’s engineering firm is paid from the 3M Settlement, to our knowledge), and needs to cease for the urgency of the moment to be met.

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Conclusion

Any of this contemplated investment in Woodbury's municipal water system would not be needed, but for PFAS. Therefore, the Co-Trustees must revise the Conceptual Drinking Water Supply Plan to provide treated water to all residents of the East Metro Area. Once again, treatment should be provided to the lowest detectable level for all systems. We are well aware the funding of the CDWSP is limited but with the new science, we again strongly recommend that the funds are re-directed from any other project uses to ensure the residents of the east metro are ALL guaranteed to have safe drinking water now and into the future, as described in the settlement.

Woodbury staff and engineers have every respect for the fact that these are shared funds and are very clear on the direction of what is and not included in the CDSWP. It is our duty to build a resilient and sustainable water treatment plant to serve the community for generations to come. Our designs will ensure the residents of Woodbury do not lose any of the current resiliency built into the Woodbury water system and will not work to push those limits past our current system. With this commitment, Woodbury respectfully requests that the current process for engineering design review by the State and its engineering firm be reimagined to provide for requisite verification without unnecessary duplicative engineering review.

I again implore the Commissioners to give this issue immediate attention and action. The communities of the East Metro must be able to confidently promise that, 'yes – you will be receiving treated drinking water, with the historic 3M settlement.' Please, provide a clear response by Monday, August 15, so Woodbury City Council and staff are no longer in limbo and can move forward with urgency to bring treated drinking water to our community.

Sincerely,



Anne Burt

Mayor

cc: Woodbury Council Members
Susan Kent, Minnesota State Senator
Steve Sandell, Minnesota State Representative
Tou Xiong, Minnesota State Representative
Kirk Koudelka, MPCA
Jess Richards, DNR
Clint Gridley, City Administrator
Mary Hurliman, Public Works Director
Chris Hartzell, Engineering Director
Jim Westerman, Assistant Public Works Director
Mike Madigan, Woodbury Citizen Working Group Member
Dave Filipiak, Woodbury Citizen Working Group Member
Kodi Verhalen, Taft
Rob Bilott, Taft
Ann Lenczewski, Lockridge Grindal Nauen