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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ...

PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on Environment...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
  (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (September 2013)

Senate

Record of Committee Proceedings

Committee on Environment

Clearinghouse Rule 10-035

Relating to phosphorus water quality standards criteria and limitations and effluent standards.

Submitted by Department of Natural Resources.

July 08, 2010 Referred to Committee on Environment.

July 28, 2010 **PUBLIC HEARING HELD**

Present: (4) Senators Miller, Wirch, Kedzie and Olsen.
Absent: (1) Senator Jauch.

Appearances For

- Russ Rasmussen, Madison — DNR
- Bruce Baker, Madison — DNR
- George Meyer, Madison — Wisconsin Wildlife Federation
- Jim TeSelle, Grafton — Wisconsin Great Lakes Coalition
- Amber Meyer Smith, Madison — Clean Wisconsin
- Jon Schellpfeffer, Madison — Madison Metropolitan Sewerage District
- Rick Carlson, Friendship — Carlson's Rustic Ridge
- Thomas Koren, Nekoosa — Barnum Bay Marina
- Denny Caneff, Madison — River Alliance of Wisconsin
- Paul Kent, Madison — Municipal Environmental Group
- Julian Zelazny, Madison — Wisconsin Land & Water Conservation Association
- Betsy Lawton, Madison — Midwest Environmental Advocates
- Will Stahl, Neenah — Sierra Club
- Toni Herkert, Madison — Wisconsin Lakes

Appearances Against

- Jim Ott, Mequon — Representative, 23rd Assembly District
- Tom Ratzlaff, Park Falls — Mayor, City of Park Falls
- Herman Luedtke, Park Falls — Flambeau River Papers
- Joseph Terry, Port Edwards — Village of Port Edwards
- Ken Hartje, Nekoosa — City of Nekoosa
- Nick George, Madison — Midwest Food Processors
- Chris Groh, Plover — Wisconsin Rural Water Association
- Ken Blomberg, Plover — Wisconsin Rural Water Association

- David Ward, Madison — Cooperative Network
- John Manske, Madison — Cooperative Network
- Shawn Pfaff, Madison — Wisconsin Cheesemakers Association
- James Buchen, Madison — Wisconsin Manufacturers & Commerce

Appearances for Information Only
- None.

Registrations For
- Steven Roanhaus, Madison — Wisconsin Environment
- Lisa Conley, Oconomowoc — Town & County Resoruce Conservation & Development
- Emily Schneider, Portage — Wisconsin Wildlife Federation
- Abigail Gilman, Madison — herself
- Mary Vendiola, Madison — herself
- Julie Bucheger, Madison — herself
- Casey Eggleston, Madison — The Nature Conservancy
- Dirk van Dwyn, Madison — himself
- Dan Kohler, Madison — Wisconsin Environment
- Matthew Burke, Madison — Wisconsin Environment
- Andy Bean, Madison — himself
- Zach LaPorte, Madison — himself
- Madelyn Petersen, Madison — herself

Registrations Against
- Scott Reimer, Rice Lake — Rice Lake Utilities
- Greg Engeset, Elksworth — Village of Elksworth
- Dennis Holtz, New Richmond — City of New Richmond
- John Bond, Roberts — himself
- David Jeuseme, Oshkosh — himself
- Scott Luczak, Delafield — Delafield-Hartland WPCC
- Dan Meyer, Eagle River — Representative, 34th Assembly District
- Dave Lawrence, Plover — WRWA
- Bob Anderson, Brooklyn — Village of Brooklyn
- Pavel Hajda, Shorewood — self

Registrations for Information Only
- Jay Tousey, Sunine — Village of Sunine
- Andres Aslesen, Sun Prairie — WRWA
- Ann Gryphan, Madison — Wisconsin Liquid Waste Carriers Assoc.

September 7, 2010 No action taken.

Elizabeth Bier
Committee Clerk

Midwest Environmental ADVOCATES

pro bono publico

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED

November 23, 2009

Lisa Jackson, Administrator
United States Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

RE: Notice of Intent to Sue Administrator of the Environmental Protection Agency for Failure to Perform Its Non-discretionary Duty to Promulgate Numeric Nutrient Criteria for the State of Wisconsin.

Dear Ms. Jackson:

This letter is to provide notice, pursuant to the citizen suit provision of the Federal Clean Water Act, 33 U.S.C. § 1365 ("CWA" or "the Act"), that Clean Water Action Council of Northeastern Wisconsin, Gulf Restoration Network, Milwaukee Riverkeeper, Prairie Rivers Network, River Alliance of Wisconsin, Sierra Club, and Wisconsin Wildlife Federation intend to file suit in the Federal District Court for the Western District of Wisconsin against the Administrator of the United States Environmental Protection Agency ("EPA") for failing to perform its non-discretionary duty under the Act to promulgate numeric nitrogen and phosphorus criteria for the state of Wisconsin.

The citizen suit provision of the CWA provides an opportunity for any citizen to commence a civil action in federal court on his or her own behalf against the EPA Administrator for an alleged failure of the Administrator to perform any non-discretionary duty imposed by the CWA on the Administrator. 33 U.S.C. § 1365(a)(2).

The CWA requires the EPA Administrator to "promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this chapter." 33 U.S.C. § 1313(c)(4)(B).

551 W. Main Street, Suite 200 • Madison, WI 53703
Telephone 608.251.5047 • Fax 608.268.0205

1845 N. Farwell Avenue, Suite 100 • Milwaukee, WI 53202
Telephone 414.688.4171

Email: advocate@midwestadvocates.org • Web: www.midwestadvocates.org

Scientists have known for decades that many marine and fresh water bodies of the United States are being harmed by nitrogen and phosphorus pollution. This pollution causes or contributes to low dissolved oxygen levels and has numerous adverse effects on aquatic life and on the economic, aesthetic, and recreational value of our rivers, lakes, and streams, including contamination of drinking water supplies and the growth of potentially toxic cyanobacteria or "blue-green algae," in lakes and rivers.[1]

Every summer, Wisconsin communities and tourism-related businesses cope with the detrimental effects of nutrient pollution, ranging from foul, smelly water to health threats, such as toxic algae and contaminated drinking water, and from nuisance algae blooms to fish kills and beach closures. Due to increasing nutrient concentrations in Wisconsin's waters, the frequency and duration of toxic algal blooms has severely increased over the past decade. Nitrogen and Phosphorus pollution are listed as the pollutants causing approximately 36% of the 453 Category 5A impairments listed in Wisconsin's 2008 303(d) impaired waters list. By mid-summer 10 beaches in Madison, Wisconsin had been closed for a "combined total of 90 days, mostly because of algae blooms."[2] Amongst various reports of harm caused by excess nutrients in Wisconsin waters this season, at least 3 dogs have reportedly died due to nutrient induced toxic blue-green algae and the Wisconsin Department of Health Services has received 41 complaints related to health concerns with blue-green algae, including rashes, sore throats and eye irritation.[3]

Nitrogen and phosphorus pollution in Wisconsin contributes to downstream water quality impairments including a huge dead zone in the Gulf of Mexico that threatens numerous human and ecological communities as well as the basic health of the Gulf.[4] Nitrogen and phosphorus pollution in Wisconsin also negatively impacts downstream waters that flow out of Wisconsin, such as the Rock River and Fox River. Furthermore, Lake Michigan is also negatively impacted by phosphorous pollution.

On February 1, 2008, almost ten years after EPA told states to develop numeric nutrient water quality standards, the Wisconsin Department of Natural Resources ("DNR") convened a group of interested stakeholders and held its *first* Phosphorus Criteria Advisory Committee meeting. To guide the development of phosphorus criteria for streams in Wisconsin, DNR relied on U.S. Geological Survey ("USGS") data and

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[1] State-EPA Nutrient Innovations Task Group, *An Urgent Call to Action*, 2-11 (Aug. 2009).
[2] Janie Boschma, *Algae, Bacteria Keep Madison Beaches Closed More Than Usual*, Wis. St. J., July 25, 2009, *available at* http://host.madison.com/news/article_42590528-a2ec-5953-a3f1-c85e7cc78a17.html?mode=story.
[3] *Stinky Blue-Green Algae Blamed for Dog Deaths*, Sept. 27, 2009, *available at* http://www.msnbc.msn.com/id/33045773/ns/us_news-environment/ (reporting from Wausau, Wisconsin).
[4] U.S. Geological Survey, *Share of the Nutrient Flux (mass per time) Delivered to the Gulf of Mexico from States in the Mississippi and Atchafalaya River Basins*, http://water.usgs.gov/nawqa/sparrow/gulf_findings/ES&T_states.pdf; R.B. Alexander, *et al., Differences in Phosphorus and Nitrogen Delivery to the Gulf of Mexico from the Mississippi Basin* 42 Envtl. Sci. & Tech. (2008), *available at* http://water.usgs.gov/nawqa/sparrow/gulf_findings/.

reports regarding water quality impacts of nitrogen and phosphorus on the biotic integrity of Wisconsin streams and rivers.[5] Yet DNR has yet to propose that its governing board, the Natural Resources Board, amend the Wisconsin Administrative Code to include numeric criteria for phosphorus. Despite the USGS data related to nitrogen impacts on the biological integrity of Wisconsin streams and rivers, DNR does not expect to begin promulgation of numeric nitrogen water quality criteria until at least 2012.[6] In the meantime DNR refuses to derive water quality based effluent limits in NPDES permits to implement its narrative standard as applied to nitrogen and phosphorus.[7]

More than a decade has passed since EPA, acknowledging the severity of nitrogen and phosphorus pollution, directed states to develop numeric criteria for nitrogen and phosphorus. In 1998 EPA determined that prompt development of numeric standards for the nutrients phosphorus and nitrogen in all states, including Wisconsin, was necessary to meet the requirements of the Clean Water Act. The Clean Water Action Plan ("CWAP") issued on February 19, 1998 explained:

> Excessive nutrient loadings. . . result in excessive growth of macrophytes or phytoplankton and potentially harmful algal blooms (HAB), leading to oxygen declines, imbalance of aquatic species, public health risks, and a general decline of the aquatic resource. Nutrient over-enrichment has also been strongly linked to the large hypoxic zone in the Gulf of Mexico and to recent outbreaks of *Pfiesterias* along the mid-Atlantic Coast.
>
> State water quality reports indicate that over-enrichment of waters by nutrients (nitrogen and phosphorus) is the biggest overall source of impairment of the nation's rivers and streams, lakes and reservoirs, and estuaries. In the 1996 National Water Quality Inventory, states reported that 40 percent of surveyed rivers, 51 percent of surveyed lakes and 57 percent of surveyed estuaries were impaired by nutrient enrichment.
>
> ...
>
> EPA will develop nutrient criteria – numerical ranges for acceptable levels of nutrients (i.e., nitrogen and phosphorus) in water....EPA will develop nutrient criteria for the various water

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[5] Dale M. Robertson, et al., U.S.G.S., *Nutrient Concentrations and Their Relations to the Biotic Integrity of Wadeable Streams in Wisconsin* (2006) *available at* http://pubs.usgs.gov/pp/pp1722/pdf/PP_1722.pdf; Dale M. Robertson, et al., U.S. Geological Survey, *Nutrient Concentrations and Their Relations to the Biotic Integrity of Nonwadeable Rivers in Wisconsin* (2006) *available at* http://pubs.usgs.gov/pp/1754/pdf/pp1754.pdf.

[6] Wisconsin Dep't of Natural Res., *2008-2011 Triennial Standards Review Cycle: Topic Descriptions* 5, 8 (July 2, 2008) *available at* http://www.dnr.state.wi.us/org/water/wm/wqs/tsr/documents/Topic_Descriptions.pdf.

[7] Memorandum from Russ Rasmussen, Watershed Management, on Determining Reasonable Potential for Narrative Standards to the WPDES Permits Staff 2-3 (Dec. 14, 2006).

> body types and ecoregions of the country by the year 2000. ... Within three years of the EPA issuance of applicable criteria, all states and tribes should have adopted water quality standards for nutrients. Where a state or tribe fails to adopt a water quality standard for nutrients within that three-year period, EPA will begin to promulgate water quality standards for nutrients...[8]

On June 25, 1998 EPA published its *National Strategy for the Development of Regional Nutrient Criteria* in the Federal Register, acknowledging that nutrient pollution had recently been reported to be the leading cause of impairment in lakes and coastal waters and the second leading cause of impairment in rivers and streams.[9] This plan reiterated that all states were required to develop numeric nitrogen standards that supported designated uses by 2003, or EPA would develop standards for them.[10]

EPA did establish recommended numeric nutrient criteria for ecoregions by early 2001.[11] Yet in 2007 EPA's Office of Water issued a report outlining the detrimental affects of nitrogen and phosphorus pollution and the states' general failure to adopt numeric nitrogen and phosphorus criteria.[12] EPA acknowledged that "[v]irtually every State and Territory is impacted by nutrient-related degradation of our waterways" and explained that the adoption of numeric nutrient water quality criteria would allow for:

- easier and faster development of TMDLs;
- quantitative targets to support trading programs;
- easier issuance of protective NPDES permits;
- increased effectiveness in evaluating success of nutrient runoff management programs; and
- measurable, objective water quality baselines against which to measure environmental progress.[13]

EPA stated very clearly that "we cannot afford delayed or ineffective responses to this major source of environmental degradation."[14]

In August 2009 EPA's Office of the Inspector General ("OIG") painted a grim picture of the states' stagnant progress in adopting numeric nutrient criteria in a report titled "EPA Needs to Accelerate Adoption of Numeric Nutrient Water Quality

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[8] U.S. EPA, *Clean Water Action Plan: Restoring and Protecting America's Waters* 58-59 (Feb. 2008) [hereinafter CWAP].
[9] U.S. EPA, *National Strategy for the Development of Regional Nutrient Criteria,* iii June 25, 1998).
[10] *Id* at 5-6.
[11] Nutrient Criteria Development; Notice of Ecoregional Nutrient Criteria, 66 Fed. Reg. 1671 (Jan. 9, 2001).
[12] Memorandum from Benjamin H. Grumbles, Assistant Administrator, U.S. EPA, on Nutrient Pollution and Numeric Water Quality Standards, (May 25, 2007), *available at* http://www.epa.gov/waterscience/criteria/nutrient/files/policy20070525.pdf
[13] *Id.*
[14] *Id.*

Standards."[15] Recognizing that "[s]tates have not been motivated to create these standards because implementing them is costly and often unpopular with various constituencies," the report found that under the current approach there are no assurances that States will develop protective standards.[16] OIG recalled that "[h]istorically, EPA has said it would use its authority to set standards as a motivator and then failed to set standards," and reiterated that states upstream of the Gulf of Mexico and the Mississippi River have failed to set nutrient standards for themselves; "consequently, it is EPA's responsibility to act."[17] In response to the OIG's report, EPA explained its view that "numeric nutrient State water quality standards are needed to protect not only those waters already impaired by nutrient pollution, but also to prevent high quality waters from future impairment."[18]

The State-EPA Nutrient Innovations Task Group reiterated the urgency of adopting numeric nitrogen and phosphorus criteria in its August 2009 report *An Urgent Call to Action.* That report, the collaboration of state and EPA water quality and drinking water directors and program managers, recognizes the inadequacy of state and national efforts to control nutrient pollution, and calls for national leadership.[19] Not surprisingly, the Task Group rated "Federally required state WQS numeric nutrient water quality criteria" as one of the top five most effective tools for reducing nitrogen and phosphorus pollution.[20]

Having determined that numeric standards were necessary to meet the requirements of the Act in the Clean Water Action Plan and having reconfirmed this determination in the above referenced documents and in other findings, the Administrator has failed to perform its non-discretionary duty under section 303(c)(4)(B) of the CWA to promptly set numeric nitrogen and phosphorus criteria for the state of Wisconsin.

V. PARTIES GIVING NOTICE

The parties giving notice are:

Clean Water Action Council of Northeastern Wisconsin
2484 Manitowoc Rd.
Green Bay, WI 54311
(920) 468-4243

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[15] U.S. EPA, Office of the Inspector Gen., *EPA Needs to Accelerate Adoption of Numeric Nutrient Water Quality Standards,* No. 09-P-0223 (Aug. 26, 2009).
[16] *Id.* at 5-6.
[17] *Id.* at 11.
[18] *Id.* at app. C (Memorandum from Michael H. Shapiro, Acting Assistant Administrator, U.S, EPA on Agency Response to the Draft Evaluation Report to Dan Engelberg, Director, Water Enforcement Issues (July 15, 2009)).
[19] *See supra* note 1, at 33.
[20] *See supra* note 1, at 20-21, tbl. 2.

Gulf Restoration Network
338 Baronne Street, Suite 200
New Orleans, LA 70112
(504) 525-1528

Milwaukee Riverkeeper
Milwaukee Environmental Consortium
1845 N. Farwell Avenue, Suite 100
Milwaukee, WI 53202
(414) 287-0207

Prairie Rivers Network
1902 Fox Drive, Suite G
Champaign, Illinois 61820
(217) 344-2371

River Alliance of Wisconsin
306 East Wilson Street, Suite #2W
Madison, WI 53703
(608)257-2424

Sierra Club – John Muir Chapter
222 South Hamilton Street, Suite #1
Madison, WI 53703
(608) 256-0565

Wisconsin Wildlife Federation
W7303 County Highway CS
Poynette, WI 53955
(608) 635-2742

VI. CONCLUSION

The individuals giving notice encourage you to contact them through their attorneys as soon as possible should you desire to discuss the allegations set forth in this letter; if this matter is not resolved to the satisfaction of the individuals giving notice, they will file suit on the sixtieth day following the date of this letter.

Sincerely,

Elizabeth Lawton
Midwest Environmental Advocates
551 W. Main St. #200
Madison, WI 53703
608-251-5047

Albert Ettinger
Environmental Law & Policy Center
35 East Wacker Drive, Suite 1300
Chicago, IL 60601-2110
Phone: 312-673-6500

Counsel for: Clean Water Action Council of Northeastern Wisconsin, Gulf Restoration Network, Milwaukee Riverkeeper, Prairie Rivers Network, River Alliance of Wisconsin, Sierra Club, and Wisconsin Wildlife Federation

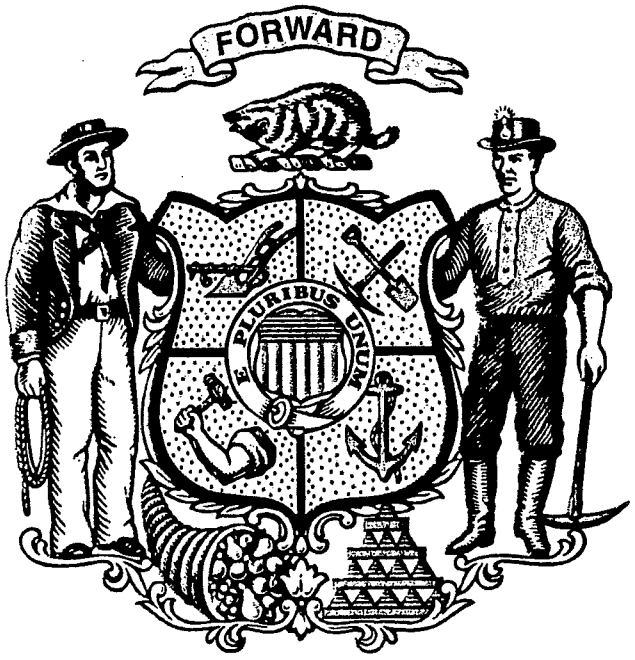
Copies To:

Mr. Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Mr. Bharat Mathur
Acting Regional Administrator
U.S. EPA, Region V
77 W. Jackson Blvd.
Chicago, IL 60604

Mr. Matthew Frank, Secretary
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921

Mr. Todd Ambs
Wisconsin Department of Natural Resources
101 South Webster St.
P.O. Box 7921
Madison, WI 53707-7921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Clean Water Action Council of Northeastern Wisconsin • Environmental Law & Policy Center • Gulf Restoration Network • Midwest Environmental Advocates • Milwaukee Riverkeeper • Prairie Rivers Network • River Alliance of Wisconsin • Sierra Club • Wisconsin Wildlife Federation

For Immediate Release
November 23, 2009

Contact: Betsy Lawton, MEA - (608) 251-5047
Peter Gray, ELPC - (312) 795-3715

CLEAN WATER ADVOCATES ANNOUNCE INTENT TO SUE EPA TO SET STANDARDS NEEDED TO CONTROL PHOSPHORUS AND NITROGEN POLLUTION

Decade of Inaction Has Left Wisconsin Waters Unsafe

A coalition of environmental groups seeks through legal action to push the United States Environmental Protection Agency (EPA) to regulate nitrogen and phosphorus pollution in Wisconsin waters under the Clean Water Act. EPA pledged to regulate this pollution in 1999, but action was delayed for years. Nitrogen and phosphorus pollution, common in many Wisconsin lakes and streams, has been shown to contaminate drinking water, contribute to the growth of potentially toxic cyanobacteria or "blue-green algae," and is the main cause of algal blooms in the Great Lakes and the dead zone in the Gulf of Mexico.

To Wisconsin Department of Natural Resources' (DNR) credit, the DNR moved forward on EPA's 1999 order and has collected all the data necessary to set standards for control of phosphorus pollution, giving the EPA the information it needs to set standards. The coalition is hopeful that the current EPA will act to put those standards in place, and they're taking legal action to accelerate the process. Coalition members say the action is necessary because Wisconsin can't wait any longer for clean water.

Betsy Lawton, Interim Executive Director of Midwest Environmental Advocates (MEA) and an attorney representing the coalition stated, "Wisconsin DNR has developed the science needed for sound phosphorus standards, and EPA must honor its 1999 pledge to set standards for this harmful pollutant that hampers recreation for Wisconsin residents by contributing to green, stinky water, closed beaches, and toxic algae."

This year, nutrient-induced blue-green algae in Wisconsin has led to the death of pets, and several cases of rashes, sore throats and eye irritation "Businesses located on waters tainted with toxic algae are really hurting," said Denny Caneff, Executive Director of the River Alliance of Wisconsin. "They lose customers who flee the stench and the health hazards posed by toxic algae. EPA needs to act to limit the nutrients causing these algae blooms."

The groups filed a 60-day notice of intent to sue, the first step in a Clean Water Act citizen suit. The groups now must wait 60 days before filing a formal lawsuit. According to Albert Ettinger of the Environmental Law & Policy Center, "The current Administrator of EPA, Lisa Jackson, is obviously not the one to blame for the decade-long failure to establish standards for controls on phosphorus and nitrogen pollution, but under the Clean Water Act, she is now the one with the responsibility to fix the problem."

The coalition of groups are being represented by two Midwestern environmental law centers, Midwest Environmental Advocates and the Environmental Law & Policy Center. The full 60 day notice is available here at www.midwestadvocates.org.

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The following are statements from the coalition members:

While acknowledging that Wisconsin isn't the largest source of the pollution causing the Gulf of Mexico Dead Zone, Matt Rota of the Gulf Restoration Network said," if we're going to get serious about reducing the size of our nation's largest dead zone, every source state needs to develop controls for their pollution. It's time for Wisconsin to act. The Gulf and our fish and fishermen have been paying the price of our nation's inaction for too long."

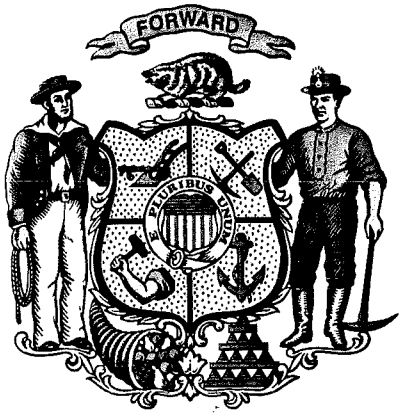
Karen Schapiro of the Milwaukee Riverkeeper stressed that phosphorus must be controlled to protect the Great Lakes and the Milwaukee River Basin. Schapiro said, "setting nitrogen and phosphorus standards is a critical first step to protecting Milwaukee's rivers. Phosphorus pollution is causing unnatural growth of nuisance plants in Lake Michigan. EPA must take action to lower phosphorus pollution in the Great Lakes system."

"Clean water is critical to public health, recreation and tourism in Wisconsin. We need common sense rules that protect our natural resources," said Rebecca Katers of Clean Water Action Council of Northeastern Wisconsin. "We hope this legal action spurs the EPA to move forward."

"Obviously, Illinois has to control it own pollution, but establishing good standards for Wisconsin will both lessen pollution in the downstream Fox, Mississippi and Rock Rivers and help provide a benchmark for controlling pollution in Illinois waters," said Glynnis Collins of Prairie Rivers Network

"Phosphorus discharge into Wisconsin lakes and streams is causing a substantial growth in nuisance aquatic vegetation which is causing serious injury to fishing, boating and other critically important uses of our waterways," said George Meyer of the Wisconsin Wildlife Federation.

Sierra Club's Eric Uram stated, "For Sierra Club, it's critical we get a handle on nutrient pollution. Wisconsin's drinking water supplies, rivers, lakes and streams are all suffering the effects of excessive nitrogen and phosphorus pollution. As a result, the health of our families; our environment and the wildlife – including hunting and angling opportunities – are being negatively impacted. Sierra Club wants to work here in Wisconsin to insure everyone's water is kept safe by helping set the bar for protective nutrient standards."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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 30 2010

OFFICE OF
WATER

Mr. Matthew Frank, Secretary
Wisconsin Department of Natural Resources
101 S. Webster Street
P.O. Box 7921
Madison, Wisconsin 53707-7921

Dear Secretary Frank:

The Environmental Protection Agency (EPA) commends the State of Wisconsin on the progress it has made toward adoption of numeric water quality criteria for nutrients. We recognize and appreciate the effort that the Wisconsin Department of Natural Resources (WDNR), in conjunction with interested stakeholders, has put into the development of phosphorus criteria scheduled for adoption this year. Numeric phosphorus criteria will be significant additions to the state's water quality standards and will be important in the state's efforts to protect the valuable water resources of Wisconsin.

We strongly encourage you to move forward in accordance with your current schedule and submit the revised standards with phosphorus criteria to your legislature for adoption. If WDNR does not submit numeric phosphorus criteria to EPA for review and approval in 2010, then EPA intends to move forward to issue a determination pursuant to CWA section 303(c)(4)(B). EPA's determination would evaluate whether, in light of Wisconsin's current efforts to control nutrient pollution, Wisconsin needs new or revised water quality standards containing numeric nutrient criteria to meet the requirements of the Clean Water Act. If EPA determines Wisconsin needs numeric nutrient criteria, that determination would trigger EPA's duty to propose and promulgate such criteria for the state.

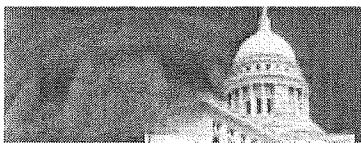
Assuming Wisconsin is successful in adopting numeric phosphorus criteria this year, EPA will carefully review them to ensure they are consistent with the Clean Water Act and EPA's regulations. EPA understands that WDNR is also developing implementation procedures to accompany the adoption of the numeric phosphorus criteria. To the extent such implementation procedures would revise the state's water quality standards or permitting program, such procedures would also be subject to EPA review and approval. It will be important that any such procedures do not inappropriately interfere with or constrain the implementation of the Clean Water Act programs for assessment of water quality, establishment of TMDLs, or development of water quality-based effluent limits for permits.

We congratulate Wisconsin on progressing this far in the development of numeric water quality criteria for phosphorus. Finalization of these criteria will be a major step in effectively addressing nutrient pollution. We look forward to working with you to support this process.

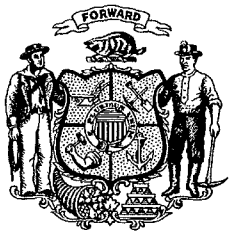
Sincerely,

Peter Silva
Assistant Administrator

cc: Mr. Jonathan P. Ela, Chair, Wisconsin Board of Natural Resources
Mr. Todd Ambs, Water Division Administrator, Wisconsin Department of Natural Resources



WISCONSIN STATE LEGISLATURE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 30 2010

WQ-16J

On March 18, 2010, the Wisconsin Department of Natural Resources proposed amendments to chapters NR 102 (establishment of phosphorus water quality standards for Wisconsin surface waters) and NR 217 (effluent standards and limitations for phosphorus for Wisconsin Administrative Code. U. S. Environmental Protection Agency, Region 5 has reviewed the proposed amendments for consistency with the requirements of sections 303(c) and 402(b) of the Clean Water Act (CWA). Our comments are enclosed.

As proposed, Wisconsin's phosphorus criteria satisfy the requirement of section 303(c)(2)(B) of the CWA, that States must adopt water quality criteria to protect the uses of interstate waters in their jurisdiction. EPA notes that Wisconsin is not proposing nitrogen criteria at this time, but is expecting to begin work on nitrogen criteria in the Summer/Fall of 2010 with a planned adoption date of 2012-2013. EPA recommends that, along with the phosphorus criteria, Wisconsin also adopt a statement that parallels 40 CFR § 131.10(b), similar to the following:

> "The water quality standards of downstream waters shall also be considered and phosphorus criteria may be modified as necessary on a case-by-case basis to ensure that the criteria provide for the attainment and maintenance of the water quality standards of downstream waters."

Wisconsin's proposed code includes authorization for a variance by rule for lagoon systems serving populations under 2,000 that would be unable to comply with limits necessary to attain the phosphorus standard, based on a finding that compliance would result in widespread and substantial social and economic impacts for such communities. To date, EPA has not seen any record to support the finding in the proposed code. Without data and analysis supporting this finding, EPA cannot approve this variance provision. Communities that can demonstrate that complying with phosphorus limits would result in widespread and substantial social and economic impact would continue to be able to seek a variance under Wisconsin's existing variance provisions. Alternatively, WDNR could prepare documentation supporting such finding at any time and submit it with individual variances to satisfy the requirements of 40 CFR § 131.10(g).

The proposed phosphorus water quality standards do not include the frequency and duration parameters that WDNR will use in determining which waters will be listed under Section 303(d) of the

CWA. EPA recommends that WDNR include these duration and frequency parameters in the phosphorus water quality standards.

EPA has a number of legal and technical comments on the proposed [illegible] implementing the criteria. We are commenting in part because the State has [illegible] to [illegible] policy preferences in an administrative code, a choice that we understand will [illegible] rights and obligations. The comments notwithstanding, EPA generally supports the concept that [illegible] attainment with the water quality standards can be achieved at lower cost through an [illegible] program of point source and non-point source load reductions than is possible through point [illegible] reductions alone. Such integrated approaches may be pursued. We suggest that [illegible] EPA's comments carefully and consider making decisions on a permit by permit or watershed [illegible] based on the facts of the situation, rather than through an administrative code. EPA is [illegible] neither Wisconsin nor EPA have sufficient experience with [illegible] point source and non-point source nutrient control to establish statewide legal rights and obligations at this time. EPA [illegible] the opportunity to discuss further with WDNR and other Wisconsin stakeholders ways to [illegible] integrate efforts to control nutrients and thereby improve water [illegible]

The comments in this letter on Wisconsin's phosphorus water quality [illegible] waters and the enclosed comments on procedures for implementing the [illegible] preliminary technical review of Wisconsin's proposed codes. These comments do not [illegible] approval or disapproval action by EPA under either section [illegible] EPA will make approval/disapproval decisions following adoption of codes by Wisconsin and submittal of [illegible] adopted codes to EPA. EPA encourages WDNR to use the time between now and [illegible] the phosphorus water quality standards to continue its preparation of technical support materials [illegible] compile in one place the full documentation of the scientific basis for the criteria. This will [illegible] rule more transparent to the public and facilitate EPA's review of the [illegible]

We commend WDNR on reaching this milestone in the adoption of [illegible] standards and permitting procedures, and we recognize WDNR's extensive effort over the [illegible] developing the standards and procedures. State adoption of protective water quality [illegible] nutrients is a high priority for EPA, and consequently EPA greatly [illegible]

Do not hesitate to contact me if you would like to discuss EPA's comments, or your staff may contact Brian Thompson, the review coordinator, at (312) 353-6066.

Sincerely,

for Tinka G. Hyde
Director, Water Division

Enclosure

cc: Jim Baumann, WDNR

EPA COMMENTS ON PROPOSED AMENDMENTS TO CHAPTERS NR 217 (EFFLUENT STANDARDS AND LIMITATIONS FOR PHOSPHORUS) OF THE WISCONSIN ADMINISTRATIVE CODE PUBLISHED BY THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES ON MARCH 18, 2010

1. s. NR 217.10 Wis. Adm. Code. This section contains the applicability statement for ch. NR 217, Subchapter III. It provides that the Subchapter is applicable to four specified categories of point sources including, but not limited to, publicly and privately owned wastewater facilities and treatment works. The term "privately owned wastewater facilities and treatment works" is not defined in the rule. A similar term, "privately owned treatment works," is defined in 40 CFR § 122.2 to mean "any device or system (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a publicly-owned treatment works" (POTW). EPA is concerned that the Wisconsin term may be interpreted, consistent with federal regulations, such that dischargers who own or operate their own wastewater facilities or treatment works, such as commercial and industrial sources which discharge process wastewater, are generally excluded from ch. NR 217, Subchapter III. Such an exclusion would be inconsistent with 283.13(15) Wis. Stats., 33 U.S.C. § 1311(b)(1)(C) and 40 CFR § 122.44(d) (made applicable to States by 40 CFR § 123.25(a)(15)). Wisconsin should properly define the term in the rule or explain in a note or the rule record its intent that non-domestic dischargers are subject to ch. NR 217, Subchapter III.

   Separately, Wisconsin needs to revise s. NR 217.10 to provide that (1) concentrated aquatic animal production facilities (40 CFR § 122.24), aquaculture projects (40 CFR § 122.25), and silvicultural point sources (40 CFR § 122.27); (2) production area overflows from Large concentrated animal feeding operations (CAFOs); and (3) production area discharges from Medium and Small CAFOs, are subject to ch. NR 217, Subchapter III. In the alternative, Wisconsin could add a note to s. NR 217.10 to clarify that these point sources are subject to 283.15(15) Wis. Stats.

2. s. NR 217.11(2) Wis. Adm. Code defines the term "new source" in a manner consistent with the definition at 40 CFR § 122.2 (made applicable by 40 CFR § 123.2). (It also defines the term inconsistent with 283.01(8) Wis. Stats. and 283.03(20) Wis. Adm. Code.) Wisconsin should revise the definition so it applies solely for the purpose of ch. NR 217 Wis. Adm. Code. Alternatively, Wisconsin could add the term "new discharger" to the rule, define that term in a manner consistent with 40 CFR § 122.2, and revise the definition of "new source" in accordance with 40 CFR § 122.2.

3. ss. NR 217.12(1)(a), NR 217.15(1)(a), and NR 217.15(1)(c) Wis. Adm. Code. To match the language in 40 CFR § 122.44(d)(1)(i) and (ii), Wisconsin needs to revise the noted rules to provide that a water quality-based effluent limitation (WQBEL) will be set when the Department determines that a discharge will cause, has the reasonable potential to cause, or contribute to an excursion above the phosphorus water quality criterion.

4. s. NR 217.13(1)(b) Wis. Adm. Code. This rule contains factors that must be consider to determine whether a discharge may affect a downstream water. [illegible] should develop guidance to which staff should refer to when [illegible]

5. s. NR 217.13(2)(a) Wis. Adm. Code provides that, where data are [illegible] one year in the last five, the Department may use all of the [illegible] upstream concentration. This rule seems to suggest that the Department must [illegible] not use data that are older than five years. The Department should [illegible] representative, even if the data are older than five years. Wisconsin should [illegible] state in the record, or revise the rule to explicitly provide that the [illegible] representative, even if the data are older than five years.

6. ss. NR 217.13(3) and (7) Wis. Adm. Code identify circumstances [illegible] set equal to criteria. These rules do not conform to 40 CFR [illegible] to States by 40 CFR § 123.25(a)(10)). For continuous discharges, [illegible] provides that, unless impracticable, limits shall be set as average [illegible] monthly values for POTWs and maximum daily and average [illegible] dischargers. So as to not preclude the establishment of limits in accordance with these regulations, Wisconsin should revise the noted rules to provide that [illegible] allocation will be set equal to criteria. Please see chapter five of the *Technical Support Document for Water Quality-based Toxics Control* for [illegible] considerations that may be relevant when establishing [illegible]

7. s. NR 217.13(4) Wis. Adm. Code provides that the Department may [illegible] consistent with model results for discharges to the Great Lakes [illegible] the Department may set interim limits prior to the availability of [illegible] EPA has two comments on this rule. First, the Department needs to add [illegible] first sentence to establish that limits based on model results with [illegible] zone granted under ch. NR 102 and any applicable antidegradation [illegible] Second, the Department needs to add language to the second sentence to establish that a permit with an interim limit will include a final [illegible] has a reasonable potential to cause, or contribute to an excursion above [illegible] criteria. (See 33 U.S.C. § 1311(b)(1)(C) and 40 CFR § 122.44(d).)

8. s. NR 217.13(4) Wis. Adm. Code provides that the allowable load for the various discharges, when the Department determines that more than one may affect the quality of the same receiving waters. Wisconsin should add language to establish an affirmative requirement that the Department will determine whether more than one discharge may affect a body of water.

9. Please revise s. NR 217.13(8)(a) Wis. Adm. Code as follows: "The new source of phosphorus is allocated as part of the wasteload allocation or reserve capacity in an EPA approved TMDL."

10. ss. NR 217.14(2) and (3) Wis. Adm. Code provide that concentration-based limits shall be expressed as 30-day rolling averages. 40 CFR § 122.45(d) provides, in part, that

limitations for continuous dischargers shall be expressed as monthly averages. Wisconsin should amend its Enforcement Management System to establish policy and procedures through which the State will evaluate 30-day rolling averages to determine compliance and calculate penalties in the event of noncompliance.

11. s. NR 217.15(1)(c) Wis. Adm. Code identifies procedures that Wisconsin will use to set phosphorus WQBELs for permittees who do not have such limits. The rule does not contemplate cases where phosphorus discharge data are not available. Wisconsin needs to revise the rule to contemplate such cases. Where a permit authority knows, based on a permit application or other information, that a discharge contains a pollutant for which a water quality criterion exists, 40 CFR § 122.44(d) mandates that the permit authority determine whether the discharge will cause, has a reasonable potential to cause, or contribute to an excursion beyond the criterion. The mandate applies in cases where discharge analytical data do not exist.

12. s. NR 217.16(1) Wis. Adm. Code. This rule provides that the [illegible] a permit a limit based on an approved total maximum [illegible] limit calculated in accordance with s. NR 217.13. This rule [illegible] the extent that a limit based either on an approved TMDL or s. NR [illegible] Code is a WQBEL. Nevertheless, Wisconsin needs to add [illegible] level of water quality to be achieved by the limitations in a permit [illegible] complies with the water quality standards in ch. NR [illegible] 122.44(d)(1)(vii)(A). In addition, the State needs to add [illegible] affirmative requirement that limits will be set consistent with the [illegible] requirements of any approved TMDL. *See* 40 CFR § 122.44(d)(1)(vii)(B).

13. When an issued permit contains a WQBEL calculated in accordance with [illegible] Wis. Adm. Code, s. NR 217.16(1) appears to allow the State to modify the permit to include a less stringent limit based on an approved TMDL if [illegible] would be modified or reissued in this fashion would be subject to the [illegible] provisions in 33 U.S.C. § 1342(o) and § 122.44(l). If antibacksliding [illegible] 283 Wis. Stats. or the applicable administrative codes, then Wisconsin [illegible] note or the record for the rule that a permit modified or reissued in the [illegible] contemplated here is subject to the State's antibacksliding provisions. If [illegible] not so recognized, then Wisconsin must revise s. NR 217.16(1) to [illegible] a permit which is modified or reissued to contain a less stringent [illegible]

14. s. NR 217.17(1)(a) Wis. Adm. Code provides that a schedule of [illegible] established when necessary and will lead to compliance as soon [illegible] proposed provisions of ch. NR 217, subchapter III, seem to [illegible] "necessity" and "as soon as possible" standards apply to all [illegible] 217.17(4)(c)4. Wis. Adm. Code is an example. 40 CFR § 122.47(a)(1) to States by 40 CFR § 123.25(a)(18)) provides that a schedule [illegible] when appropriate and any schedule must achieve compliance as [illegible] note. Wisconsin needs to explain that the "necessity" and "as soon [illegible]

in s. NR 217.17(1)(a) apply in each place in ch. NR 217, Subchapter III, wherein a compliance schedule is contemplated or may be inferred.

15. s. NR 217.17(1)(c) 3.Wis. Adm. Code. In determining whether a compliance schedule is appropriate and determining the length of the schedule, this rule provides that the Department may consider the likelihood that a TMDL will be developed and approved within the permit term and whether the WLA for the facility will likely be less stringent than a WQBEL calculated under s. NR 217.13. A compliance schedule based solely on time to develop a TMDL is not appropriate under 40 CFR § 122.47. *See* "Compliance Schedules for Water Quality-Based Effluent Limitations," May 10, 2007, memorandum from James A. Hanlon, Director, Office of Wastewater Management, EPA (attached). Wisconsin needs to remove paragraph (1)(c)(3) from s. NR 217.17. To the extent that Wisconsin develops and EPA approves a TMDL during a permit term, and the TMDL would justify a less stringent limit, the State could modify the permit to incorporate the TMDL-based limit, provided that the modified limit conforms to antibacksliding provisions and is derived from and complies with the water quality standards in ch. NR 102.

16. Wisconsin needs to incorporate the provisions of 40 CFR § 122.47(a)(3) and (4) into s. NR 217.17(3) Wis. Adm. Code. Wisconsin should add a note to clarify that the provisions of 40 CFR § 122.47(a)(3) and (4) apply in each place in ch. NR 217, Subchapter III, where a compliance schedule is contemplated or may be inferred. s. NR 216.16(2) Wis. Adm. Code is an example.

17. s. NR 217.17(3) Wis. Adm. Code identifies certain of the actions or operations which may be included in a compliance schedule. The State should supplement this list to include preparation of preliminary and final designs for new or modified treatment technology, the initiation of construction, and the completion of construction.

18. ss. NR 217.17(3)(b) and (4)(c) 1. Wis. Adm. Code provides [illegible] may include instream monitoring. In the case of [illegible] develop WQBELs. While the State may write a permit to [illegible] permit may be modified or reissued to incorporate a [illegible] WQBEL in an initial permit (provided that the future [illegible] NR 217, Subchapter III, and antibacksliding provisions). [illegible] these rules does not fit within the meaning of "compliance [illegible] 1362(17) and 40 CFR § 122.2 because is not an action or [illegible] compliance with the effluent limitation in a permit as [illegible] strike these provisions from s. NR 217.17. The State could [illegible] require such monitoring elsewhere in the rule.

19. s. NR 217.17(3)(c) Wis. Adm. Code provides that a compliance schedule may include development and implementation of a local pollutant trading program that applies to the receiving water. The program contemplated within this rule does not fall within the meaning of "schedule of compliance" in 33 U.S.C. § 1362(17) and 40 CFR § 122.2 because it is not an action or operation leading to compliance with an effluent limitation.

Wisconsin needs to strike this rule from the code or revise it to provide that a compliance schedule may include implementation of one or more trades that apply to the permittee, provided that such trade is established and incorporated into the permit so that it is enforceable.

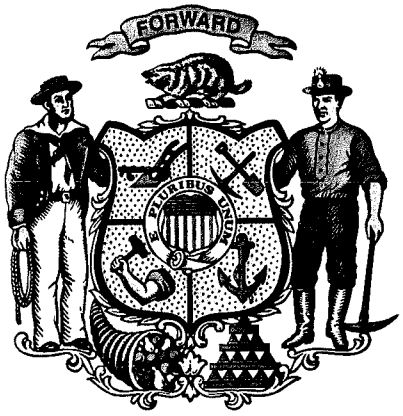
20. s. NR 217.17(4) Wis. Adm. Code is titled "Adaptive Management Option." The substance of the rule focuses on the time a permittee will have to comply with a phosphorus WQBEL and the steps a permittee will take to achieve compliance.

While the rule allows the State to find that the phosphorus water quality criterion in s. NR 102.06 Wis. Adm. Code is not likely to be met without the control of phosphorus from non-point sources, EPA does not see companion provisions which will produce the needed non-point source reductions. To the extent that the State may contemplate issuing the noted finding, EPA recommends that the State first (1) establish a TMDL for the waterbody and (2) make the determination and finding, and promulgate the targeted performance standards, as required under s. NR 151.004 Wis. Adm. Code. In addition, we urge the State to first exercise the authority provided in ss. NR 243.26(2), 216.21(2), and 216.51(3) to designate animal feeding operations, commercial sources, and land disturbing activities as point sources subject to the permit program.

21. s. NR 217.17(4)(c) Wis. Adm. Code contains a list of mandatory interim requirements, and dates for their achievement, when the adaptive management option is employed. Wisconsin should assess requests for a schedule of compliance, and identify the compliance actions or operations which are appropriate, on a case-by-case basis. Separately, the State needs to revise the rule to provide that the list contained therein is not exhaustive. To illustrate this point, treatment equipment which is not "readily" affordable may nevertheless need to be installed to achieve compliance.

22. s. NR 217.17(4)(c) 3. Wis. Adm. Code provides that a compliance schedule shall include the installation of treatment equipment that is readily affordable. The rule does not define the meaning of the words, "readily affordable." Under 33 U.S.C. §1311(b)(1)(C) and 40 CFR § 122.44(d), NPDES permits must include effluent limitations as required for the discharge to meet water quality standards. Unless Wisconsin grants a variance to the criterion and EPA approves the variance under 40 CFR § 131.21, compliance is required even when the equipment needed to comply is not readily affordable. Wisconsin needs to revise s. NR 217.17(4)(c) Wis. Adm. Code to provide that a compliance schedule shall include the installation of the treatment equipment as needed to achieve compliance with the WQBEL as soon as possible. *See* 40 CFR § 122.47(a)(1).

23. s. NR 217.17(4)(c) 4. c. Wis. Adm. Code provides that the Department may impose a WQBEL for phosphorus in the third permit term as an "interim numerical limitation," and may allow five years to achieve compliance with the limitation. Interim limitations, as provided in s. NR 217.17(3), are not WQBELs. Wisconsin must revise this rule to provide that the WQBEL will be established in the first permit term. *See* 33 U.S.C. § 1311(b)(1)(C) and 40 CFR § 122.44(d).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CITY OF STOUGHTON
RESOLUTION NO. R - 24 - 2010

A RESOLUTION REGARDING PROPOSED DNR RULES ON PHOSPHORUS

WHEREAS, The City of Stoughton, Wisconsin has been and continues to be committed to clean water, and as part of that commitment owns and operates a municipal wastewater treatment plant that has already reduced phosphorus loadings organically by 90%, or approximately 68 pounds per day;

WHEREAS, the Wisconsin Department of Natural Resources (DNR) is proposing rules to establish water quality standards for phosphorus in NR 102 and a plan to implement those standards for "point sources" like wastewater treatment plants in NR 217.

WHEREAS, the DNR is also proposing rules that would place additional regulations on phosphorus from agricultural fields in NR 151;

WHEREAS, controlling phosphorus from point sources alone will not achieve clean water standards because, in most watersheds, those sources account for only 10 to 20 percent of the phosphorus reaching Wisconsin's waterways;

WHEREAS, clean water will not be achieved in our community unless there is a comprehensive and integrated approach that addresses all sources of phosphorus;

WHEREAS, requiring our municipal treatment plant to achieve phosphorus treatment levels 10 times below our current permit limit will require investment in filtration systems that will cost our community $6,800,000 and an additional $800,000 annually and produce little water quality benefit.

WHEREAS, the cost of removing additional amounts of phosphorus from our municipal treatment plant is 10 times or more expensive than reductions of phosphorus that could be made from other sources such as agricultural practices;

WHEREAS public money should be spent in the most cost effective manner;

NOW, THEREFORE, following consideration of the above recitals, which are hereby ratified and incorporated by reference, the City of Stoughton, Wisconsin resolves as follows:

1. We support a **comprehensive and integrated approach** that addresses all sources of phosphorus. We support the establishment water quality standards for phosphorus under NR 217 and we support the revisions to NR 151 that establishes phosphorus standards for agricultural fields.

2. We support provisions in NR 217 that allow for **flexible compliance options and a phased implementation** approach.

3. We support the development of a regulatory and administrative framework that supports **watershed based trading options** that allow phosphorus reductions to be made in the most cost-effective manner between point and nonpoint sources.

4. We support a plan that includes increases in **state and federal funding** for both point sources and nonpoint sources to meet these standards.

This Resolution is duly adopted by the City Council of the City of Stoughton at a regularly scheduled meeting on May 25, 2010.

Donna L. Olson, Mayor

Luann J. Alme, City Clerk

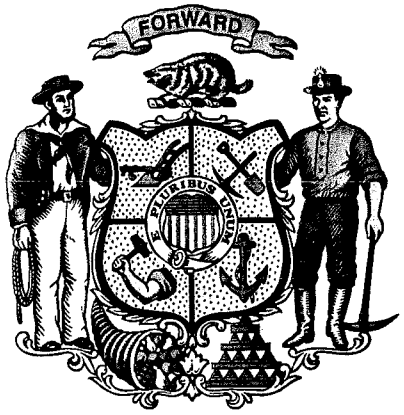
VOTE:

Ayes: 11

Noes: 1

Adopted: 5-25-2010

s/common/lja/ord&res/resolutions/phosphorous resolution 2010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Rock River Coalition

Our Mission:
"To educate and provide opportunities for people of diverse interests to work together to improve the environmental, recreational, cultural, and economic resources of the Rock River Basin"

June 22, 2010

Senator Mark Miller, Chair
Wisconsin State Senate Environment Committee
State Capitol
PO Box 7882
Madison, WI 53707

RE: Numeric Nutrient Standards Rule (NR 217)

Dear Senator Miller and Members of the Senate Environment Committee,

On behalf of the Rock River Coalition Board, I wish to express our strong support for the proposed phosphorus standards for lakes, rivers and streams in Wisconsin. Excessive phosphorus levels in our waters have led to impaired uses for people, fish and wildlife of the state. Wisconsin's tourism industry, human health, and our quality of life depend on clean rivers, streams and lakes.

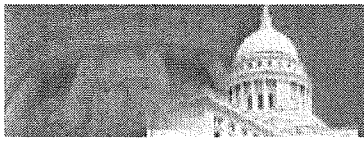
As you know, the Rock River Basin is waiting for the results of the TMDL study of our area. The proposed rules will strengthen our ability to work to achieve significant improvements of the Rock River and the other impaired waters of it's basin.

Thanks for all your work on this issue, and we hope the rules will be in force as soon as practical.

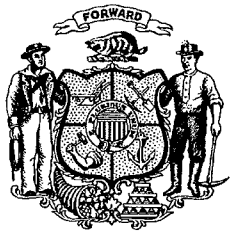
Sincerely,

Lisa Conley

Lisa Conley, Board of Directors



WISCONSIN STATE LEGISLATURE



MADISON METROPOLITAN SEWERAGE DISTRICT

1610 Moorland Road
Madison, WI 53713-3398
Telephone (608) 222-1201
Fax (608) 222-2703

Jon W. Schellpfeffer
Chief Engineer & Director

Protecting Public Health and the Environment

July 12, 2010

Senator Mark Miller
P.O. Box 7882
Madison, WI 53707-7882

Subject: Legislative Review of Natural Resources Board Orders WT-14-08 and WT-25-08

Dear Senator Miller:

Madison Metropolitan Sewerage District collects and treats over 40 million gallons of wastewater every day. We support clean water-it is the primary focus of our mission of protecting public health and the environment. We recognize that nutrients such as phosphorus can impact the quality of Wisconsin's lakes and streams, and we agree that steps need to be taken to reduce phosphorus.

At its June, 2010 meeting, the Natural Resources Board unanimously adopted two Board Orders collectively aimed at controlling phosphorus discharges to waters of the state. Board Order WT-14-08 included revisions to NR 151 which controls runoff from non-point sources of phosphorus. Board Order WT-25-08 included revisions to NR 102 and NR 217, which establish phosphorus water quality standards and WPDES (Wisconsin Pollution Discharge Elimination System) permit provisions for phosphorus, respectively.

The phosphorus rule making packages have now been sent to the legislature as the first step in the legislative review process. As an elected state official with a constituency located either in whole or in part in the District's service area, we urge you to support the proposed rule revisions contained in both Board Orders.

It is critical that revisions to NR 151 be adopted along with revisions to NR 102 and NR 217. Without effective non-point control measures, point dischargers such as the District could make major expenditures to comply with proposed revisions to NR 102 and NR 217, while significant

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sources of phosphorus are not effectively regulated and more importantly, real improvements in water quality will not be achieved.

It is also critical that the flexibility built into NR 217 be retained. A key component of NR 217 is the opportunity to use adaptive management to meet water quality goals. This innovative approach promotes watershed based decision-making, encourages water quality trading between point and non-point sources, and provides the opportunity to achieve water quality improvements in a cost effective manner.

The Natural Resources Board also unanimously adopted two resolutions related to the phosphorus rule making packages. These resolutions direct the Department to:

1. Immediately assemble a stakeholder group of those parties interested in watershed based trading to develop a trading framework, including any recommended rules or guidance to facilitate watershed based trading, and report back to the Board no later than July 1, 2011.

2. Develop guidance in consultation with stakeholders regarding TMDL implementations so that such implementation is consistent with NR 217.

While the Board resolutions may not technically be subject to the legislative review process, recognizing and supporting the resolutions during the review process will help assure timely follow through by the Department.

The District would appreciate having an opportunity to meet with you and/or your staff to answer any questions that you might have regarding the phosphorus rule making packages and potential impacts on the District and its ratepayers. Please contact either myself (phone: 608-222-1201 ext. 276; email: davet@madsewer.org) or Jon Schellpfeffer (phone: 608-222-1201, ext. 266; email: jons@madsewer.org). We can also be reached by regular mail using the address shown on the letterhead. In the meantime, I have enclosed a background document that was sent to you earlier this year in advance of the June, 2010 Natural Resources Board meeting.

Respectfully submitted;

David S. Taylor
Director of Special Projects

Enc: as stated

Phosphorus and Water Quality

Developing a Comprehensive, Integrated, and Equitable Regulatory Approach

The Madison Metropolitan Sewerage District supports clean water. It is the primary focus of our mission of protecting public health and the environment. Everything that we do every day is done with the goal of clean water in mind. We recognize that nutrients such as phosphorus can impact the quality of Wisconsin's lakes and streams, and we agree that steps need to be taken to reduce phosphorus.

The Wisconsin Department of Natural Resources (WDNR) has proposed revisions to three administrative code rules that collectively are aimed at controlling phosphorus discharges to waters of the state:

- NR 102: would establish numeric water quality criteria for phosphorus.
- NR 151: currently contains provisions to reduce runoff from farms, construction sites and urban areas. Revisions have been proposed, including new agricultural performance standards.
- NR 217: would establish a framework for implementing the phosphorus water quality criteria for point discharges.

Public hearings for proposed revisions to NR 151 have already occurred. The public comment period for NR 102 and NR 217 ends on April 30th. All three rules (NR 102, NR 217, and NR 151) will be brought to the Natural Resources Board for approval in June.

How the state moves forward to address phosphorus is very important. A comprehensive and integrated regulatory approach that addresses all sources of phosphorus is crucial to achieve real improvements in water quality in an equitable and cost effective manner.

Traditionally, regulations have primarily focused on controlling phosphorus from point dischargers, which include municipal wastewater treatment plants, industry and commercial sources. That is too narrow of a focus, because in most watersheds, the majority of phosphorus reaching lakes and streams comes from non-point sources, which include runoff from agricultural fields, construction sites, and urban areas.

There have been minimal regulations that address non-point sources of phosphorus. Proposed revisions to NR 151, which would establish agricultural performance standards, are a step in the right direction. However, the performance standards are not enforceable unless cost-sharing is provided, and cost share dollars are limited. In addition, these revisions are being vigorously opposed by many in the agricultural sector, which presents a dilemma.

Without effective non-point control measures, point dischargers such as the District could make significant expenditures to comply with proposed revisions to NR 102 and NR 217, while the main sources of phosphorus are not effectively regulated. The District estimates that it will cost $85 million to construct facilities needed to comply with the proposed revisions to NR 102 and NR 217. On a statewide basis, a recently completed evaluation estimated that wastewater treatment plants alone could spend $1.3-$1.8 billion to comply with the proposed criteria. The costs could be even higher if site specific factors are considered.

It does not make sense to spend billions of dollars to address a small percentage of the phosphorus load, while major sources of phosphorus are not effectively regulated. This approach would not result in meaningful water quality improvements and would be an inefficient use of the public's money. A better way, for our waterways and for taxpayers, would be to adopt a comprehensive, integrated and equitable approach to address phosphorus. This approach would include the following key components:

- Adoption of the pending NR 151 controls on agricultural runoff (public hearings have already taken place).
- Adoption of an adaptive management approach in NR 217 that includes establishment of interim numeric limits as part of a phased implementation strategy.
- Development of a framework that supports water quality trading[1] between point sources and non-point sources, and incorporation of trading language in NR 217. Trading could provide opportunities to achieve desired phosphorus reductions in a more cost effective manner.
- Development of total maximum daily loads (TMDLs)[2], where appropriate.
- Adoption of a watershed based permitting approach.
- Development of a sustainable funding mechanism for both point and non-point control measures.
- A comprehensive water quality monitoring program to evaluate the effectiveness of phosphorus control strategies.

This kind of balanced approach will accomplish the goal all of us are working toward-cleaner water. A plan that addresses all sources of phosphorus and includes an appropriate mix of state, federal and local funding benefits both the environment and the citizens of Wisconsin. This is the kind of plan that the state should adopt if it truly wants to have cleaner water.

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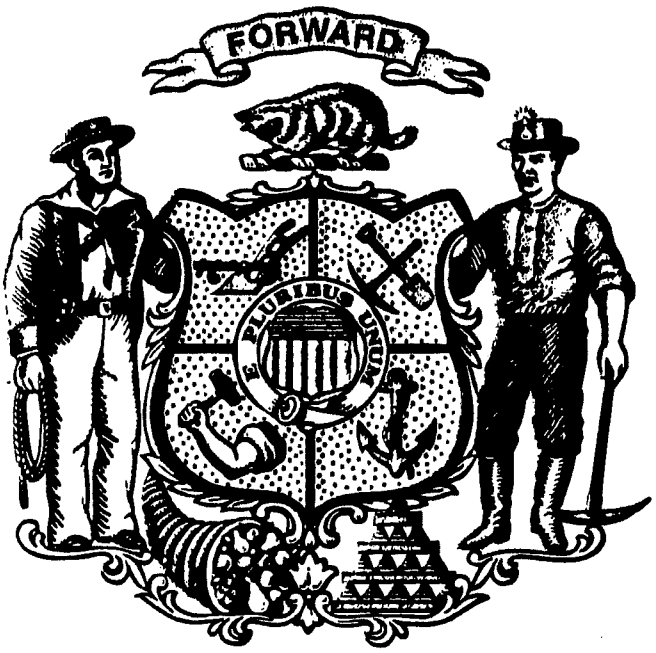
[1] **Water quality trading** is an innovative approach to achieve water quality goals more efficiently. Trading is based on the fact that sources in a watershed can face very different costs to control the same pollutant. Trading programs allow facilities facing higher pollution control costs to meet their regulatory obligations by purchasing environmentally equivalent (or superior) pollution reductions.

[2]**Total Maximum Daily Load (TMDL)** is the amount of a pollutant an impaired waterbody can receive and still meet state water quality standards. A TMDL includes an analysis of sources that cause or contribute to the impairment, and an allocation of allowable loads or load reductions among different sources of concern.


FORWARD
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TO: Wisconsin Legislators

FROM: Cooperative Network

Midwest Food Processors Association, Inc.

Wisconsin Cheese Makers Association

Wisconsin Dairy Products Association

Wisconsin Manufacturers & Commerce

Wisconsin Paper Council

DATE: July 13, 2010

RE: Clearinghouse Rule 10-035, DNR Phosphorous Regulations

As representatives of the dairy, food processing, manufacturing and paper industries in Wisconsin, we are writing to call your attention to a very expensive phosphorous regulation recently adopted by the Natural Resources Board. Clearinghouse Rule 10-035 is expected to cost ***more than $3 billion statewide***, without achieving a meaningful benefit to water quality.

Because of the rule's substantial cost, limited benefit, and hasty process for enactment, we are asking that the Legislature take the time to determine whether Clearinghouse Rule 10-035 is the most effective way to reduce phosphorous loading in Wisconsin water bodies, while at the same time protecting Wisconsin jobs and our economy. The information below is intended to provide you with important information about the impact of this rule. Please contact any of our organizations if you have any questions or need additional information.

How does this rule change current phosphorous regulations?

Point sources (businesses and municipalities with a DNR discharge permit) are already subject to phosphorous limitations of 1.0 milligrams per liter under NR 217.04 of the Wisconsin administrative code. The proposed rule would establish much more stringent phosphorous limitations for point sources, including 0.10 milligrams per liter (90% reduction) for discharges into rivers, 0.075 milligrams per liter for streams, and .04 milligrams per liter (96% reduction) for lakes.

How much phosphorous comes from point sources?

According to the DNR, an average of 20% of the phosphorous loading into Wisconsin water bodies is attributable to point sources. The remaining 80% comes from non-point sources which are not regulated by this rule. Because the rule only targets 20% of the phosphorous impairment, it will not result in a meaningful improvement to water quality.

How much is this rule expected to cost?

By all estimates, Clearinghouse rule 10-035 will be incredibly expensive. A study prepared for Wisconsin's municipal wastewater treatment plants predicted the rule would cost between ***$2.9 billion***

and $4.9 billion[1]. Those costs would be passed along to homeowners and businesses in the form of higher water fees. Another study found the treatment costs for the dairy and cheese industry to range from $1.3 million to $4.3 million *per facility*.[2] The DNR predicts the rule will cost industrial dischargers up to $440 million, and will cost municipalities up to $1.3 billion.[3] We ask legislators to consider whether spending billions of dollars to regulate 20% of the phosphorous impairment is an effective and affordable approach to addressing this problem.

Who will pay the cost of this rule?

The rule regulates point source dischargers of phosphorous, which are primarily municipal wastewater treatment facilities, paper mills, food processors, dairy processers and cheese makers. The rule's multi-billion dollar cost for municipalities will be passed along to homeowners and businesses in the form of higher water rates. For example, the municipal cost study predicted a cost up to $600 million for Milwaukee Metropolitan Sewerage District customers, and up to $295 million for customers of the Green Bay Metropolitan Sewerage District.

Although businesses of all types that are serviced by a municipal water utility will pay higher fees because of this rule, certain industries will be hit with direct costs to comply with Clearinghouse Rule 10-035. Paper mills and food processing facilities are likely to face multi-million dollar costs if they must meet the stringent phosphorous limits described above. These industries are already under extremely intensive competitive pressures based upon product cost, and are not in the position to absorb significant new expenses if they hope to remain competitive and keep jobs in Wisconsin.

What are our neighboring states doing?

While some surrounding states have proposed establishment of phosphorous standards, none have set standards for lakes, reservoirs, rivers and streams as this rule does. More importantly, ***no other Midwest state has proposed establishment of discharge limits for phosphorous***. Wisconsin simply cannot afford to be the only state in our region that punishes businesses and jobs with multi-billion dollar phosphorous regulations that fail to address the predominant source of phosphorous impairment. The viability of Wisconsin jobs will be threatened if Wisconsin employers are forced to bear the considerable costs of this rule, while competitors in other states remain immune from the "phosphorous penalty."

A better approach would involve Wisconsin petitioning the EPA to use its authority under the Clean Water Act to establish a uniform national set of regulations that strike an equitable balance between point and non-point sources of phosphorous.

What can Legislators do to help?

As written, this rule will impose severe financial hardships on Wisconsin homeowners and businesses at a time when they can least afford it – without achieving a meaningful benefit to statewide water quality. The rule was rushed through the Natural Resources Board's rulemaking process in a three-month period, which is not an adequate amount of time to fully address concerns regarding the enormous cost and limited benefit. Legislative hearings on this rule would allow for a more deliberative approach, and would present an opportunity to attempt to mitigate the rule's financial impact.

Per Capitol Mailroom requirements, this memo was distributed on behalf of the listed organizations, by:
Scott Manley, smanley@wmc.org, PO Box 352, Madison, WI 53701, 608-258-3400.

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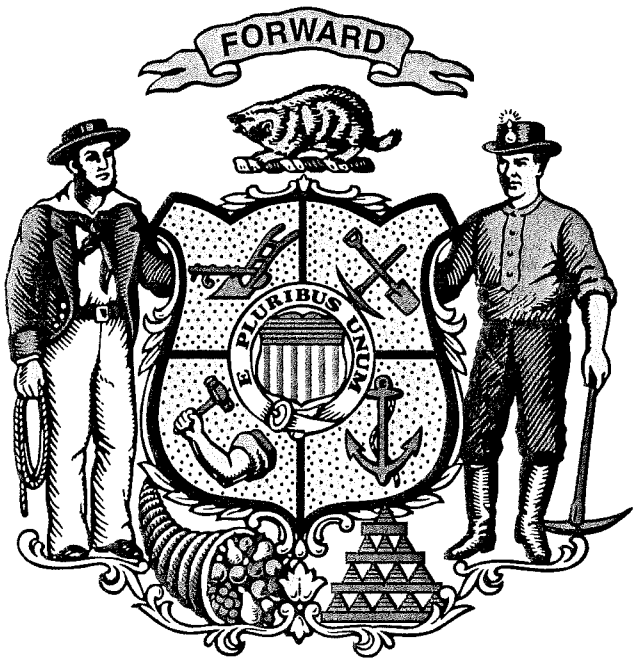
[1] Opinions of Probable Cost for Achieving Lower Effluent Phosphorous Concentrations at Wastewater Treatment Plants in Wisconsin. Strand Associates, Inc. August 2008.

[2] Potential Impact of Proposed Phosphorous Regulations on the Dairy Industry in Wisconsin. The Probst Grout, LLC. April 2010.

[3] Department of Natural Resources Fiscal Estimate, Sections III & IV. March 2010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Bier, Beth

From: Amber Meyer Smith [asmith@cleanwisconsin.org]
Sent: Wednesday, July 14, 2010 4:16 PM
To: Bier, Beth
Subject: FW: DNR Phosphorous Rule

Hey , I thought you might find some of these immediate thoughts from MEA interesting as you guys are thinking about the issue.

Amber Meyer Smith
Program Director
Clean Wisconsin
122 State St, Suite 200
Madison, WI 53703-4333
(608) 251-7020 ext. 16
asmith@cleanwisconsin.org

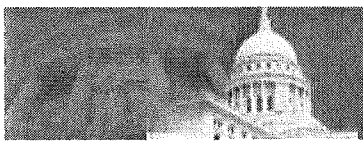
From: Betsy Lawton [mailto:blawton@midwestadvocates.org]
Sent: Wednesday, July 14, 2010 4:08 PM
To: Amber Meyer Smith; Albert Ettinger; Denny Caneff; Bill Davis; Lyman Welch; shahla.werner@sierraclub.org; George Meyer
Cc: Karen Schapiro; Melissa Malott; bvanderheiden@greatlakes.org; Bradley Klein; Kimberlee Wright
Subject: RE: DNR Phosphorous Rule

There is quite a bit of misinformation in that letter:

1) The rules do not require limits for point sources of .1 mg/L or .075 mg/L – those numbers are the water quality targets for instream phosphorus concentrations, and point sources will only need to meet those limits if they discharge to impaired waters.
2) Still not buying the 20% comes from non-point sources argument. The Fox River TMDL clearly shows that in some watersheds point sources contribute substantially more than 20% of the phosphorus pollution.
3) The $2.9 billion to 4.9 billion estimate had nothing to do with costs for industry and industry groups. That number was a inflated estimate for municipalities, and even with that estimate the municipalities aren't objecting to the rule. I also think the municipalities might have revised that number downward in a later version (but I'm not certain).
4) Some neighboring states do have limits or are working on limits – MN has established criteria for lakes, and will soon promulgate criteria for rivers. Michigan is issuing some permits with fairly stringent phosphorus limits (does Michigan count as a midwestern state?)
5) The EPA couldn't under the Clean Water Act establish regulations that "strike an equitable balance between point and non-point sources of phosphorus" because EPA has no authority to regulate nonpoint sources of phosphorus pollution under the Clean Water Act.
6) Rules were not rushed through the process without time to address concerns about costs – the Paper Council and the Midwest Food Processors both sat on the stakeholder advisory committee for the past 2 years and had plenty of time to provide feedback.

Just some thoughts.

Betsy



WISCONSIN STATE LEGISLATURE

TO: Senator Mark Miller

FROM: Cooperative Network

Midwest Food Processors Association, Inc.

Wisconsin Cheese Makers Association

Wisconsin Dairy Products Association

Wisconsin Manufacturers & Commerce

Wisconsin Paper Council

DATE: July 14, 2010 – Via Email

RE: Legislative Hearing Request for Clearinghouse Rule 10-035, DNR Phosphorous Regulations

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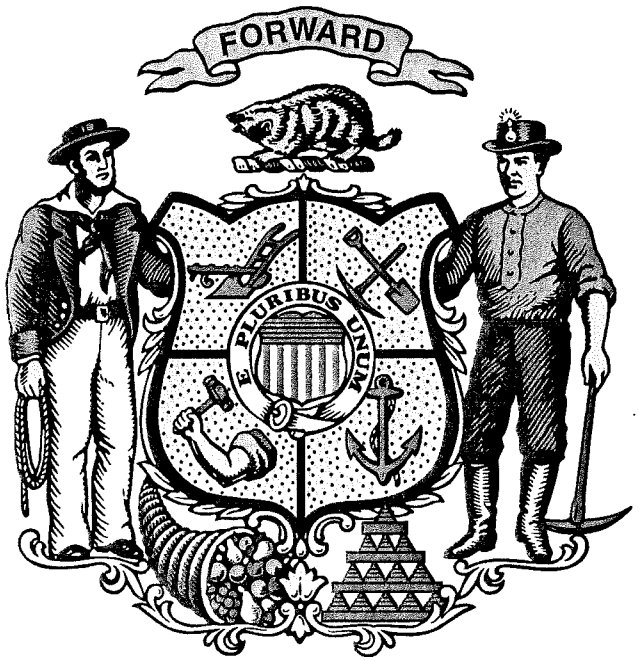
The Assembly Committee on Natural Resources recently received Clearinghouse Rule 10-035, regarding phosphorus water quality standards criteria and WPDES permit provisions for phosphorous. The above organizations respectfully request a public hearing on the rule so that legislators and the general public are thoroughly aware of the consequences of such a far-reaching rule.

Because of the rule's substantial cost, limited benefit, and hasty process for enactment, we believe a hearing is justified. According to the most conservative estimates, the rule is expected to cost Wisconsin citizens more than $3 billion statewide without achieving a meaningful benefit to water quality. The above organizations are concerned that the rule will have a profound impact on our industries and jeopardize Wisconsin jobs and our economy. We are also concerned with the short three month period taken by the Natural Resources Board to hear, review, and adopt the rule.

For the above reasons we respectfully request that you schedule a public hearing for this rule. Thank you for your consideration of our request. If you would like further information please contact a representative from any of the organizations listed above.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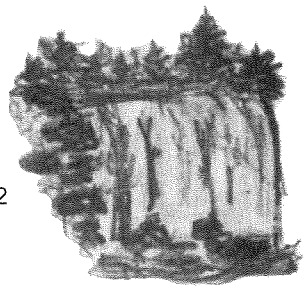
920-484-3525
fax 920-484-6201

Village of Fall River

641 South Main Street
P.O. Box 37
Fall River, Wisconsin 53932



Senator Mark Miller
PO Box 8952
Madison, WI 53707-7882

July 20, 2010

Dear Mr. Miller,

This letter comes to you from the Village Board of the Village of Fall River. The proposed phosphorus limits is of grave concern.

We currently have a lagoon based wastewater system. Over the last 40 years we have been consistently under more and more pressure to meet the ever growing DNR requirements in order to be able to discharge as needed. The costs for us range from @ $15,000 to $35,000 twice a year.

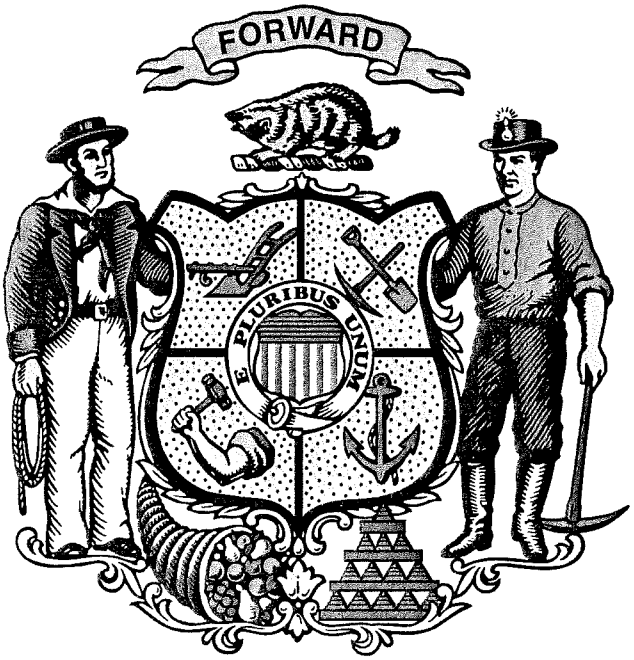
We have two major industries in Fall River that have worked diligently to find ways to eliminate or cut down on the amount of phosphorus put into their wastewater. The cost to them is not known by us, but it is a given that it has not been inexpensive.

We have worked very hard the last year and have entered into an Inter-Municipal agreement with the City of Columbus for service of our wastewater. This means less work for the DNR and probably more costs to Columbus that will be passed on to us. I believe they are in a better position than many of the treatment facilities in Wisconsin.

This is a plea to look at agricultural runoff, failing septic systems and other sources that account for up to 80% of the phosphorus pollution in Wisconsin waters. This plea comes to you from us, as representatives of the citizens of Fall River. I believe you have heard from many municipality representatives – which represent hundreds of thousands of your constituents. We need someone to represent us in this matter. We agree that we need farmers and nice lake front properties – but they should be following the same rules as we have to when it comes to polluting our waters. You should take the time to look at Lazy Lake and see all the weeds that are there for most of year that there is not ice on the lake. That comes from farmland and septic systems – not from our wastewater treatment plant! Please represent us on this proposed phosphorus regulation and vote NO.

Sincerely,

The Fall River Village Board
President, Dale Standke, Trustees John Ninmann, Steve Obrion, Judy Robbins, Duane Durtschi, Ron Kennedy and Jeff Slotten. All can be reached with a response to the address above.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PLOVER
WISCONSIN

PLOVER WASTEWATER UTILITY

PO Box 37
Plover WI 54467
715 345-5259
Fax 715 345-5249

July 23, 2010

Mark Miller
Room 317 East
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

RE: Comments Regarding Proposed Amendments to NR 102 and NR 217

Dear Mr. Miller,

The Village of Plover has reviewed the proposed amendments to NR 102 and NR 217 and wish to re-instate the following comments on the rules.

We agree in concept that is in the best interest of the State to control phosphorus discharges to lakes and streams to preserve water quality. We also understand that the rule making process is driven by Federal Government rules promulgated by the EPA and that lacking action by the State, EPA will impose criteria upon permitted dischargers.

Unfortunately, the proposed State rules and the Federal "hammer" behind them ignore the reality that up to 80% of the phosphorus entering lakes and streams comes from sources that are beyond the reach of these regulations. In other words, 80% of the problem continues to go unaddressed.

This issue has been raised for many years with the various State agencies that are responsible to regulate non point sources of phosphorus. Very little has been done to address the non-point sources that generate up to 80% of the phosphorus.

The discharge limits that will result from the new water quality criteria will be in excess of a tenfold decrease from the current allowable discharge levels. This will require an entirely new stage of treatment processes to obtain this level of removal. The capital cost of the necessary improvements for the Village of Plover is estimated at approximately $5,000,000. While this may be just a number to regulators, this expense will have a significant impact on the customers of the Utility. In addition to the cost for equipment and installation, operating costs attributed to the new treatment process will amount to about $100,000 per year. These costs will result in a 66% increase in the rate a typical Utility customer will pay.

This will create a political firestorm when rate payers realize they are paying significantly increased rates and the investment will do little to improve the problems associated with excess phosphorus discharged to lakes and streams.

The Plover Wastewater Treatment Facility removes an average of 96% of the phosphorus that enters the facility. The proposed regulations would require removal efficiency of just over 99% to meet the anticipated limit. This calculates to just over 3 pounds of additional phosphorus removed each day. A conservative cost estimate to remove this additional phosphorus is about $1,650 per day, resulting in a cost of $505 per pound of additional phosphorus removed.

For comparison, a 50 pound bag of 17-17-17 agricultural fertilizer, which costs $15.35, has 8 1/2 pounds of phosphorus per bag. The cost to reduce an equivalent amount of phosphorus from this source is $5.88 per pound.

Why are municipal customers and industries being forced to pay a premium of 100 times the cost per pound to remove this small amount of phosphorus when there are much less expensive alternatives that could result quantum improvements in water quality across the State.

Wisconsin has a national reputation for being an expensive place to live and conduct business. Placing this massive cost burden on municipalities and industries will only add the the negative perception of Wisconsin's business climate and be a disincentive to growth.

Wisconsin also has a national reputation as a leader in water quality issues and environmental protection. A comprehensive and common sense approach to reducing phosphorus discharges will benefit the environment more than the narrow focus of these proposed regulations. We strongly urge the DNR to allow enough flexibility in the rules to allow innovative and less expensive alternatives to be considered as equivalent to meeting a strict numerical limit. This approach would serve to target the need to reduce phosphorus more efficiently and more effectively.

And finally, companion rules or control strategies should be developed or strengthened to address the vast majority of phosphorus discharge which comes from non point sources.

Thank you for the opportunity to comment on these proposed rules.

Sincerely,

Dan Schlutter
Village President

Dan Mahoney
Village Administrator

Rich Boden
Wastewater System Manager

Lyle Lutz
Asst. Wastewater System Manager

cc: Julie Lassa — Wisconsin State Senator
Louis Molepske Jr — Wisconsin State Representative
Amy Sue Vruwink — Wisconsin State Representative

Consolidated Koshkonong
SANITARY
DISTRICT

328 E. Ellendale Road • Edgerton, WI 53534 • Telephone: 608-868-7191 608-884-6447 • Fax: 608-868-5325
www.cksdistrict.org

July 23, 2010

Mr. Matthew Frank, Secretary
Wisconsin Department of Natural Resources
101 South Webster Street-AD/8
Madison, WI 53703

Re: WPDES Permit Reissuance-Consolidated Koshkonong Sanitary District
Clearinghouse Rule 10-35 (Relating to Phosphorus Water Quality Standards)

Dear Mr. Frank:

The Consolidated Koshkonong Sanitary District is requesting an expedited reissuance of their WPDES permit which expired on December 31, 2008. As required by Wisconsin Administrative Code, the District submitted the application for reissuance before June 30, 2008. To date, the District has received no written correspondence regarding this permit, a copy of the proposed limits for the reissued permit or a draft permit for review. The District is requesting reissuance of their permit prior to the effective date for clearinghouse rule 10-35(Phosphorus Standards).

Clearing House Rule 10-35 (Phosphorus Standards)

Wisconsin DNR efforts regarding development of clearinghouse rule 10-35 (Phosphorus Standards) began on February 1, 2008. Draft rules for public hearing were authorized for hearing by the Wisconsin Natural Resources Board on March 16, 2010 with four hearings scheduled for April 2010. This was more than 15 months after the expiration of our current WPDES permit. Subsequent to these hearings, the Wisconsin DNR issued the proposed rule for public review on or about June 17, 2010 prior to their June 22 and June 23, 2010 Natural Resources Board meeting. These rules contain significant modifications to the hearing rules which will impact the potential use of the rules by the Consolidated Koshkonong Sanitary District and many other dischargers.

The District would like to consider effluent trading as a potential solution to the installation of expensive (both initial costs and operating costs) wastewater treatment technology. Trading, in concept, would allow the Village to identify alternative practices which would remove a stipulated amount of phosphorus in their watershed. At the present time, specifically identifying this amount of phosphorus removal is not possible since there is no state-wide standard for effluent trading.

The rule as approved by the Wisconsin Natural Resources Board appears to preclude the opportunity for the District to consider trading as an alternative unless their permit is reissued prior to the effective date of the rule. The rule as proposed for adaptive management (NR 217.17 (4)) in the public hearing draft was approximately one page in length and contained about 375 words while the rule approved by the Wisconsin Natural Resources Board (NR 217.18) is about four pages in length and contains about 1,100 words of which only about 130 words from the public hearing rule remain in the approved rule. Needless to say, there were many changes to this rule language and with only 6 days between the release of the rule for board approval and the actual approval there was not sufficient time for a reasonable review of the proposed language.

The rule as proposed requires the permittee to request the use of adaptive management with the application for reissuance for their WPDES permit. This is not possible for the District since the rule was approved by the Wisconsin Natural Resources Board 18 months after our current WPDES permit expired. The rule as approved also requires the submittal of an approvable adaptive management plan which requires the identification of partners and potentially contracts with those partners. This would likely require a two year period provided the District had specific guidance on methods for trading which do not exist. If the Wisconsin DNR is unable to reissue our WPDES permit prior to the effective date of the rule, we are requesting that the Wisconsin DNR provide the District with at least two years to prepare the necessary information to apply for an adaptive management approach. There are many actions required to allow the District to determine if the adaptive management approach would be a preferred option. These include:

1. The District's review of the proposed trading framework which the Natural Resources Board on June 23, 2010 required the Department to immediately assemble a stakeholder group and report back to the board no later than July 1, 2011.

2. Allows the District to develop the necessary information required by the adaptive management approach including potential trading partners.

3. Allows DNR to promulgate total nitrogen requirements, if determined necessary, to comply with the notice of intent to sue US EPA over promulgation of nutrient criteria which includes nitrogen as well as phosphorus criteria.

4. Allows demonstration of the effectiveness of the proposed NR 151 rules with regards to non-point source contribution to phosphorus loadings.

5. Allows demonstration of the effectiveness of 2009 Wisconsin Act 9 which limits the use phosphorus in lawn fertilizers.

6. Allows the District to account for the effect on influent phosphorus concentrations of 2009 Wisconsin Act 63 which limits phosphorus use in dishwasher detergents.

7. Allows the Wisconsin DNR to complete the Rock River TMDL and implementation plan.

Provided that the Wisconsin DNR staff is capable of developing the necessary trading framework by July 1, 2011, the District would potentially be in a position to complete the necessary items to request an adaptive management approach for our wastewater treatment facility by January 1, 2013.

We appreciate consideration of these issues. We believe that we are not the only community in the state with similar issues with regard to these rules.

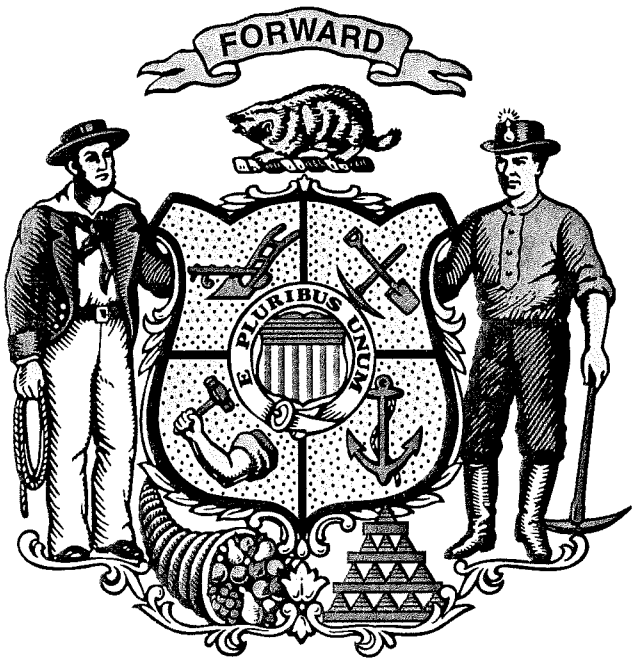
Please feel free to call with any questions or concerns.

Sincerely,

Consolidated Koshkonong Sanitary District

John Traynor
Vice President

c: Representative Kim Hixson
Senator Judy Robson
Representative Andy Jorgensen
Senator Scott Fitzgerald
Representative Spencer Black, Chair, Assembly Natural Resources Committee
Representative Chris Danou Vice- Chair, Assembly Natural Resources Committee
Senator Mark Miller, Chair, Senate Environment Committee.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City of Eagle River

525 E. Maple Street • P.O. Box 1269 • Eagle River • WI 54521
Phone: (715) 479-8682 • Fax: (715) 479-9674

City Administrator

www.eagleriver.govoffice2.com
e-mail: administrator@ci.eagle-river.wi.us

July 26, 2010

Senator Mark Miller, Chairman of the Senate Environmental Committee

NR 102 and NR 217 Phosphorus Limits

The City of Eagle River is formally registering its opposition to the proposed phosphorus limit changes by NR 102 and NR 217.

To meet these new standards, we anticipate that Eagle River would be required to install tertiary filtration system along with added chemical treatment. Eagle River has significant site restrictions which would make it very difficult to construct a tertiary filtration system. We anticipate that the overall capital cost would be approximately $4.2 million dollars and an expected increase of $25,000 per year in operational costs for the treatment facility. Adding this new debt burden and operational costs would drive up Eagle Rivers fixed rate charges to the residential user by approximately 126%.

Eagle River currently has difficulty competing with septic systems, mound systems and holding tank systems for development. Doubling our current rates would drive development further away from the Eagle River sewage treatment plant.

Properly working septic systems can discharge higher levels of phosphorus into the environment than the current permitted level at Eagle River sewage treatment facility. Many holding tanks in Wisconsin are not properly managed; therefore, holding tank systems also have the potential to discharge higher levels of phosphorus into the environment.

If these new rules end up promoting development using septic, mound and holding tank systems, then the rules will actually increase phosphorus into Wisconsin's waterways.

We encourage the DNR to seek a comprehensive approach to control phosphorus discharge into the waterways of Wisconsin. The current proposal would place an undue burden on the City of Eagle River residents. Thank you for considering our comments.

Best regards;

Joseph F. Laux, Eagle River City Administrator

Jon Schellpfeffer: DNR shouldn't single out treatment plants

By JON W. SCHELLPFEFFER | Posted: Sunday, May 2, 2010 12:07 pm

The state Department of Natural Resources is considering new rules aimed at reducing the amount of phosphorus in our lakes, rivers and streams.

That's good, because too much phosphorus can lead to harmful algae blooms, which severely deplete the oxygen supply in water, endangering fish and other aquatic life.

But a traditional regulatory approach - focusing primarily on municipal wastewater treatment plants, industry and commercial sources of phosphorus - will not be effective in achieving meaningful improvements in water quality.

That is too narrow of a focus. In most watersheds, those sources account for only 10 percent to 20 percent of the phosphorus reaching Wisconsin's waterways.

The majority of phosphorus comes from runoff from agricultural fields, construction sites and urban areas. Without effective control of these sources, phosphorus discharges to water will not be significantly reduced.

On a statewide basis, wastewater treatment plants alone could spend between $1.3 billion and $1.8 billion to comply with proposed phosphorus criteria.

It does not make sense to spend that kind of money to address a small percentage of the phosphorus load, while major sources of phosphorus are not effectively regulated. This would be an inefficient use of the public's money.

A better way is to adopt a comprehensive, integrated and equitable approach to address phosphorus from all sources.

Under a separate rule-making effort, the state is proposing new provisions to control agricultural sources of phosphorus. Adopting these in tandem with rules that further reduce phosphorus from municipal wastewater treatment plants, industry and commercial sources is essential.

In addition, the state should develop a regulatory framework that encourages innovative and cost-effective solutions with a reasonable timeline for implementation.

This would include issuing permits on a watershed basis and establishing a water-quality trading program. A trading program acknowledges the fact that phosphorus sources in a watershed can face very different control costs.

A trading program would allow facilities facing higher phosphorus control costs to meet their regulatory obligations by funding lower-cost practices that accomplish the same or greater overall phosphorus control, such as funding best management practices for agriculture.

Any phosphorus reduction plan needs adequate long-term funding targeted at specific water quality concerns using a prioritized approach. The plan also needs to include a comprehensive monitoring program to evaluate the effectiveness of phosphorus control strategies.

Clean water is important, and a plan that actually helps promote water quality, gets results, and is cost-effective should move forward. Both the environment and the citizens of Wisconsin will benefit from this type of approach.

Schellpfeffer is chief engineer and director of the Madison Metropolitan Sewerage District.

122 West Washington Avenue
Suite 300
Madison, Wisconsin 53703

608/267-2380
800/991-5502
Fax: 608/267-0645

E-mail: league@lwm-info.org
www.lwm-info.org

To: Mr. Jim Baumann, Bureau of Watershed Management, Department of Natural Resources

From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities

Date: April 22, 2010

Re: Comments on Revisions to NR 102, NR 151, and NR 217, Phosphorus Rules

The League of Wisconsin Municipalities, on behalf of its 582 members, submits these comments on proposed revisions to NR 102, NR 151, and NR 217, requiring municipal wastewater treatment plants to take additional steps to reduce levels of phosphorus discharged into Wisconsin lakes and rivers. The League is a voluntary association of Wisconsin cities and villages working to advance local government. First established in 1898, its membership consists of 190 cities and 392 villages.

Most of our members have municipal wastewater treatment plants subject to these rules. For more than half of the 540 municipal treatment plants in this state, the proposed rules will result in an effluent limit in the range of 0.1 mg/l -- 10 times lower than the current standard in NR 217. While lagoon and stabilization systems will be able to apply for a one-time streamlined variance, only about 142 systems statewide will be able to take advantage of this option. All other systems, including those currently exempt under the current NR 217 will be subject to the new numeric standards.

We Support the Following Goals:

- **We support a comprehensive and integrated approach that addresses all sources of phosphorus.** "Point sources" like municipal treatment plants account for 20% or less of the phosphorus loading in most of our major water basins. Clearly, controlling point sources alone will not achieve the goal of clean water. Achieving that goal requires control of agricultural and other sources of phosphorus as well.
- **We support cost effective measures to reduce phosphorus.** To meet the proposed water quality standards for phosphorus, many municipalities will be forced to build new filtration systems that statewide it is estimated will cost from $1.3 billion to $4.3 billion. This extraordinary cost will be borne exclusively by municipal residents and businesses.

  The average cost per pound of phosphorus removed is $200 to $300 per pound from treatment plants compared with $30 per pound for removing phosphorus from agricultural practices.

Phosphorus can be reduced in a much more cost effective manner on the agricultural side. Spending billions of dollars to reduce 20% of the problem is the least effective and most costly way to address phosphorus. It simply does not make sense and it is not fair to municipal residents and businesses. It is imperative that a better solution be found.

We Support the Following Actions:

- We support the revisions to NR 151 establishing phosphorus standards for agricultural runoff. It is critical that DNR adopt and the legislature support the change to NR 151 that creates a phosphorus index which will serve to limit the amount of phosphorus agricultural producers can discharge into surface water.

- We support provisions in NR 217 that allow for flexible compliance options, watershed based approaches and phased implementation. Successful and cost-effective reductions of phosphorus will only be achieved when the watershed is looked at as a whole, and all sources are required to work together. One way that can be accomplished is through flexible watershed based permits and a trading program that allows municipalities to make reductions offsite rather than building expensive new filtration systems. Municipalities should be given adequate time and flexibility to work with nonpoint sources so that cost effective solutions can be achieved.

- We support the development of a sustainable funding mechanism to help pay the cost of implementing both point and nonpoint control measures. The proposed plan should include having the federal and state government as strong funding partners in this effort. NR 151 requires state cost sharing in order to enforce agricultural runoff rules. It is imperative that the state adequately fund cost share. If clean water is a priority that requires us to spend money, we need to do so in a cost effective and fair manner that gets results. All of the state should share in this burden equally.

  It is 10 times cheaper and much more effective to fund agricultural practices than impose filtration technology on municipal treatment plants and their ratepayers.

Thanks for considering our comments on the new phosphorus standards.