

2013 DRAFTING REQUEST

Bill

Received: **4/29/2013** Received By: **btradewe**
 Wanted: **As time permits** Same as LRB:
 For: **John Jagler (608) 266-9650** By/Representing: **Mark Florian**
 May Contact: Drafter: **btradewe**
 Subject: **Environment - water quality** Addl. Drafters:
 Extra Copies:

Submit via email: **YES**
 Requester's email: **Rep.Jagler@legis.wisconsin.gov**
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Areawide water quality plans and revisions to those plans

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	btradewe 7/12/2013			_____			
/P1	btradewe 8/7/2013	jdyer 7/15/2013	jfrantze 7/15/2013	_____	srose 7/15/2013		
/P2	btradewe 8/29/2013	scalvin 8/13/2013	rschluet 8/14/2013	_____	sbasford 8/14/2013		State
/1	btradewe	scalvin	rschluet	_____	lparisi		State

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/2	10/17/2013	jdye 10/17/2013	rschlue 10/18/2013	_____	sbasford 10/18/2013		State
/3	btradewe 11/8/2013	jdye 11/11/2013	rschlue 11/11/2013	_____	sbasford 11/11/2013	mbarman 2/18/2014	State

FE Sent For:

→ At
Intro.

<END>

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Vers. Drafted

Reviewed
8/29/2013

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8/29/2013

Proofed

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Jacketed

Required

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FE Sent For: /1 sac
08/29/2013


8/29/13
-END>

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Area water quality planning for area located within one county

Instructions:

See attached

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/?	btradewe			_____			

FE Sent For:

<END>

Tradewell, Becky

From: Florian, Mark
Sent: Monday, April 29, 2013 10:28 AM
To: Tradewell, Becky
Subject: Bill Draft Request: Rep. Jagler
Attachments: Bill Draft Request Water Quality Planning.docx

Hello Becky,

Thank you for your help with this, we really appreciate it! If you have any questions please let me know.

All the best,

Mark

Mark Florian
Office of Representative John Jagler
37th Assembly District
(608) 266-9650

MEMORANDUM

TO: Legislative Reference Bureau

Request from: Rep. John Jagler (608-266-9650)

DATE: April 29, 2013

RE: AREAWIDE WATER QUALITY MANAGEMENT PLANS
Wis. Adm. Code ch. NR 121

*Confidential. Not urgent.

Under the authority of Wis. Stat. §§ 281.11, 281.12, 281.13, 281.15, 281.17 to 281.20, and 283.83, Wis. Adm. Code ch. NR 121 was adopted establishing regulations specifying policies, procedures, and requirements for Wisconsin's areawide water quality planning process.

PROPOSED BILL

We request that the Legislative Reference Bureau draft a bill to amend Wis. Stat. § 283 to accomplish the following:

- Provide that for any areawide water quality planning area that is located within one county, the Department of Natural Resources (the "Department") shall review and approve or disapprove revisions to the water quality management plan under Wis. Adm. Code § NR 121.07(3) within 60 days of submission of the application or such revision would be deemed approved.
- Provide that for any areawide water quality planning area that is located within one county, the DNR shall be the responsible agency for all actions necessary under Wis. Adm. Code. § NR 121.06, and a "designated agency" shall not be appointed in such planning areas.
- Nothing herein should prohibit the DNR from contracting with a regional planning commission or other agency to provide advisory services to the DNR when reviewing such applications in one county areawide water quality planning areas; however, the DNR would not be allowed to designate any authority to the regional planning commission or any other agency relating to the authority to approve or disapprove revisions to the areawide water quality management plan. Any contract for advisory services should not extend the time period the DNR has to complete its review and approve or disapprove of the revision.

If it is a nondesignated area, DNR make the plan,
so whose proposed revisions is DNR reviewing & approving
or disapproving?

rules sometimes use "waste treatment management plan"



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

One East Main Street, Suite 200
P. O. Box 2037
Madison, WI 53701-2037
www.legis.wisconsin.gov/lrb/

Stephen R. Miller
Chief

Legal Section: (608) 266-3561
Legal Fax: (608) 264-6948
Library Circulation: (608) 266-7040
Reference Section: (608) 266-0341
Reference Fax: (608) 266-5648

May 30, 2013

MEMORANDUM

To: Mark Florian
Rep. John Jagler's Office

From: Becky Tradewell
Managing Attorney

Subject: Drafting request concerning areawide water quality management plans

I want to be sure that I understand what the drafting request that you sent to me is intended to accomplish and produce a bill draft that accomplishes that without having effects that are unintended. To do this, it would help to know more specifically what problem this request is intended to address.

This memo describes my understanding of the water quality management planning statutes and rules and how the process actually works. I would appreciate knowing if there are inaccuracies in my understanding. The memo also poses questions about the request.

Federal law

The federal Clean Water Act (in 33 USC 1288) requires states to conduct a continuing areawide waste treatment planning process. (This is part of the broad, continuing water quality planning process under 33 USC 1313 (e) and section 283.83 (1), Wis. Stats.) For the purpose of areawide plans, the federal law requires the governor to designate each area of the state that has substantial water quality control problems. Then, for each area, the governor must designate a single representative agency (including elected officials from local governments or their designees) capable of developing effective plans (33 USC 1288 (a) (2)). The federal law requires the state to act as a planning agency for the parts of the state that are not identified by the governor. This federal statute does not seem to contemplate a state taking over the planning process for an area that it has designated as having substantial water quality control problems.

An Environmental Protection Agency regulation allows a governor to withdraw or modify the designation of a planning agency if the agency requests it, the agency fails to meet planning requirements, or the agency no longer has the resources or the commitment to continue water quality planning activities within the designated boundaries of the area (40 CFR 130.9 (b)). If those conditions are not satisfied in the currently designated areas that would be affected by this draft, the proposal to have DNR take over planning for those areas would seem to conflict with federal law. I

do not know whether this issue has arisen here or in other states in the past or what the impact would be if the EPA determined that a "de-designation" was inconsistent with federal law. (There may be additional federal regulations that are relevant to this proposal.)

The Clean Water Act also requires the governor, at the time that an areawide plan is submitted to EPA, to designate waste treatment management agencies (or designated management agencies, DMAs) with the authority to carry out portions of the plan and manage waste treatment works (33 USC 1288 (c)). DMAs carry out responsibilities, including implementing control measures, specified in the plans. Designated planning agencies (or states, in areas without designated planning agencies) monitor the DMAs (40 CFR 130.0 (c) and 130.9 (d)).

Under the Clean Water Act, after an areawide plan is approved, certain actions, such as issuance of wastewater discharge permits, must be in conformity with the plan (33 USC 1288 (d) and (e)).

Areas intended to be affected

The drafting request would apply to "any areawide water quality planning area that is located within one county." I am not certain which planning areas that is intended to describe. From what I can tell by looking at DNR's Internet site, there are 23 water quality management (WQM) planning agencies. It appears that two agencies cover several counties, two cover one entire county (Dane and Brown), at least three cover parts of two counties, and the rest cover parts of one county.

Is this proposal intended to apply to both of the WQM planning agencies that cover an entire county? Is it intended to apply to the WQM planning agencies that cover parts of one county? If the proposal is intended to address a concern in only one designated WQM area (or a couple of areas), it might be possible to describe the area more specifically so that the legislation covers only that area (or those areas).

DNR as planning agency

The request states that DNR would be the responsible agency for all actions necessary under NR 121.06 of the Wisconsin Administrative Code in the covered planning areas. NR 121.06 only relates to recommending areawide planning areas, recommending planning agencies, and recommending withdrawal or modification of the designation of designated agencies and areas. Thus, NR 121.06 would not seem to apply to an area for which DNR is responsible for the planning. I assume that the intent is to have DNR conduct the planning for the areas affected by the proposal.

DNR's rules seem to only contemplate two situations, designated areas for which designated agencies conduct water quality management planning and undesignated areas for which DNR is responsible for the planning. Is the intent here that the areas to which the proposal applies would remain designated areas (for which DNR would be the planning agency) or would they become undesignated areas? (Note, as mentioned above, that federal law provides for the governor (rather than state statutes) to designate the planning agencies for designated areas. It also requires the governor to designate any areas with substantial water quality control problems.)

Deadline

The request would, for the covered planning areas, require DNR to approve or disapprove revisions to the water quality management plan under NR 121.07 (3) within 60 days of submission or

the revisions would automatically be approved. (I do not know whether providing for automatic approval of changes to water quality management plans would raise concerns under federal law.)

Under NR 121.07 (3), DNR reviews revisions to plans that are proposed by designated planning agencies. Logically, it does not seem that NR 121.07 would apply in an area for which DNR is the planning agency (otherwise, DNR would be reviewing revisions that it proposes). DNR establishes water quality management plans under NR 121.08 for nondesignated areas. NR 121.08 (3) authorizes DNR to revise areawide water quality plans. There is no reference in that rule to anyone submitting an application to DNR for a revision to a water quality management plan. (It appears that DNR contracts with local agencies to be its agents in nondesignated areas, but under the rules DNR revises the plans and its revisions may be subject to a public participation process.)

Past proposals with which I am familiar relating to water quality management planning have been motivated by concerns with sewer service area planning. Areawide water quality management plans include sewer service area plans.

If this proposal is intended to deal with amendments to sewer service area plans, one approach might be have the draft deal only with that kind of amendment. (This would avoid specifying a deadline and automatic approval for other kinds of proposed revisions to water quality management plans, which might be quite extensive.) For example, the draft might create a statutory provision authorizing specified persons to request amendments to sewer service area plans and then require DNR to act on those requests within 60 days.

Currently, according to DNR's Internet site, sewer service area amendments can be initiated by the area water quality planning agency (I believe that this would include an agency with which DNR contracts in a nondesignated area), DMA, or an entity seeking DMA status (an entity seeking to construct and operate a sewage treatment plant for an unsewered area, for example). The Internet site goes on to say that amendments requested by private parties should be channeled through the appropriate local agency.

Please let me know if you want to pursue an option like this.

Please feel free to contact me with any questions or if you would like to meet to discuss this proposal. Thank you for your assistance.

Tradewell, Becky

From: Florian, Mark
Sent: Wednesday, July 10, 2013 10:11 AM
To: Tradewell, Becky
Subject: RE: Bill Draft Request: Rep. Jagler
Attachments: Areawide Water Quality Management Plans Drafting Request Memo.pdf

Hello Becky,

Please see the attached memo that should help answer your questions regarding the bill request. Let me know if you have any questions or need any more clarification. We really appreciate all of your help!

Thanks and all the best,

Mark

Mark Florian
Office of Representative John Jagler
37th Assembly District
(608) 266-9650

From: Tradewell, Becky
Sent: Thursday, May 30, 2013 3:47 PM
To: Florian, Mark
Subject: RE: Bill Draft Request: Rep. Jagler

Mark,

I have attached a memo with some background and some questions about this request.

Becky Tradewell
Managing Attorney
Legislative Reference Bureau
(608) 266-7290

From: Florian, Mark
Sent: Monday, April 29, 2013 10:28 AM
To: Tradewell, Becky
Subject: Bill Draft Request: Rep. Jagler

Hello Becky,

Thank you for your help with this, we really appreciate it! If you have any questions please let me know.

All the best,

Mark

Mark Florian
Office of Representative John Jagler
37th Assembly District
(608) 266-9650

MEMORANDUM

TO: Becky Tradewell
Managing Attorney
Legislative Reference Bureau

FROM: Office of Rep. Jangler

DATE: July 8, 2013

RE: Areawide Water Quality Management Plans Drafting Request
Wis. Stat. § 283
Wis. Adm. Code § NR 121

Thank you for your response to our drafting request. This memo is intended to respond to your questions and propose a clearer change to the existing statutes.

We have discussed your concerns with DNR and plan to continue discussions to make sure staff is comfortable with the language in the proposed statute, but cannot do so without the draft language. We would appreciate it if you would provide us the draft language of the bill based on our request so that we can better analyze the bill's impact.

Generally speaking, the goal of the requested changes is to provide a definite timeline for the DNR to approve or deny amendments to a water quality management plan. Under current law, it is our understanding that the DNR is the default designated management agency throughout the state, and this only changes if there is a specific designated agency for any water quality management area. 40 C.F.R. §§ 130.6(c)(5), 130.9(d); Wis. Stat. § 281.11. In almost all situations, the DNR contracts with regional planning commissions to provide review services; however, in almost all those cases the regional planning commissions are not Designated Agencies as that term is used in § NR 121

The goal of the proposed revisions is to make this clear and to give the DNR a deadline by which it must act on any such proposal. The proposal is not intended to change any current designated planning area or designated planning agency in the state.

Our intent is to bring clarity to the law and to the process of revising water quality management plans.

With that in mind, we request that the Legislative Reference Bureau draft a bill to amend Wis. Stat. §§ 281 and 283 to accomplish the following:

- Upon the enactment of this bill, no new designated management agency for any water quality management area or plan within this State may be created.
- For any water quality management area for which there is no designated management agency, the Wisconsin Department of Natural Resources (“DNR”) shall serve as designated agency.
- Any revisions to a water quality management plan under Wis. Admin. Code § NR 121.07(3), shall be approved or disapproved by the designated management agency within 90 days of submission. If no action is taken within 90 days, the requested revision shall be deemed approved.
- Nothing herein should prohibit the DNR from contracting with a regional planning commission or other similar agency to provide advisory services when reviewing revisions to a water quality management plan. However, the DNR shall not delegate any authority to such an agency relating to the DNR’s authority to approve or disapprove revisions to the water quality management plan under this chapter. Any contract for advisory services may not extend the deadline to approve or disapprove the revision.



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2261/P1

RCT: A...

Tue, 7/16, if possible

JLd
Mete

(PB)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

X

Gen

1 AN ACT ...; relating to: areawide water quality management plans and revisions
2 to those plans.✓

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.✓

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 283.83 (1) (intro.)^X of the statutes is amended to read:
4 283.83 (1) (intro.) The department shall establish a continuing water pollution
5 control[✓] quality management planning process which is consistent with applicable
6 state requirements. The continuing planning process shall result in plans for all
7 waters of the state, which plans shall include:

History: 1973 c. 74; 1995 a. 227 s. 878; Stats. 1995 s. 283.83; 200[✓] a. 227.

8 SECTION 2. 283.83 (1) (b) of the statutes is amended to read:

1 283.83 (1) (b) The incorporation of all elements of any applicable areawide
2 waste treatment management plans, basin plans and statewide land use plans;

History: 1973 c. 74; 1995 a. 227 s. 878; Stats. 1995 s. 283.83; 2007 a. 227.

****NOTE: These changes are intended to provide terminology that is consistent with DNR's rules and federal law. Please see the drafter's note for a discussion of the relevant laws and rules.

3 **SECTION 3.** 283.83 (1m) of the statutes is created to read:

4 283.83 (1m) (a) Beginning on the effective date of this subsection [LRB
5 inserts date], the governor may not designate an organization under 33 USC 1288
6 (a) (2) to develop an areawide water quality management plan for any area that was
7 not designated under 33 USC 1288 (a) (2) as having substantial water quality control
8 problems before that date.

9 (b) The department shall prepare an areawide water quality management plan
10 for each area of the state for which the governor has not designated an organization
11 under 33 USC 1288 (a) (2) before the effective date of this paragraph [LRB inserts
12 date].

13 (c) 1. The department shall adopt or reject a proposed revision to an areawide
14 water quality management plan prepared by the department under par. (b) no later
15 than the 90th day after the day on which it receives the request to make the proposed
16 revision.

17 2. If the department does not adopt or reject a proposed revision to an areawide
18 water quality management plan by the deadline under subd. 1., the revision is
19 adopted.

20 (d) The department may contract with a regional planning commission or other
21 agency to provide advisory services relating to the review of proposed revisions to
22 areawide water quality management plans to which par. (c) 1. applies, but may not

1 delegate its authority to adopt or reject proposed revisions. The deadline under par.

2

(c) 1. is not affected by a contract entered into under this subdivision. *paragraph*

****NOTE: The statutes and the rules do not indicate who may propose to DNR a revision of an areawide water quality management plan developed by DNR. Please see the Drafter's Note for more information.

Please note that, as drafted, the deadline in par. (c) 1. for DNR to act applies to proposed revisions that relate to any subject included in an areawide water quality management plan. See the Drafter's note for a discussion of the subjects covered by a plan.

Also, par. (c) 1. applies only to areas for which par. (b) requires DNR to prepare areawide plans (nondesignated areas). If the intent is to impose a deadline also for designated areas, we will need to discuss how that would work.

3

(END)

Note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2261/P1dn

RCT:.....

date

jld

Mark Florian:

This is a preliminary draft of the proposal relating to areawide water quality management planning. This area of the law is difficult to understand and draft in part because the terminology used in federal law, in state statutes and rules, and in practice is not always consistent. Additionally, although the subject involves a range of important matters, there is very little in state statutes on the subject.

I hope that this note provides some helpful context.

Keep plain period

Federal law

In 33 USC 1288 (often referred to as section 208) the federal Clean Water Act requires each state to conduct an areawide waste treatment management planning process. For the purpose of areawide waste treatment management plans, this provision required the governor to initially designate each area of the state that had substantial water quality control problems. For each designated area, the governor must designate a single representative agency capable of developing effective plans (33 USC 1288 (a) (2)). (Governors may designate additional planning areas and agencies after making the initial designations.) Finally, this provision requires the state to act as a planning agency for the parts of the state that are not designated by the governor.

Under 33 USC 1288 (e), a state may not issue a water pollution discharge permit that conflicts with an approved areawide waste treatment management plan.

Under 33 USC 1313 (e) (3) (B), approved areawide waste treatment plans are incorporated into the broad water quality management plans produced through the continuing water quality planning process required under 33 USC 1313 (e).

EPA's regulations relating to water quality management planning are in 40 CFR part 130. The regulations require each state to have a continuing planning process, which is reviewed periodically by EPA (40 CFR 130.5). The regulations prohibit the approval of the wastewater discharge permit program of a state whose continuing planning process is not approved by EPA. States and designated agencies must update water quality management plans to reflect changing conditions and new requirements and EPA may require the plans to be updated as needed (40 CFR 130.6 (e)). A state must submit for EPA approval a letter certifying that updates to a water quality management plan are consistent with other parts of the plan.

I am uncertain whether the part of this proposal that provides automatic approval if DNR misses the deadline to act on a proposed revision to an areawide water quality management plan (which is part of this state's federally required water quality management plan) is consistent with federal law. *
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State law

Section 283.83 (1), Wis. Stats., requires DNR to establish a water pollution control planning process that results in plans for all waters of the state. The plans must include the provisions specified in s. 283.83 (1) (a) to (h). These provisions correspond generally to the required provisions of a state water quality management plan specified in federal law (33 USC 1313 (e) (3) (A) to (H)). I believe that the reference in s. 283.83 (1) (b) to areawide waste management plans refers to the areawide waste treatment management plans under 33 USC 1288, discussed above.

The Wisconsin statutes do not address who prepares water quality management plans or portions of those plans or how they are revised.

DNR's rules concerning water quality management plans are in chapter NR 121, Wisconsin Administrative Code.

Section NR 121.04 (2), Wis. Adm. Code, provides that the state water quality management plan consists of areawide water quality management plans prepared by agencies designated by the governor for areas designated by the governor, areawide management plans prepared by DNR for the rest of the state (nondesignated areas), and a document describing the state's water quality management planning process.

The rules do not distinguish between areawide waste treatment management plans required under 33 USC 1288 and the broader water quality management plans required under 30 CFR 1313 (e).

Section NR 121.05 describes the content of areawide water quality management plans. The plans are required to cover many subjects, including water quality standards, total maximum daily loads and waste load allocations (used to ensure that streams with poor water quality meet water quality standards), and best management practices for the control of nonpoint source pollution (NR 121.05, Wis. Adm. Code). Also, s. NR 121.05 (g) 2. requires that an areawide plan delineate a sewer service area for existing and proposed treatment systems.

Section NR 121.06 describes the designation of areawide water quality planning areas and designated agencies for those areas. A designated agency may be either a regional planning commission or another representative organization that includes local elected officials.

Section NR 121.07, Wis. Adm. Code, specifies procedures for adoption, revision, and approval of areawide water quality management plans for designated areas of the state (that is, those for which designated planning agencies, rather than DNR, prepare the water quality management plans). DNR reviews and approves plans developed by the designated planning agencies for these areas. Under s. NR 121.07 (3), DNR may approve revisions of areawide water quality management plan for a designated area *
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on an annual basis or according to procedures established by DNR and the designated agency. The rule does not address who may propose a plan revision to a designated agency.✓

Section NR 121.08 specifies procedures for adoption and revision of areawide water quality management plans for nondesignated areas of the state (that is, those for which DNR prepares the water quality management plans). Section NR 121.05 (1) (g) 4. a. provides that the preparation of the plan for a nondesignated area will be carried out by a local planning agency under contract with DNR, if possible. Under s. NR 121.07 (3), DNR may revise areawide water quality management plans for nondesignated plans as necessary. The rule does not address who may propose a plan revision to DNR.✓

According to DNR's Internet site, changes related to a sewer service area may be initiated by the area water quality planning agency (I believe that this would include an agency with which DNR contracts in a nondesignated area), the designated management agency (that is, the operator of the sewage system), or an entity seeking designated management agency status (an entity seeking to construct and operate a sewage system for an unsewered area, for example). The Internet site goes on to say that changes requested by private parties should be channeled through the appropriate local agency.

Please consider whether you want the draft to specify who may request DNR to revise an areawide water quality management plan.✓ If the draft does not specify this, it might be argued that anyone may propose a revision, requiring DNR to act within 90 days in order to prevent automatic adoption of the proposed revision.

Please contact me with any questions or redraft instructions.✓

Rebecca C. Tradewell
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E-mail: becky.tradewell@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2261/P1dn
RCT:jld:jf

July 15, 2013

Mark Florian:

This is a preliminary draft of the proposal relating to areawide water quality management planning. This area of the law is difficult to understand and draft in part because the terminology used in federal law, in state statutes and rules, and in practice is not always consistent. Additionally, although the subject involves a range of important matters, there is very little on the subject in state statutes.

I hope that this note provides some helpful context.

Federal law

In 33 USC 1288 (often referred to as section 208) the federal Clean Water Act requires each state to conduct an areawide waste treatment management planning process. For the purpose of areawide waste treatment management plans, this provision required the governor to initially designate each area of the state that had substantial water quality control problems. For each designated area, the governor must designate a single representative agency capable of developing effective plans (33 USC 1288 (a) (2)). (Governors may designate additional planning areas and agencies after making the initial designations.) Finally, this provision requires the state to act as a planning agency for the parts of the state that are not designated by the governor.

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Please contact me with any questions or redraft instructions.

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2/31/13 Meeting in Rep. Tagler's office with Mark Florian, Robert Procter (of Arley Bynelson - representing the builders), and representatives of the Madison Area Builders Association, including Andrew Bisch

The concern is with the Capitol Area Regional Planning Commission, with which DNR contracts to do water quality management planning for Dane County. (It is not a designated agency under the Clean Water Act or ch. NR 121). When a proposed sewer extension is submitted to CARPC, it can take ^{as long as} 12 years to act. DNR won't decide on the extension until CARPC acts. The builders need a decision from CARPC so they have something that can be reviewed by DNR or the courts if necessary.

They are aware that this has to comply with federal law. So allow DNR to go to court (within 30 days) if it can't make the decision in 90 days, to prevent automatic approval. Request reasonable amount of time to make decision.

This isn't a problem in most areas - so limit it to the Dane County areawide water quality management plan.

In practice, the requests to amend sewer service areas come from the municipalities. After approval of change in plan, the operator of the sewage system (MMSD, in this area), looks at the engineering.