

Department of Natural Resources
Testimony Before the Senate Committee on Environment
Clearinghouse Rule 10-035
Phosphorus Water Quality Standards
July 28, 2010

Thank you Chairman Miller and members of the committee for the opportunity to appear before you to discuss revisions to Chapters NR 102 and NR 217, Wisconsin Administrative Code, that are very important to maintaining and improving water quality in our state. These rules establish water quality standards and implementation processes and options for phosphorus – the nutrient that has perhaps the most impact to the condition of our state's waters.

Wisconsin has 172 lakes, rivers and streams currently listed as impaired waters due to the unmet challenge of phosphorus, other nutrients and sedimentation. The water quality problems caused by phosphorus are a prime example of how clean water is important to Wisconsin's quality of life and our \$13 billion tourism industry. These problems may be in the form of low oxygen levels in streams which threatens aquatic life, nuisance algae blooms on lakes or algal mats on Lake Michigan beaches that not only inhibit people from swimming, but also negatively impact resorts and other businesses depending on water front use. There are also the significant odor issues that these algae blooms cause all of us to endure. In the worst cases, the algal blooms may produce toxic conditions that have resulted in concerns to human health. In 2009 there were 35 reported health cases in Wisconsin due to algae blooms. Excessive phosphorus loading degrades habitat for fish spawning and depletes oxygen levels which of course negatively affects the fish population as well as the \$2.75 billion fishing industry and untold damage to property values of those living on our lakes and rivers. In addition, 30% of our citizens obtain their drinking water from surface water sources. The impacts of excessive phosphorus on water quality contribute significantly to the cost of treatment to drinking water standards.

In 2001, the department, in collaboration with the United States Geological Survey, began a study on 240 streams and 42 rivers to provide information needed to establish nutrient water quality standards for rivers and streams in Wisconsin. A vast amount of lakes data collected by the department through its citizen-based lakes monitoring network was also analyzed to establish nutrient criteria for lakes. Data and analysis from the State of Minnesota that it used to establish nutrient criteria for lakes was also reviewed. This scientific data was subjected to extensive and varied statistical analysis to derive correlations between phosphorus concentrations and the diversity and health of the biotic systems in our streams, rivers and lakes.

The result was that the department proposed standards and held an initial technical advisory committee meeting with stakeholders in February, 2008. Numerous meetings with the Technical Advisory Committee were held over the next twenty months which focused largely on implementation procedures. The department held public hearings on the proposed rule in April 2010.

However, in November 2009, a number of environmental groups formally issued a notice of intent to the US Environmental Protection Agency (EPA) that they intended to sue EPA to require them to promulgate numeric nutrient water quality standards for Wisconsin. EPA has agreed to delay their process to promulgate standards for phosphorus, pending the results of this effort before you today. If EPA does establish phosphorus standards for Wisconsin, they can be expected to be more stringent than those being proposed today and will lack the implementation flexibilities we have incorporated, significantly increasing the cost. In Florida, where EPA has begun the standards process for that state, compliance costs are estimated to exceed \$50 billion.

The current effluent standards for point source discharge permits for phosphorus implemented in Wisconsin were established in the early 1990s and are technology-based. This means that the standard is based on what could be achieved using the best available technology readily available at that time. This standard is generally 1.0 mg/L, but alternate limits can be allowed. The water quality-based limits being proposed today are

derived from the scientific studies previously described and reflect what is needed to achieve water quality that supports a diverse biotic, including fish, community, and allows people to swim and recreate in the water without concern of getting sick. I have listed these standards in an attachment to my comments. Please note that they are expressed in the rule in micrograms (ug) which is 1/1000th of a milligram (mg).

Since most of the discussion surrounding this proposal has been regarding implementation issues, I would like to focus the balance of my remarks on this topic. First I wish to acknowledge that the rule proposal in front of you directly addresses point sources of phosphorus. Nonpoint sources of phosphorus are only indirectly addressed. This is because nonpoint sources are addressed in another rule, NR 151, which is also currently before the legislature. A Hearing will be held by the Senate Agriculture Committees this morning and the Assembly Agriculture Committee held a hearing last Wednesday. The rules before you, in combination with NR 151, take a comprehensive approach that combats this problem of excess phosphorus on a watershed basis, and engages both point and non-point sources rather than one economic sector at a time. They ensure that all stakeholders are at the table helping to ensure that our waters meet the basic tenants of swimmable and drinkable in the most cost effective manner possible.

Implementation of any water quality standard for point sources starts with an effluent limitation in a water discharge permit. NR 217, the implementation rule before you, contains an equation to calculate this effluent limit. However, if the water body that receives the discharge already exceeds the standard, the calculated limit will likely be below the standard, so the minimum default limit is the standard itself. For example, in the case of a river that exceeds the standard, the limit would be set at the criterion, or 0.1 mg / L. If we just stopped there (which is where EPA would stop) then some of the concerns expressed regarding the cost of this rule would be valid. I also want to note that ½ of our waters currently meet the proposed standards, and facilities discharging to waters meeting the standards will likely see little or no change to their current effluent limits.

However, the department has included a number of policies and flexibilities designed to promote a more cost-effective approach by allowing facilities time to plan and determine the true extent of actions necessary and by recognizing the contribution from nonpoint sources, that often exceed those of the point sources, and are often less costly to address.

While EPA usually allows schedules of compliance for facilities to meet more stringent effluent limits in permits to extend only within a permit term, which is at most five years and often as little as two or three years, this proposed rule allows compliance schedules to extend seven to nine years, depending on the complexity and scope of any necessary capital improvements. This will allow facilities time to plan for the most cost-effective alternatives available and arrange the most advantageous funding.

The rule also provides that limits may be established based on a total maximum daily load (TMDL) analysis where a discharge is into a receiving water that is impaired due to excess phosphorus. A TMDL takes into account all sources of a pollutant such as phosphorus, and a point source limit will be based on the proportion of contribution and the reduction required of that contribution to meet the water quality standard. For example, the Department is currently engaged in developing a TMDL for the Upper Fox River watershed, in which is located the City of Berlin. Preliminary results show that Berlin's permit limit may only need to be reduced from 1 milligram per liter to 0.8 to 0.9 milligrams per liter. Since Berlin's discharge is currently averaging less than 0.7 milligrams per liter of phosphorus in their effluent, they would not be required to make any changes to their operation or facility.

In addition to extended compliance schedules and TMDL-based limits that take into account the nonpoint contributions, the department, in conjunction with municipal, industrial and environmental stakeholders, has developed an adaptive management option to provide further flexibility in implementing these standards. The watershed adaptive management flexibility option offered in the rule proposal is designed to help address nonpoint source pollution impacts while lowering costs for point sources. A point source choosing this option can be allowed up to three permit terms (again, a permit term is 5

years) to implement a plan to work with nonpoint sources that discharge to the same receiving water. In the meantime, the department will work with the point source in a stepped approach to ensure that the point source is not compelled to over comply. The point source receives an interim limit (0.6 milligrams/liter) in the first permit term and another interim limit (0.5 milligrams/liter) in the second permit term – if necessary. This allows the facility and the department time to work with nonpoint sources to reduce their phosphorus input based on a plan proportionate to the point sources contribution. Cost benefits of this option include, preventing over compliance by point sources by delaying and possibly eliminating (if addressing nonpoint sources results in meeting water quality standards) the need for capitol improvements to the facility, further cost reductions through improvements in technology, and providing time for the facility to establish pollution trading contracts if they wish, with nonpoint sources where reductions of phosphorus on a per pound basis are significantly less. In addition, delaying the need to engage in facility upgrades may allow the facility to make any necessary capitol improvements at the same time it would be upgrading the facility anyway due to it reaching the end of its normal life cycle.

In the unusual cases where compliance with an extremely low limit will result in widespread social and economic impacts – including significant impacts on profitability – a municipal or industrial discharger has the ability to apply for a variance. The rule contains a streamlined procedure for lagoon and stabilization pond systems (found in many small communities with very limited ability to fund an expensive treatment plant upgrade), but variances remain available for any municipality or industry through existing statutory and rule provisions. Many facilities now receive alternative limits through variances well above the current technology-based limit of 1 milligram per liter. Some have limits as high as 5 milligrams per liter. This is a good example of the Department's past practice of using variance flexibility to deal with technology issues and/or adverse economic impacts while implementing environmental standards.

In conclusion, these proposed rules, NR 102 and NR 217, in conjunction with the proposed revisions to the nonpoint performance standards –NR 151, recognizes and provides a comprehensive approach to addressing the largest remaining threat to Wisconsin's water quality, excess phosphorus. With point and nonpoint sources working together, these rules provide a framework to identify and determine the scope of phosphorus discharges in the watersheds of the state and further provide tools and flexibility to address them in a cost-effective manner. The concerns over cost expressed by many are based on assuming a worst case scenario of every facility being forced to comply with the most stringent effluent limits. They do not take into account the fact that fully ½ of our waters already meet the standards, and facilities discharging into these waters will very likely not experience any change in their limits. They do not take into account the cost-reduction flexibilities afforded in the proposal of increased compliance schedules, TMDL based limits, the adaptive management option or the availability of variances. Those objecting to the proposal also do not take into account that if this proposal is not adopted, EPA will adopt phosphorus standards for the state which will be more stringent, not founded on detailed Wisconsin-based science and that will not contain the cost reduction suite of flexibilities contained in this proposal. As in Florida, the cost of an EPA imposed set of phosphorus standards could exceed even the worst case estimates for Wisconsin by a factor of 10.

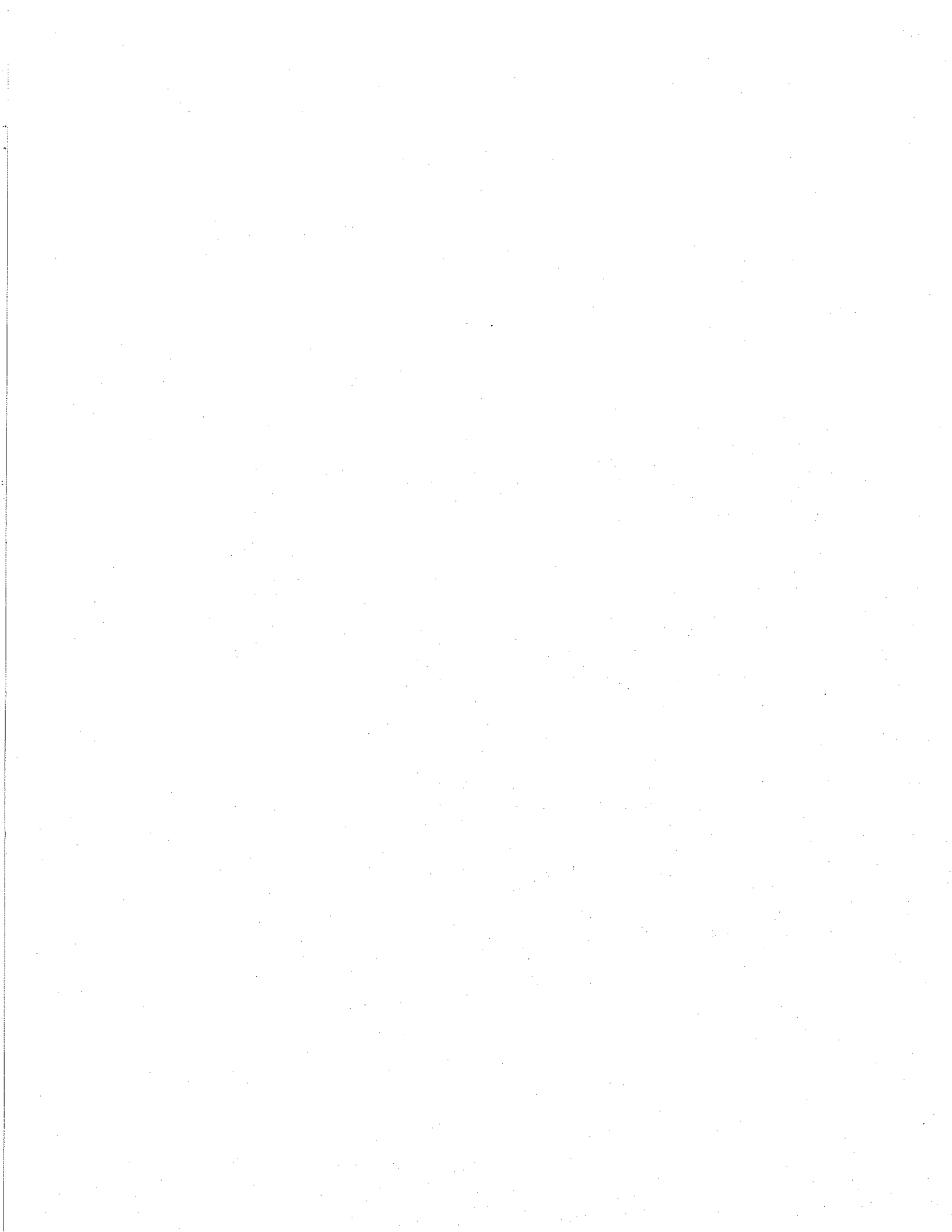
The rules before you provide a numeric measure of what is needed to achieve water quality in terms of phosphorus in state waters and provide the most cost-effective measures available to achieve them. We urge you to support their adoption and are available to answer any question you may have.

**Summary Table of Proposed Phosphorus Standards for Wisconsin
Waters in NR 102**

<u>Proposed Standards</u>	<u>Standard (ug)</u>	<u>Standard (mg)</u>
	micrograms	milligrams
<u>Flowing Waters</u>		
Rivers (enumerated in rule)	100	0.100
Streams	75	0.075
<u>Lakes</u>		
Stratified 2-story fishery	15	0.015
Drainage and stratified	30	0.030
Drainage, not stratified	40	0.040
Seepage and stratified	20	0.020
Seepage, not stratified	40	0.040
<u>Reservoirs*</u>		
Stratified	30	0.030
Not Stratified	40	0.040
Impoundments*	Same as the entering river or stream (100 or 75)	Same as the entering river or stream (0.100 or 0.075)
<u>Great Lakes**</u>		
Lake Superior	5	0.005
Lake Michigan	7	0.007

* A reservoir is a waterbody with a constructed outlet structure intended to impound water and raise the depth by more than two times relative to the conditions prior to the construction of the dam and that has a mean water residence time of 14 days or more under summer mean flow conditions. An impoundment is impounded water that does not meet the depth or residence times that define a reservoir.

** The standards for the Great Lakes are those adopted by the International Joint Commission (IJC).





TO: Members, Senate Committee on Environment
FROM: James Buchen, Vice President, Government Relations
DATE: July 28, 2010
RE: Clearinghouse Rule 10-035, Proposed Phosphorous Regulations

Wisconsin Manufacturers & Commerce (WMC) opposes the proposed phosphorous discharge rule in its current form, and we therefore respectfully urge you to seek modifications addressing the concerns noted below. In the absence of revisions that significantly reduce compliance costs, we ask that you object to the rule.

Before noting our specific concerns with the rule, WMC wishes to make clear that we support the goal of improved water quality and a reduction in algae blooms in Wisconsin waterways. We are proud of the significant strides our members have already made with respect to reduced phosphorous discharges, and believe that additional reductions can be made at a modest cost. However, we do not believe the DNR has identified the prime regulatory target in this rule (non-point source sector), nor do we believe the rule as written will lead to affordable reductions in phosphorous.

WMC also wishes to express our appreciation to DNR staff who took the time to meet with industry stakeholders on multiple occasions to discuss this rule. While efforts to attempt to contain compliance costs and add flexibility are commendable, the package before you remains a tremendously expensive rule for homeowners and businesses – especially the paper and food processing industries – both of which have struggled economically in recent years.

Perhaps your most important consideration as you perform your legislative review duty is whether the regulatory path proposed in this rule will result in meaningful improvements in water quality, and whether the regulations are cost effective. For the reasons cited below, we believe Clearinghouse Rule 10-035 fails the test on both accounts:

The Rule Will Add Substantial Cost To Wisconsin Companies

Facilities receiving a stringent water quality based effluent limit (WQBEL) for phosphorous are likely to face extraordinary new costs as a result of this rule. As the DNR noted in the rule analysis, "compliance would likely require installation of additional treatment processes, such as filtration, at a substantial capital cost with increased operation and maintenance costs." The Department's fiscal analysis suggests the rule will impact an estimated 35 industrial facilities with an aggregate cost approaching \$440 million on a statewide basis. That amounts to an average of roughly \$12.5 million per facility.

Feedback from WMC members suggests that compliance costs will vary widely depending on the case-specific circumstances of each facility. However, these costs will be measured on the low end at \$2-3 million per facility, and climb in excess of \$20 million on the high end.

The paper and food processing industries in Wisconsin are already under extremely intensive competitive pressures in both the national and international marketplace. As such, Wisconsin companies are not in the position to absorb significant new expenses – any attempt to pass new regulatory costs on to consumers will merely price our companies out of the market. Moreover, saddling Wisconsin facilities with higher costs will make it increasingly likely that Wisconsin-based operating capacity will be shifted to sister facilities in other states with a lower cost structure. This would result in job migration out of our state, and economic dislocation within our state.

Unlike municipal water utilities, which have the ability to distribute the enormous cost of this rule across a captive rate base, industrial facilities have no ability to recover the multi-million dollar cost of this proposed rule.

When layered on top of the thermal discharge rule, which also has the potential for substantial new costs, these regulations will make it increasingly difficult for Wisconsin facilities to remain economically viable when compared to their counterparts in other states. Wisconsin has already lost more than 60,000 manufacturing jobs in the past two years, and we cannot afford to lose more because of an expensive phosphorous rule that does very little to address the vast majority of nutrient loading in our waterways.

Municipal Treatment Costs Will Be Passed Along to Wisconsin Businesses

While WMC is very worried about the economic impact of this rule on our members that discharge directly to a water body, we are also very concerned with the financial implications of this rule on manufacturers that discharge to a municipal wastewater treatment system. The DNR's fiscal analysis predicts this rule will cost municipal water utilities in excess of \$1.3 billion. We believe this figure is overly conservative. An engineering analysis prepared for the Municipal Environmental Group suggests the rule could cost municipal treatment facilities and their ratepayers in excess of \$4 billion dollars.

Adding billions of dollars to the cost of municipal water treatment will increase costs for all water consumers, as these costs will be passed along to ratepayers in the form of higher fees. Large industrial water users, especially those that discharge phosphorous to municipal treatment systems, will be disproportionately impacted when the financial cost of this rule is passed through to customers. For example, one of our members was told by their municipal wastewater utility to expect a 25% increase in wastewater fees if this rule is enacted. *We are very concerned that adding costs of this magnitude to our economy at a time when we are struggling to emerge from a recession will only serve to weaken our state's economic position.*

Industrial Sources Are Not The Predominant Source of Phosphorous Impairment

Current regulations in Chapter NR 217 of the Wisconsin Administrative Code establish technology-based phosphorous discharge limits for both industrial and municipal dischargers. These limits are generally set at 1 mg/l unless an alternative limit has been approved. Many

facilities discharge at a concentration well below that which is allowed under current law. As a general matter, point source dischargers are already well-controlled for phosphorous.

The DNR's own analysis shows that 80 percent of the impairment due to phosphorous occurs from nonpoint sources – not industrial or municipal treatment works. By targeting this rule at a comparatively small fraction of the nutrient impairment, any water quality benefit will be correspondingly minimal. The extreme cost of the stringent effluent limits resulting from this rule cannot be justified by the uncertain and unlikely water quality improvements that may occur in the future.

This Rule Will Make Wisconsin A Costly Regulatory Island In The Midwest

As noted earlier, Wisconsin companies compete in a regional, national and international marketplace where cost often dictates success or failure by the slimmest of margins. WMC is very concerned that unique and costly "Wisconsin only" phosphorous limits from this rule will severely inhibit our overall economic competitiveness. That is, 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."

While some surrounding states have proposed establishment of a water quality criteria for phosphorous, none have set a criteria for lakes, reservoirs, rivers and streams in the manner that this rule does. More importantly, no other Midwest state has proposed establishment of water quality based effluent limits for phosphorous. Wisconsin simply cannot afford to be the only state in our region that punishes businesses and jobs with multi-billion phosphorous regulations that will make little or no difference in water quality. If this rule is indeed being driven by Clean Water Act requirements, *the DNR and Legislature should postpone any revisions to NR 217 unless and until the EPA promulgates a uniform national regulation that strikes an equitable balance between point and nonpoint source discharges of phosphorous.*

Important Changes Must Be Made To This Rule

Following is a list of specific suggestions for modifying this rule that will add compliance flexibility and contain costs without sacrificing water quality.

- Provisions in the adaptive management option that require point sources to pay for and achieve nonpoint phosphorous reductions (NR217.18(d)) should be removed from the rule. It is wholly unfair to impose enforceable permit conditions on industry to reduce rural or urban nonpoint pollution from another source, and this provision was never contemplated in any prior version of the rule. The adaptive management option will have little utility for industry if this inequitable requirement remains in the rule.
- The Department's authority to unilaterally revoke an approved adaptive management plan for reasons beyond the permittee's control under NR217.18(3)(g)3-4 should be removed.
- Similar to the variance procedure for stabilization ponds and lagoons in NR217.19, a streamlined variance should be created under the rule to address human caused conditions or sources of pollution directly attributable to nonpoint sources that prevent

attainment of the phosphorous criteria in NR 102.06. This variance would be consistent with the criteria set forth in s. 283.15(4)(c) Wis. Stats.

- The rule should specifically address situations where small sources of phosphorous loading are exempt from the provisions of NR 217 because they will not impact water quality, and the cost of regulation cannot be justified given their minimal impact.
- The applicability of phosphorous criteria in NR 102.06 and the corresponding effluent limits proposed in NR 217 should not take effect unless and until the U.S. EPA promulgates a nationwide water quality standard for phosphorous to ensure that Clean Water Act requirements are applied fairly and uniformly in all states. Wisconsin's economy must be allowed to compete on a level playing field.

Conclusion

WMC appreciates the DNR's effort to move forward with a rule that seeks to balance environmental and economic goals. Unfortunately, we do not believe the approach taken in this rule strikes a proper balance between cost and benefit. As written, this rule will impose severe financial hardships on homeowners and businesses at a time when they can least afford it - without achieving a meaningful benefit to statewide water quality.

WMC urges the Legislature to carefully examine the economic costs and related job impacts associated with Clearinghouse Rule 10-035, and consider whether forcing the expenditure of billions of dollars to target less than 20 percent of the phosphorous impairment is an effective and affordable approach to addressing this problem. We also ask that you consider whether unilaterally imposing these costs on our economy makes sense when none of our neighbors are doing so.

The Natural Resources Board has rushed this multi-billion proposal through its rulemaking process in a three month period. We respectfully ask that the Legislature take a more deliberative approach, and direct the DNR to make revisions to the rule package to address the concerns referenced above. If those changes are not made, we ask you to object to this rule.

Thank you for your thoughtful consideration of our members' concerns with Clearinghouse Rule 10-035.



July 28, 2010

Testimony of the Wisconsin Cheese Makers Association
to the
Wisconsin State Senate
Committee on Environment

Re: Clearinghouse Rule 10-035

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The Board of Directors and membership of the Wisconsin Cheese Makers Association would like legislators to know we oppose clearinghouse rule 10-035 (changes to NR 102 and 217) as approved by the Natural Resources Board on June 23.

Why are we Opposed?

In brief, several dairy plants may face multi-million dollar system upgrades to remove trace amounts of phosphorus from their wash water effluent.

Also, dozens of dairy plants that send their wash water to municipal wastewater treatment systems may face increased fees due to these rule revisions.

Dairy plants that achieve today's technology-based limit of 1 mg/L phosphorus are already removing more than 95 percent of phosphorus in their wash water.

These new rules could require expensive new equipment, and increased energy and labor costs, to achieve a few more percentage points of removal.

DNR is proposing substantial costs to industry for very little gain to the environment.

Some Background

The Wisconsin dairy processing industry has reduced phosphorus levels in effluent waste streams since numeric limits were initiated in 1992. Conversion to cleaning solutions with zero or trace amounts of phosphorus have been adopted uniformly across industry. Changing cleaning products no longer represents a solution to reducing phosphorus.

Phosphorus in dairy plant effluent is the result of natural phosphorus present in cow's milk.

Some background (Continued)

To consistently meet new, lower phosphorus limits, new filtration technology (known as tertiary or 'third step' treatment) would be required at several Wisconsin dairy processing plants. Furthermore, total phosphorus will need to be reduced to less than 2.0 mg/L prior to introduction to this tertiary 'polishing' step.

Costs for tertiary treatment systems range from \$1.1 million to \$1.48 million for smaller volume dischargers in the dairy industry (150,000 gallons of effluent per day), to construction and equipments costs of \$2.4 million to \$4.3 million to install tertiary treatment systems at large dairy plants. These systems offer minimal or no return on investment, adding to the difficulty in attaining financing.

Today, only one Wisconsin dairy processing facility uses a complete effluent treatment system including new tertiary treatment technologies. WCMA is concerned that, in addition to cost, these systems are unknown and unproven with the unique profile of dairy effluent. Good science, thoughtful engineering modifications and industry education and training should prevail over haste if the dairy industry must adopt these new technologies for the long haul.

A report prepared for the dairy industry by The Probst Group, a respected wastewater engineering firm, states: "Based upon our knowledge of the numerous dairy sites in the state, we anticipate that 25-30 facilities with direct discharges will be impacted" by the new phosphorus regulations.

In addition, a great number of dairy plants indirectly discharge effluent waste to surface waters via sending their effluent to municipal treatments systems. In their report, The Probst Group states: "Each of these facilities discharging to POTWs is likely to be asked, as high phosphorus dischargers, to bear substantial portions of the burden to upgrade the municipal systems to meet proposed limits or to install/upgrade on-site pretreatment systems." The Probst Group estimates that 50-60 Wisconsin dairy plants discharge effluent waste to municipal treatment systems.

This spring DNR staff was diligent in meetings with industry and pointed out "soft landing" options for dischargers facing these new regulations. These soft landings consist mainly of options to delay the onset of new, lower phosphorus limits, including "schedules of compliance" and the "adaptive management" options. Procedures to gain variances from regulation also exist in state law and regulation.

But WCMA is concerned that this final rule has made schedules of compliance and adaptive management impractical for small- and medium-sized private companies and cooperatives. These options include onerous monitoring and reporting requirements at a cost of time and labor that small and mid-sized businesses cannot afford.

What are we asking from the Legislature?

Relief for small and mid-sized businesses facing this daunting regulation. Specifically:

1. Simplify NR217.17

This all-new section in the regulation creates schedule s of compliance – a lengthening of the time frame to comply – to allow a business to modify its treatment system. This is a helpful concept, but in the final rule, section NR 217.17 (3) was beefed up and became more difficult and costly for industry. For example, annual interim requirements and written reporting is added. Action plans requiring preliminary and final designs for new technology, construction dates, and interim phosphorus limits are added. And DNR added the fact that any new discharger will not be allowed to use any schedule of compliance at all.

This section should be reviewed and redrafted to recognize the limited resources (staff and capital) at small and mid-sized businesses. **New language in NR 217.17 (3) added to the final draft rule should be removed.**

2. Simplify NR217.18

This section details the 'adaptive management' option for complying with phosphorus regulations. This section was rewritten in the final draft rule to effectively seal out small and mid-sized businesses.

One major change in the final draft rule: the burden of proving that nonpoint sources are contributing the majority of phosphorus in a watershed is moved from the DNR to the permittee. A small business, in practice, would face funding a major watershed study.

Another major change: small businesses would have to identify and contract with partners, e.g. farmers, to create an overall reduction in phosphorus in a watershed. The regulation wisely includes "a demonstration that the permittee has the ability to fund and implement the plan" because such a plan would be prohibitively expensive for small business.

Another major change: new paragraphs in this section detail water monitoring plans and tests, "reporting procedures and deadlines for all monitoring, assessment and data gathering requirements in the plan," and annual written reporting to DNR. Costs in staff time and testing are prohibitive.

This entire "adaptive management" option for dischargers became expensive in the final draft rule, and useless to small and mid-sized businesses. **Each change noted above must be removed.**

3. Offer real variances for small business.

Small and mid-sized dischargers in Wisconsin are already removing 95 percent of the phosphorus in their wash water effluent. Requiring these small businesses to add multi-million dollar filtration equipment to remove a fraction more is simply overkill.

The legislature could explicitly add a simple, economic-based variance in this regulation to allow small and mid-sized businesses to opt out of new regulations based on cost to comply.

Likewise, the legislature could include in the regulation a cut-off level for small dischargers. Dischargers below this level of phosphorus output would be exempted from the regulation. Today, DNR recognizes that minor dischargers do not have 'reasonable potential to cause or contribute to an exceedance of water quality standards' (to quote the regulation in NR 217.15 (1) (a)). **The legislature could require DNR to add an explicit cut-off level (expressed in pounds of phosphorus) to the new regulation to ease the regulatory burden on small businesses.**

In Conclusion

WCMA wishes to acknowledge the open dialogue that DNR staff pursued during the drafting and editing of these rules. However, time was short. The process from hearing draft rule to final approved rule was an astonishing three months.

Our industry's main complaint with this process has been a lack of time to study the rules, and to learn and calculate their impact on each plant site. It is difficult or impossible to know if any given dairy plant will face major or minor construction or equipment costs, or major or minor new fees from municipal treatment plants.

Given more time, DNR could have tested outcomes from the proposed rules at plant locations to learn real-world impacts on real Wisconsin employers. The need for haste seems artificial and irresponsible.

The dairy industry in Wisconsin employs nearly 200,000 people and generates \$26 billion in economic activity for the state. Any rule that will increase the cost of doing business relative to other dairy production states deserves careful scrutiny.

Thank you for considering these comments and requests.



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JOHN MUIR CHAPTER

John Muir Chapter Statement on Proposed NR 217 Rules

Thank you for the opportunity to present comments to this committee on behalf of the John Muir Chapter of the Sierra Club. We recommend the adoption of the NR 217 rules, believing that they, in conjunction with the NR 151 rules, will be important steps in reducing nutrient pollution in Wisconsin's lakes and streams.

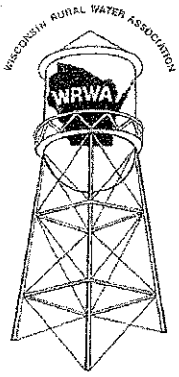
While eutrophication caused by excessive nutrients in water is a problem nationwide, indeed worldwide, the condition of its waters is of particular concern to Wisconsin's economy and quality of life. Nutrient-caused growth of weeds and algae lower property values, discourage visitors who want to fish, swim and boat, endanger some aquatic species and increases the cost of treating drinking water.

Wisconsin's nutrient pollution does not simply remain in Wisconsin. Some of it is carried into the Great Lakes and some flows down the Mississippi River where it contributes to the Gulf of Mexico's hypoxic "dead zone" where the water is unable to support much aquatic life. Over ten years ago, the United States Environmental Protection Agency proposed that states adopt numeric nitrogen and phosphorus standards. Not nearly enough progress has been made, and the EPA proposes to step in and impose standards on states that do not act for themselves. They have already done so in Florida. The Wisconsin DNR, working with stakeholders in local governments and industries, has proposed standards that will make Wisconsin a leader in improving water quality. Municipalities, manufacturers, farmers and other citizens will be working together to preserve Wisconsin's celebrated waterways. All will reap the many benefits of clear water and clean beaches.

This effort will not be without cost, and some have raised objections on that account. As the rules are written, they include the flexibility that will allow all affected entities to comply without excessive burden. All will be given plenty of time and no one will be expected to carry a disproportionate part of the effort. Funding sources are available for many of the required changes and upgrades.

For a good many years I lived in Peoria, Illinois, which drew its drinking water from the Illinois River, a stream heavily polluted by nutrients from many sources. Some summers, despite the city's best efforts, the drinking water tasted like dirt. Now I live near the shores of Lake Winnebago and my drinking water comes from there. Lately the smell of rotting algae and weeds has been very unpleasant many days, worse than I remember from past years. I'm sure it has been a challenge to maintain the quality of our drinking water and those living and recreating on the lake have found their experience degraded. Wisconsin can and will do better than this.

Will Stahl Conservation Chair, John Muir Chapter



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Society
Of
Water
Professionals



TO: Senate Committee on Environment
FROM: Ken M. Blomberg – WRWA Executive Director
DATE: July 28, 2010
RE: Clearinghouse Rule 10-035

Phosphorus Hearing Comments- 7-28-2010

On behalf of the Wisconsin Rural Water Association, its 663 community member systems, and your constituents, I would like to provide comments for the record concerning the proposed revisions to NR 102 and NR 217 relating to phosphorus limits in Wisconsin's surface waters.

Let me start by saying that our association and its membership takes our job of protecting the environment and providing safe & affordable water resources very seriously. WRWA wastewater field staff conduct over 800 on-site technical assistance visits to WWTPs each year, around 100 of which are specifically on phosphorus reduction activities. We also realize the challenges the state of Wisconsin faces in weighing the costs and benefits of regulations needed to protect both the environment and the human resources that use them.

However, we also feel that the actions and levels as proposed in the revisions to NR 102 & NR 217 will require a great deal of unnecessary expense many communities while at the same time providing no appreciable reduction in the phosphorus levels in receiving waters and streams.

By DNR's own estimates, municipal discharges of phosphorus account for only one part of the 20% of phosphorus discharges that are not agricultural in nature. If the state of Wisconsin truly wants to reduce phosphorus levels in our state waters, there are a number of actions that can be taken. These should include:

- Adopting standards on a watershed by watershed basis, specifically addressing the larger point and non-point sources of phosphorus before requiring additional measures by municipal sources which are already treating for phosphorus economically and safely.
- Developing a trading program whereby those producing larger sources of phosphorus are required to work cooperatively with other sources to reduce phosphorus levels in the most cost effective manner possible. Low level sources of phosphorus discharges such as municipalities should not be the only ones required to pay for and accomplish any trading initiatives achieved.
- Strengthen regulations, restrictions and inspections of unsewered, private wastewater treatment systems along all Wisconsin lakes, streams and rivers. Administrative Code Comm 83 is failing

WRWA Mission:

"To assist water/wastewater systems improve and preserve the quality and quantity of water resources in the State of Wisconsin"

**Quality
On Tap!**
Our Commitment  Our Profession

as it is no secret that lakeside septic system failures are common and ignored. Many lakes and streams with no municipal wastewater discharges present are still polluted with high levels of phosphorus, illustrating the extent of the phosphorus problem from other sources.

- Re-establishing regulations on increased tillage setbacks along waterways, construction site retention areas, meaningful restrictions on livestock being allowed in surface waters, and control of runoff from fertilized fields and livestock feeding areas. The brown plumes of runoff into most Wisconsin waterways go unchecked, and to achieve real improvements in water quality they must end.
- Finally, State and Federal governments must also be partners in any phosphorus reduction efforts by providing funding mechanisms that are available for any actions needed to reduce phosphorus levels in each watershed.

You must understand, the financial impact of these regulations will be epic in magnitude. Additional unfunded mandates in the current economic climate will be devastating to smaller communities. What this committee must decide is if it is reasonable to ask the residents of communities such as Merrimac, Columbus, Randolph, Cumberland, Turtle Lake, Superior, Burlington, Twin Lakes, Paddock Lake, Johnson Creek, Sullivan, Dousman, Markesan, Berlin and Brandon to join other communities in paying billions of dollars for wastewater facility upgrades that - in the big picture - will do little or nothing to improve the overall conditions of Wisconsin's lakes, rivers and streams.

Wisconsin's communities have proven that they are committed to working with everyone else involved in protecting our water resources, fisheries and aquatic life. They have already spent millions of dollars and reduced phosphorous level discharges by 80-90%, costing community taxpayers around 10-15 cents per pound of phosphorous removed. However, the wastewater treatment facility improvements needed to achieve phosphorous reduction discharges to the levels required in these regulations, will increase such treatment costs to around \$200 per pound.

The State of Wisconsin can reduce phosphorous levels in Wisconsin's waters; however, it will come at a significant cost to many Wisconsin residents. What we ask is that it be done in a responsible way, by all responsible parties. Not just those that are the easiest to regulate.



RIVER ALLIANCE of Wisconsin

July 28, 2010

**Statement by Denny Caneff, Executive Director, to the Senate Environment Committee in Support of
Clearinghouse Rule 10-035 (relating to phosphorus water quality standards criteria and limitations and
effluent standards)**

The River Alliance of Wisconsin supports this rule that addresses the chronic problem of phosphorus pollution in Wisconsin's waters.

After mercury, phosphorus is the most serious and challenging pollutant for surface waters in Wisconsin. The results of phosphorus pollution, especially from agriculture, are evident in the algae blooms that occur this time of year across the state, from Lake Michigan to the St. Croix River. If there is one water quality issue that concerns and frustrates our members, it is the algae blooms caused by phosphorus.

Wisconsin has made some gains in controlling phosphorus in just the past two years through policy changes. Phosphorus has been banned in almost all consumer cleaning products, and virtually banned from lawn fertilizer. What's left is the phosphorus coming from the pipes of cities and industries, and the phosphorus that runs off farm fields.

In many watersheds, it is so-called "nonpoint" pollution making the biggest phosphorus contribution to rivers. But without these phosphorus water quality criteria in place, regulating nonpoint pollution has been, and would continue to be, almost impossible. Without some "line in the water" that says, "This is too much phosphorus for this river," it is very difficult to regulate the phosphorus that feeds the nasty and even toxic algae blooms that are driving people away from their riverside homes and public beaches.

Perhaps the most important element of these proposed standards is the ability for cities or even industry – the so-called "point sources" – to make a deal with non-point sources in the same watershed to cooperate and reduce phosphorus pollution at the place where, and with the investment, that makes the most sense. This "adaptive management" option in the rule gives flexibility to the parties involved, should optimize pollution control spending, not maximize it, and should actually result in what the rule is intended to get – cleaner rivers and lakes.

Your approval of these rules now is critical, as it comes at the same time as another set of rules – the "nonpoint" pollution rules codified in NR 151, 153 and 155 – are being reviewed and (we hope) approved by the legislature's agriculture committees. While these are two separate rule packages, these non-point rules are the other side of the same coin of controlling phosphorus pollution. The promise of one of these rules cannot be fulfilled without the implementation of the other.

The two rule packages, in tandem, represent a real breakthrough in managing what is a persistent and, in some cases, increasingly dangerous pollutant for Wisconsin. (Some algae are toxic.) We urge the Senate Environment Committee's approval of Clearinghouse Rule 10-035.

Everyone deserves healthy rivers

MADISON METROPOLITAN SEWERAGE DISTRICT

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Jon W. Schellpfeffer
Chief Engineer & Director



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Commissioner

Testimony before the Senate Committee on Environment

July 28, 2010

Good morning.

I am Jon Schellpfeffer, Chief Engineer and Director of the Madison Metropolitan Sewerage District. I am here in support of the proposed rules. I believe the Department of Natural Resources has done all it could to address the concerns of the stakeholders in crafting them. However, I am concerned about how the proposed rules will be implemented to effectively improve water quality in the state.

The rules before you today, NR 102 and NR 217, address point source discharges, such as those from municipal treatment plants. These sources account for about one-fifth of the phosphorus loads discharged to streams and lakes in Wisconsin. To effectively deal with the remaining phosphorus, the companion rule, NR 151, will also need to be adopted, and funds will need to be appropriated to implement that rule since the non-point phosphorus control measures mandated by that rule require a 70 percent cost-share before they are required to be implemented. NR 217 includes an adaptive management approach that contemplates phosphorus trading as one option that would address non-point phosphorus sources. However, trading will only have a modest impact on reducing non-point phosphorus loads.

If non-point sources are not effectively addressed, municipalities could be required to expend significant dollars to address their share of the phosphorus discharges, but there will be no meaningful improvement in water quality.

So, while I am pleased with the flexibility built into the proposed NR 217, I am still very concerned with how it and NR 151 will be implemented to truly improve water quality and realize tangible benefits from the dollars invested.

Thank you. I am happy to answer any questions.

Jon W. Schellpfeffer
Chief Engineer and Director





JIM OTT

STATE REPRESENTATIVE • 23rd ASSEMBLY DISTRICT

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Toll-Free: (888) 534-0023
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Revised Testimony on CR 10-035

Good Morning Mr. Chairman and committee members. Thank you for allowing me to testify this morning, and thank you for holding a hearing on CR 10-035. I believe that anytime a new administrative rule is proposed that will have a far reaching effect on businesses, municipalities and individuals in our state that it is the duty of the overseeing committee to hold a public hearing. I have requested that the Assembly Natural Resources Committee, of which I am a member, hold a similar hearing on this rule. It's been two weeks since my request, but so far I have not received a response.

I realize that the Department of Natural Resources held a number of hearings around the state, but it is equally important that the Legislature exercise its oversight when a state agency exercises its rulemaking authority as granted by the Legislature.

We can all agree that keeping as much phosphorus as possible out of Wisconsin's rivers and lakes is an important goal. That's why I have consistently advocated that the Milwaukee Metropolitan Sewage District at least begin the process of separating the combined sewer system that underlies 27 square miles of Milwaukee and Shorewood. In the last session of the Legislature bills were passed that greatly reduce phosphorus content in dishwashing detergent and lawn fertilizers.

So the question is not whether additional efforts should be made to remove phosphorus, but at what speed and at what cost. According to DNR estimates changes made to NR 217 in 1992 have already resulted in an 80-90% reduction in phosphorus emissions from publically owned treatment works.

CR 10-035 would require an additional 90% reduction for discharges into rivers and a 96% reduction for discharges into lakes. A study prepared by Strand Associates in 2008 estimated the aggregate cost of this rule would be somewhere between \$2.9 and \$4.9 billion. The Wisconsin Rural Water Association used DNR estimates to conclude that the cost could be as much as \$1.8 to \$6.9 million per treatment plant, and as much as \$8.6 to \$26 million once land acquisition and other costs are included.

This is a high cost when we consider that CR 10-035 will only apply to point sources, which account for about 20% of all phosphorus releases. It is also questionable to spend this much money for such a small reduction when MMSD released 600 million gallons of

blended sewage into Lake Michigan two weeks ago, and 2 billion gallons in last week's rain event. Such releases will not be covered by this rule.

I urge the committee to consider returning CR 10-035 to the Department for revisions that would be more cost effective, and to urge the Department to address the issue of overflows related to the MMSD combined sewer system, which will continue to be one of the largest sources of phosphorus and other organic material releases into Lake Michigan.



WISCONSIN LIQUID WASTE CARRIERS ASSOCIATION, INC.

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Telephone: (608) 255-2770
Fax: (608) 251-8192

July 28, 2010

Senate Environment Committee
c/o Sen. Mark Miller
Room 317 East, State Capitol
Madison, WI 53707-7882

Dear Committee Members,

The Wisconsin Liquid Waste Carriers Association is a nonprofit trade association comprised of approximately 200 septage servicing companies throughout the state. Although the WLWCA understands that tighter regulations pertaining to phosphorus – both at wastewater treatment plants and nonpoint sources – are on the horizon, we have concerns about how these rules will indirectly affect our industry.

In 2009, an estimated 800 million gallons of septage were removed from an estimated 732,000 private onsite wastewater treatment systems such as holding tanks and septic tanks in the state of Wisconsin. This waste can be disposed of at a municipal wastewater treatment plant or via land application. However, it is not uncommon to see some treatment plants in the state refuse to accept waste from private septage carriers - they either do not have the capacity to accept outside waste, or they simply do not want to "deal with it." And with CR 10-035 pending that would require treatment plants to reduce their phosphorus output, we anticipate that more and more treatment plants will simply refuse to accept septage from private carriers.

Meanwhile, landspreading options are dwindling as well. Urban sprawl is taking away agricultural land for landspreading, and the DNR is becoming more restrictive with land application site approvals.

If septage haulers are not welcome at treatment plants AND landspreading is further restricted, what solution do state leaders have for the disposal of this waste?

These rules could greatly impact not only our industry, but the hundreds of thousands of homeowners who have private onsite wastewater systems in their yards. We foresee a septage disposal crisis in coming years that must be addressed. The Wisconsin Liquid Waste Carriers Association believes that increased use of septage storage facilities is one possible answer, and we would like to see the DNR revise its rules to ease permitting requirements for septage storage facilities.

Sincerely,
Ann Gryphan, Association Manager



City of Park Falls

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July 28, 2010

As Water and Street Superintendent for the City of Park Falls and on behalf of its 2,700 residents, I appreciate this opportunity to provide comments for the record concerning the proposed changes to NR102 and NR217 relating to the establishment of phosphorus limits in Wisconsin's surface waters.

Let me begin by saying that the City of Park Falls takes its job of protecting the environment and providing safe and affordable water resources very seriously. Our staff operates our wastewater system in a manner that consistently produces high marks on the DNR's Compliance Maintenance Annual Report. Furthermore, our commitment to excellence in the field of wastewater operation is reflected in the fact that the City of Park Falls was the recipient of the Wisconsin Rural Water Association's prestigious 2010 Wastewater System of the Year Award.

While we understand the challenges the Wisconsin DNR and the US Environmental Protection Agency face in weighing the costs and benefits of regulations needed to protect both the environment and the human resources that use them, we feel strongly that the actions and levels as proposed in the revisions to N102 and NR217 will be extremely costly to many communities while at the same time providing very little appreciable reduction in phosphorus levels.

Small communities like Park Falls produce small amounts of phosphorus.

Effective overall phosphorus reduction can be best achieved by reducing limits on the largest dischargers. It is my understanding that 80% of the phosphorus problem is caused by sources other than municipal wastewater. It makes sense to address 80% of the problem before even beginning to zero in on the remaining 20%. Once reduction in these larger sources of phosphorus is achieved, you will likely find that expensive phosphorus reduction measures from small communities are not necessary.

The City of Park Falls currently treats its wastewater in an aerated lagoon. Lagoons are a popular and effective form of treatment and are common in small communities. They are simple to operate and are very energy efficient. Phosphorus removal is much more difficult in an aerated lagoon than in a mechanical plant. Proposed phosphorus regulations will force small communities to abandon simple, relatively inexpensive lagoon systems for complex and costly mechanical systems while at the same time realizing very little gain in water quality.

The current 1.0 mg/L phosphorus limit will cost Park Falls Sewer Utility ratepayers over \$200,000 to add equipment and over \$91,000 each year for additional chemicals and operating expenses.

We can probably live with the 1.0 mg/L limit but an additional reduction in the phosphorus limit will make it extremely difficult and extremely expensive.

Government must not forget the importance of balancing the benefit of rules and regulations with the economic cost of those rules and regulations. As state and federal governments regulate phosphorus limits they must also be partners by providing funding mechanisms to meet the new standards. Unfunded mandates will put business and industry in the State of Wisconsin at a competitive disadvantage.

Unfunded mandates in the current economic climate will be also be devastating to small communities, especially when the overall benefit to the environment would be minimal.

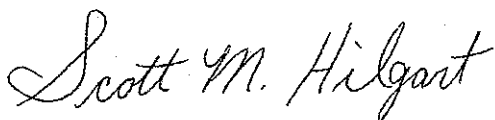
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If we are forced to build a mechanical plant to treat our wastewater and meet more stringent phosphorus limits, our engineer estimates it will cost the City of Park Falls in excess of 5 million dollars. Where does it end? This is an expense the 2,700 residents in our small community simply cannot absorb.

We believe the State of Wisconsin should adopt phosphorus standards on a watershed by watershed basis. Watersheds in the Park Falls area are much less affected by phosphorus than watersheds in other regions of the state. Why should we be asked to spend millions of dollars to fix a problem that isn't a problem in the Park Falls area?

Municipal wastewater treatment systems are committed to working with everyone else in protecting our water resources, fisheries, and aquatic life. Through previous efforts, municipalities have already reduced phosphorous levels in their discharges by 80-90%.

The State of Wisconsin must now require the same commitment and cooperation from others so that real environmental improvement can be realized in the most cost effective manner possible.



Scott Hilgart, Water & Street Superintendent

City of Park Falls



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July 28, 2010

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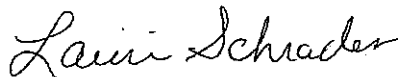
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Lauri Schrader, Chairperson
Public Services Committee



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July 28, 2010

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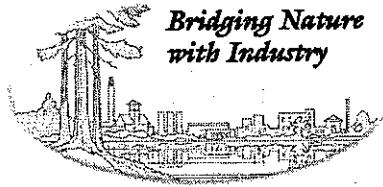
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Anthony Thier, Chairman
Board of Public Works



City of Park Falls

Office of the Mayor

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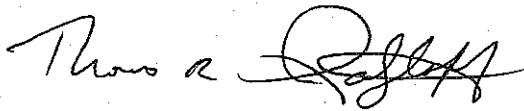
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Thomas E. Ratzlaff, Mayor

City of Park Falls

Wisconsin Wildlife Federation

Testimony Before the Senate Agriculture Committee on CR-10-035---Runoff Performance Standards and Prohibitions

Chair Miller, members of the Senate Environment Committee, thank you for the opportunity to present brief comments today on behalf of the Wisconsin Wildlife Federation and the 168 hunting, fishing, trapping and forestry-related organizations that belong to the Federation. Our many members who hunt, fish and trap are strong supporters of efforts to increase the water quality in the many lakes and streams in this state that do not meet water quality standards as a result of excessive nutrients. The result of excessive weed and algae growth in Wisconsin lakes and streams has a wide range of damaging impacts to hunting, fishing and trapping in Wisconsin waters. These include significant degradation to fisheries habitat, the danger of blue-green algae to the health of our hunting dogs, to actual loss of the ability to navigate in certain waters at times of the year.

It was because of the strong interest of our members in improving water quality in Wisconsin lakes and streams that the Wildlife Federation was one of the seven groups that, on November 23, 2009 notified the US EPA of the intent to sue over US EPAs failure to promulgate phosphorus and nitrogen criteria for Wisconsin.

The Federation does strongly support the proposed changes to NR 102 and 217 which incorporate phosphorus water quality standards criteria for lakes and streams into the states overall water quality standards and incorporating into the WPDES program water quality based effluent standards and limitations for phosphorus. These criteria effectively deal with the point source contribution of phosphorus into our lakes and streams.

We applaud the efforts of the Department staff who have worked long and hard to make the improvements to the requirements of NR 102 and 217. They have done a fine job in advancing the reduction of phosphorus in our waters. It was difficult to bring all of the different groups of interest together to come up with a set of rules that virtually all can live with. It took many years and great skill to do this.

Thank you again for the opportunity to testify here today on behalf of the Wildlife Federation.

Submitted by:
George Meyer
Executive Director
Wisconsin Wildlife Federation
June 28, 2010

Wissenschaftliche Zusammenfassung

Die vorliegende Arbeit ist eine Zusammenfassung der Ergebnisse der Untersuchungen über die Wirkung von ...

Die Untersuchungen wurden in drei Phasen durchgeführt. In der ersten Phase wurde die Wirkung von ... in der zweiten Phase wurde die Wirkung von ... in der dritten Phase wurde die Wirkung von ...

Die Ergebnisse der Untersuchungen zeigen, dass ...

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Die Ergebnisse der Untersuchungen zeigen, dass ...

Dr. ...
Prof. ...
...

City of

Nekoosa

951 Market Street
Nekoosa, Wisconsin 54457
(715) 886-7878
Fax (715) 886-7901

July 28, 2010

NR 102 Hearing

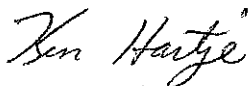
The City of Nekoosa is reviewing NR 102 legislation proposed to limit phosphorus to the Wisconsin River from our Wastewater Treatment Plant. The information that is posted on the internet relates to agricultural runoff to be 80% of the problem. The City of Nekoosa has just started to rebuild our Wastewater Treatment Plant for six million dollars and with the proposed regulation we will have an increased cost as soon as our new treatment plant is completed.

The cost to the City will be from the cost of chemicals to lower the Phosphorus, shipping cost of the chemicals, increased sludge to dispose of at a contracted rate per mile, electric bills and general maintenance of the plant will increase.

In reading about this recommendation from the DNR the cost of 20% reduction of phosphorus to the water streams in Wisconsin will be 1.13 BILLION DOLLARS. The cost is paid for by the user the municipality, a large increase in their taxes again. The City of Nekoosa tax payers do not need to absorb another increase to possibly help 20% of the phosphorus runoff to the water streams. The current cost to treat phosphorus in the City is over \$200.00 per day. The City of Nekoosa practices environmental safety and is always looking to improve the environment. The DNR's proposed NR 102 is not a cost effective way to improve the problem for the State of Wisconsin. It will be a very small amount of phosphorus, at a very large cost.

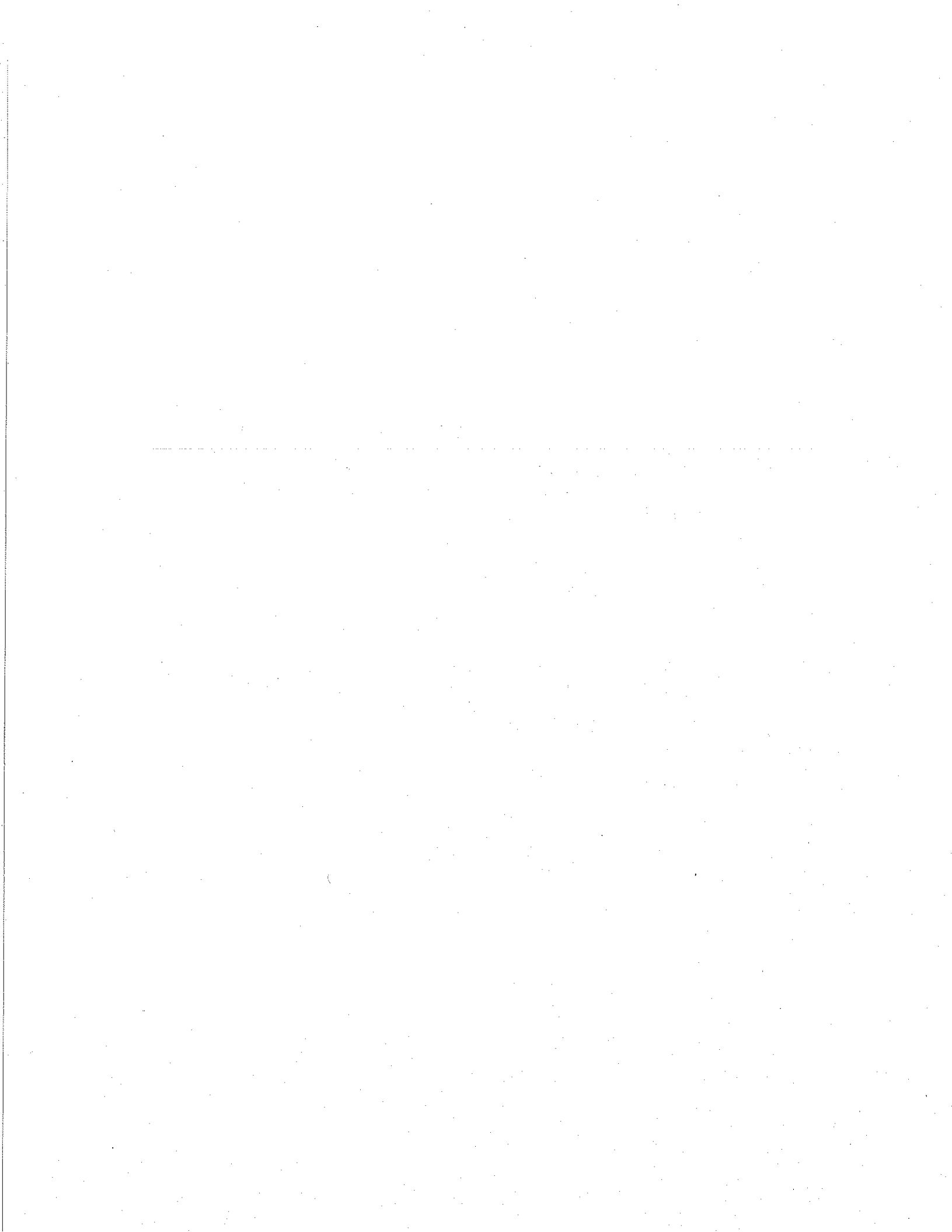
The City of Nekoosa opposes NR102 legislation.

Respectfully,



Ken Hartje
P W Committee Chairman
City of Nekoosa

File





122 State Street, Suite 200, Madison, Wisconsin 53703-2500

Telephone: 608.251.7020 Fax: 608.251.1655

Website: www.cleanwisconsin.org

(Formerly Wisconsin's Environmental Decade)

**Testimony of Amber Meyer Smith, Program Director, Clean Wisconsin
Clearinghouse Rule 10-035
Revisions to NR 102 and 217 related to phosphorus water quality standards criteria and
WPDES permit provisions for phosphorus
Senate Environment Committee
July 28, 2010**

Clean Wisconsin has thousands of members across Wisconsin focused on clean air, clean energy and clean water issues. We were originally founded as Wisconsin's Environmental Decade and celebrated our 40th anniversary in April.

Thank you for the opportunity to comment on this proposed rule. Our Water Program Director was a member of the stakeholder committee that had input into the drafting of the rule, and Clean Wisconsin supports the package before you and the revisions to NR 151 that are being considered by the Senate and Assembly Agriculture Committees. The two rules, when combined, address the two major sources of phosphorus and are a step forward in addressing polluted runoff into our waterways.

Right now, Wisconsin's waterways are in trouble. Nearly half of our waterways are so polluted due to runoff that they are federally listed as impaired. Polluted runoff contains dirt and nutrients like phosphorus. Combined, phosphorus and sediment degrade water quality and impair ecosystems. Perhaps worst of all, they cause algae in many cases; one pound of phosphorus can cause 500 pounds of algae to grow.

Algae, especially blue-green algae, is becoming a serious water quality issue across the state. Blue-green algae is harmful to aquatic ecosystems, and is harmful to human and animal health. Once algae blooms, it dies and rots. During that process, it uses oxygen in the water, and creates a dead zone where fish and other aquatic life can't live. As this occurs more frequently, it changes the nature of the ecosystem. Blue-green algae is toxic for human, pets and wildlife. There have been reports of dog deaths due to swimming through blue-green algae blooms in recent years, and people have been getting sick from coming in contact with it or breathing in fumes from it.

Problems with blue-green algae aren't limited to environmental and human health; these problems are affecting our tourism and fishing economies throughout the state. Tourism takes a hit from polluted runoff in terms of lost beach days, lost boating revenue, and lost fishing and related revenue, and more. Last year in Madison alone there were 10 beaches closed for a total of 90 days – all by July 17th – because of potentially dangerous algae blooms.

You will hear today about the costs of acting on phosphorus rules. The fact is there is also a high cost to inaction. Fishing in Wisconsin creates over 30,000 jobs in the state and \$2.75 billion in economic benefits annually.

Polluted waterways also have a negative impact on property values. Many Wisconsin residents pay a premium to live on or near waterways, and several studies have shown the direct link between increased water clarity and increased lakefront property values.

The passage of this water quality standard and implementing language are critical to addressing the most important pollution problem in Wisconsin's waterways. There are dire problems with phosphorus in our waters, and the algae-blooms that result from phosphorus pollution. We certainly agree that agriculture is a big part of the phosphorus runoff that occurs across the state, but point sources like wastewater treatment plants and other industrial point sources also contribute. Each day, point sources discharge 4,900 pounds of phosphorus into our waterways. Because a pound of phosphorus can create 500 pounds of algae, point sources are making our waterways vulnerable to up to 2.45 million pounds of algae per day!

This rule is cost-effective and flexible, allowing cooperation between point and non point sources because of the work that was put into creating the adaptive management option. Clean Wisconsin worked with many of the people you see in the room here today, including municipalities and the DNR to ensure this rule was protective of water quality standards, yet practical. We are proud of this work, and feel that the adaptive management option will allow permittees flexibility in addressing phosphorus effectively and cost-efficiently, while being true to the requirements of the Clean Water Act.

This option is being conveniently ignored by the opponents to this rule, but it is really the crux of the discussion. Over two years of discussions led to this new adaptive management option. While we may not agree with everything in this rule, adaptive management will be a new way to use the Clean Water Act to address our most important water quality problem, and we hope this sets an example for the country. Clean Wisconsin is optimistic that this will, in appropriate watersheds, lead to waterways meeting water quality standards in the most cost-effective way.

Recognizing the rule is a compromise between a variety of stakeholders, we support it and are optimistic that while it could be stronger in several areas, it will prove beneficial to our state's waterways, ecosystems, economy and all people who enjoy water. The package represents a significant step forward in getting phosphorus out of our waterways, and when combined with the changes to NR 151 can mean real results for water quality. We ask you to support this rule package.

Village of Port Edwards

Joseph M. Terry P.E.
Village Engineer / Administrator

Municipal Building
Port Edwards, Wisconsin 54469
Phone: 715-887-3511
Fax: 715-887-3524

July 28, 2010

TO: Julie Lassa, Wisconsin DNR
FROM: Joe Terry, Village of Port Edwards
RE: Proposed changes to NR 217

On behalf of the Village of Port Edwards and the residents served by the Port Edwards Wastewater Utility, I am very concerned that the proposed changes to NR 217 will result in unaffordable wastewater rates for ratepayers while doing very little or nothing to actually improve the algal bloom problems.

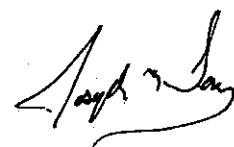
The Port Edwards Wastewater Treatment Plant removes about 80% of its influent phosphorus and has done so since the mid 90's in compliance with standards developed then. We were told when that legislation was pending the limits on phosphorus would result in dramatic reductions in algal blooms; however, there has been no data shown that indicates these efforts, costs, and additional pollution resulting from making chemicals, delivering chemicals, and disposing of the additional sludge have resulted in any reductions in algal bloom, or have resulted in any environmental benefits whatsoever.

This proposed rule once again places the focus on point sources with claimed 10% to 20% contributions rather than the larger sources of the problem. Phosphorus reductions at point sources are already significant and further reductions may be appropriate after more practical methods of non-point pollution have been addressed, implemented, and proven. The costs to further reduce point source phosphorus is estimated to be about \$270/pound whereas concentrating on the more significant non-point sources using common practices can result in costs of about \$25/pound. I'm concerned that focusing on the smallest and most expensive part of the problem will offer insignificant environmental benefits. What our rate payers and residents of Wisconsin need is value based environmental protection that guarantees results.

The cost of this proposed legislation puts basic sanitation availability at risk. This is no exaggeration: Right this moment as I am making this presentation, 14% of our rate payers in Port Edwards are being sent disconnect notices for non-payment of their wastewater bills. These are good people and according to the State of Wisconsin in a community with above average household incomes. People are struggling with the fees that currently exist, and simply cannot afford costly legislation – especially when the results are not guaranteed.

This proposed legislation, if approved will cost our community of 1,900 people approximately \$2 million to comply with the limits referred to in the rule. Should we qualify for a low interest clean water fund loan, the capital costs alone will result in a 48% increase in their wastewater bills. The good people of Wisconsin cannot afford the price tag associated with this proposed rule and are looking to you, their representatives to protect both the environment using reasonable methods and the economic viability of the very most basic sanitation services.

When considering this bill, please give careful thought to all the impacts before making a decision.



Wednesday, July 28, 2010



P.O. box 700168
Oostburg, WI 53070
info@w-glc.org

I'd like to thank the Committee for this hearing, and for allowing me to share my group's concerns. We welcome the opportunity to work with the legislature to resolve the environmental issues we all face.

The Wisconsin Great Lakes Coalition is an organization comprised of shoreline property owners on the Wisconsin shores of Lake Michigan. There are about 30,000 of us. We want to see the Lake restored, both environmentally and economically. We support recent efforts on the part of state government and the DNR to improve water quality, rid us of aquatic invasive species, take action to keep Asian carp out of the lake, and more. We also support NR217, which we consider to be a good step in dealing with non-point pollution. We're glad to see the support of the state legislature, too.

But as you might have guessed, we have a concern. It's not what the level of phosphorus should be, it's not whether we give water to Waukesha, it isn't even the lack of adequate funding to support the many projects facing us. Our concern is the DNR's ability to manage all these programs effectively.

There are two reasons for our concern. First, the DNR's workload is about to increase significantly. In addition to NR217, which we're discussing today, we have the Great Lakes Compact, for which regulations must be written before it can be fully implemented. We also have Great Lakes Restoration, funding for which was recently approved. Over 190 projects are being developed for GLRI by Wisconsin organizations, and we're only in year 1 of the project. Coming is a re-make of the Great Lakes Clean Water Agreement, a new emphasis on the Legacy Act, the water level study being done by the IJC and the Corps of Engineers, and others. And this doesn't include issues like the Asian carp, groundwater problems, cladophora, NR115 and NR151 and the normal day-to-day activities of the department.

In the last several years DNR staffing has gone from an authorized total of 3,300 people to today's actual level of about 2,300. This reduction has come from attrition and lay-offs. We're not asking to hire another 1,000 staff but we are concerned that given the number and magnitude of the tasks facing the DNR over the next ten years, serious re-engineering of the jobs within the department must be done and that a professional manager well experienced in the functions of an effective DNR is hired.

Our second concern relates to the DNR organization itself. Anyone who has studied Management has learned that it has five basic functions: Plan, Organize, Staff, Implement, and Follow-up. But we don't see these principles being followed by the DNR. Priorities seem to be missing, plans and objectives are not being developed, and staff is trying to do the same work they did before plus all the new projects, with almost 1/3 less people.

I'll frankly admit that I am an outsider and cannot see what the DNR might be doing within their organization to improve things. Our fears may be groundless. But many years of travelling the globe working for the Kohler Company and doing projects of all types on five continents has taught me to judge by results. The results we see coming from the DNR, or their lack, tell me that it is not prepared to adequately deal with the tasks ahead of it.

Thank you very much for giving us shoreline property owners the chance to present to you our concerns. We welcome the opportunity to help in any way we can.

Jim Te Selle
President
Wisconsin Great Lakes Coalition



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www.cooperativenetwork.coop

July 28, 2010

To: Members, Senate Committee on Environment
From: David Ward, Director of Government Relations & Dairy
John Manske, Director of Government Relations
Re: Opposition to Clearinghouse Rule 10-035 (NR 102/217)

Cooperative Network is the statewide trade association representing Wisconsin's Cooperative Community. Our Dairy Legislative and Regulatory Committee membership includes our dairy cooperative members and many of them process the 25 billion pounds of milk produced by Wisconsin's 13,000 dairy producers. The cooperative community supports effort to improve Wisconsin's water quality and have been participants in the process of minimizing phosphorus discharges from dairy plants for many years. We are concerned with the financial impact with changes to NR 102/217 to cooperative processors that manufacture over 60% of the cheese made in Wisconsin. As 90% of Wisconsin's milk is made into cheese and 90% of it is exported for sale beyond our state's borders, we operate in the competitive national and to a lesser degree, international dairy products marketplace. Additional costs for compliance to these proposed rules will place added financial stress on companies that compete with their products in this marketplace and remain successful. Unlike municipal wastewater plants, industry can not simply pass those costs on to the consumer/user. Wisconsin is the first state to create the phosphorus water quality standards for rivers, lakes and streams carries with it the financial burden of compliance for businesses and municipal facilities discharging wastewater. We have estimated costs from cooperative owned dairy plants, and these costs are similar to costs reported by municipalities. An example is a large milk plant expects capital costs to be \$4.5 million dollars with additional annual operating costs in excess of \$100,000. Both municipalities and industry are concerned with added costs to meet proposed phosphorus limits that are not cost effective for the amount of phosphorus removed.

We base our concern in part on a study prepared by the Probst Group, LLC, titled "Potential Impact of Proposed Phosphorus Regulations on the Dairy Industry of Wisconsin," noting following possible impacts:

- "Based upon information gathered from the WDNR WPDES permit database, discussions with WDNR staff and our working knowledge of Dairy facilities in the state of WI, we estimate that there are approximately 120 – 130 Dairy Industry facilities holding WPDES permits for various discharges. Estimates by the WDNR indicate that only up to 35 Industrial facilities may be impacted by the proposed rule changes (combined Paper and Food Processing Industry). Based upon our knowledge of the numerous Dairy sites in the state, we anticipate that 25-30 additional facilities with direct discharges will be impacted. It is important to understand that there are many Dairy Industry facilities which discharge to Publicly Owned Treatment Works (POTWs), with or without pretreatment. Each of these facilities discharging to POTWs is likely to be asked, as high phosphorus dischargers, to bear substantial portions of the burden to

upgrade the municipal systems to meet proposed limits or to install/upgrade on-site pretreatment systems. It is likely that the number of total Dairy facilities impacted by the proposed rules will be easily double the number of direct dischargers. This scenario played out many times in the state after the 1992 phosphorus rules were enacted.”

Based upon the discussion by members of our committee earlier this year, we believe the Probst study estimate of impacted dairy plants may be low, due to direct or indirect impacts of the proposed rule.

- Even by DNR’s estimate, costs to upgrade municipal treatment plants could be as high as \$1.13 billion and as high as \$460 million for the private sector. It is likely that actual compliance costs will be much higher than DNR estimates. Some estimates of actual compliance costs range as high as \$4.0 billion. For individual facilities in the Dairy Industry, the capital costs of installing the necessary treatment equipment would range from \$1.4 million for a relatively small discharger, to over \$4.3 million for a large discharger. This is in addition to annual operating costs, which could be as high as \$90,000/yr. These additional costs could mean the difference between continued operation or closure of some dairy facilities in Wisconsin. Given the high compliance costs and modest potential reductions, it is almost beyond dispute that additional point source reductions are the least cost-effective alternative.

The proposed rule change represents a significant shift from current phosphorus limit protocol. The net effect of the proposed changes will be variable; some effluent phosphorus limits may remain at current levels while others could be 10 -- 60 times more stringent. (Source Probst Group study)

It is unlikely that the point source requirements in proposed NR 102/217 will achieve the intended results.

- DNR states that the proposed rules are needed to address “nuisance algae conditions” and the resulting low dissolved oxygen levels in many state water bodies. DNR also noted that 172 water bodies are on the state’s impaired water body list (the “§303(d) list”) due to high phosphorus levels. (*Report to Legislative Council Rules Clearinghouse*, p.1)
- Of the water bodies DNR has identified as being impaired due to phosphorus in its §303(d) list, none of the water bodies are listed due solely to point source discharges.
- Since 1992, point sources have been subject to technology based phosphorus limitations and have already achieved significant reductions in phosphorus discharges.

Our cooperative owned dairy plants are not small businesses, but rather are counted among the medium and larger dairy processing facilities in the state. They play a key role in adding value to the milk produced at their member-owners’ farms across the state. The past two years have placed extreme financial pressure on milk prices and member owner equity has deteriorated. Adding additional costs without proven cost benefit for phosphorus reduction at this time is not prudent policy.

Thank you for your consideration of our position.



To: Wisconsin Senate Committee on Environment
From: Nick George, President - Midwest Food Processors Association
Date: July 28, 2010
Re: Opposition to CR 10-035 (NR 102 and NR 217 related to phosphorous water quality standards criteria)

Thank you for taking the time to schedule this hearing. Members of the Midwest Food Processors Association (MWFPA) are opposed to CR 10-035, relating to changes to NR 102 and NR 217 as approved by the Natural Resources Board on June 23, 2010. We respectfully ask that this committee send the rule back to DNR to make changes.

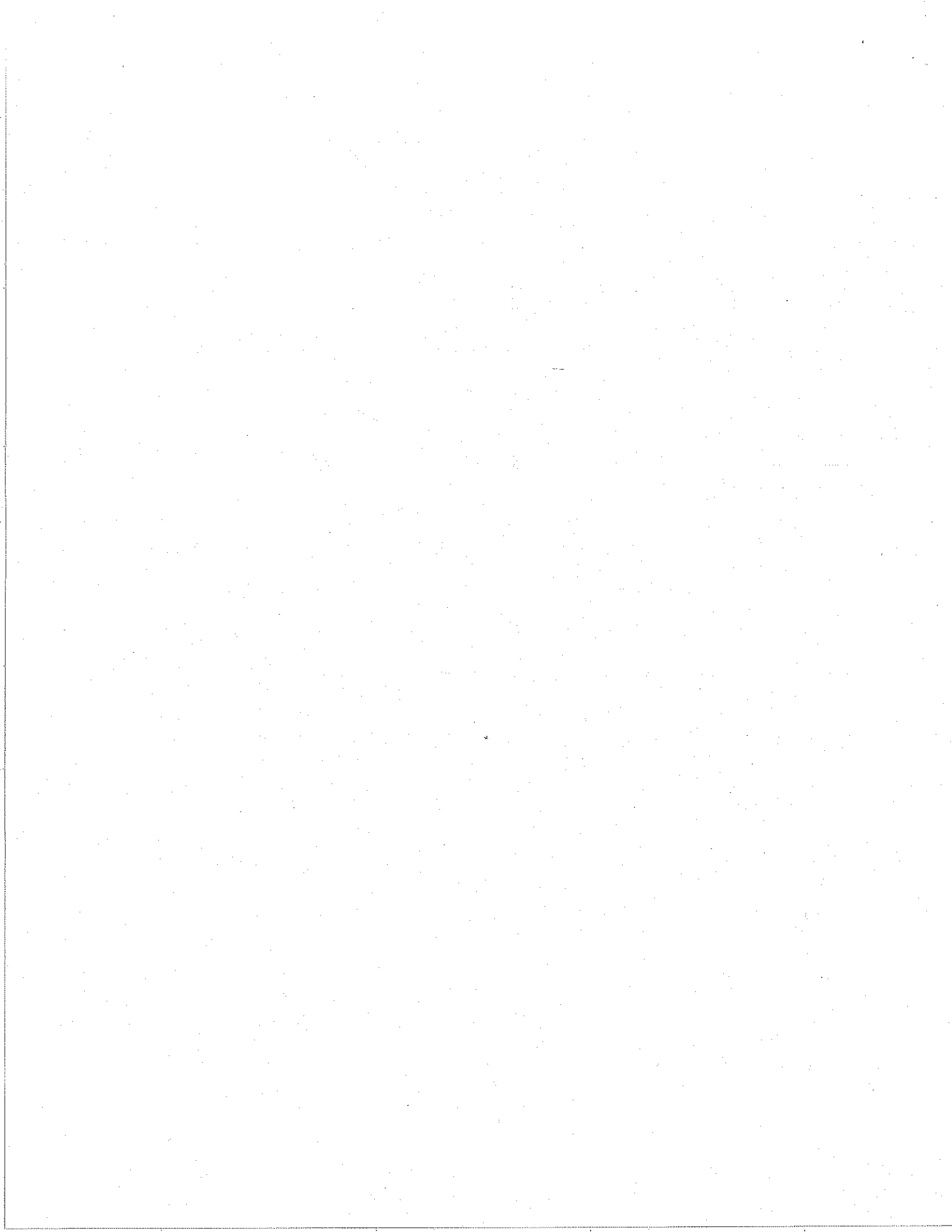
We would like to make it clear that MWFPA members are NOT opposed to lowering phosphorus limits in their wastewater. In fact food processors are continually trying to lower phosphorus discharges and have made great progress over the years. Even without this rule our members will continue to lower discharges as much as is economically and technologically feasible. However as written, the rule is unclear and will add additional costs to the food processing industry with no appreciable reductions in phosphorus.

In addition we would like to acknowledge the time and effort DNR Secretary Frank and his staff took to address our concerns and those of other business and agricultural organizations. Unfortunately, the unbending demands of EPA and threat of lawsuits by environmental organizations, put DNR policy makers and point-source phosphorus dischargers in a "no-win" situation. Attempts to address our concerns only caused more uncertainty.

For example, the adaptive management option in the rule (NR 217.18) is meant to give some flexibility and options for dischargers that cannot meet the phosphorus levels because they are either too costly or the technology does not exist. However, as drafted the option is almost unworkable and opens the door to lawsuits.

Attempts to clarify downstream impacts also fell short. It is very unclear how phosphorus levels downstream will impact a discharger up stream. Will a discharger in central Wisconsin be responsible for phosphorus levels on the lower Mississippi? No one knows. If so, shouldn't this rule clarify the point?

Cost of compliance is a concern. The rule may be extremely costly for food processors and all dischargers. DNR estimates the cost of compliance to be about \$1.5 billion and the Municipal Sewage Districts estimated that the costs are closer to \$4 billion. These costs will be an additional burden to Wisconsin businesses at a time when they are all struggling to stay



competitive and maintain jobs. Our members estimate that costs will range anywhere from \$100,000 to \$1 million per facility for capital costs; and \$30,000 to \$250,000 for yearly operational costs. These estimates do not include the additional costs that will be charged by the municipal sewage districts.

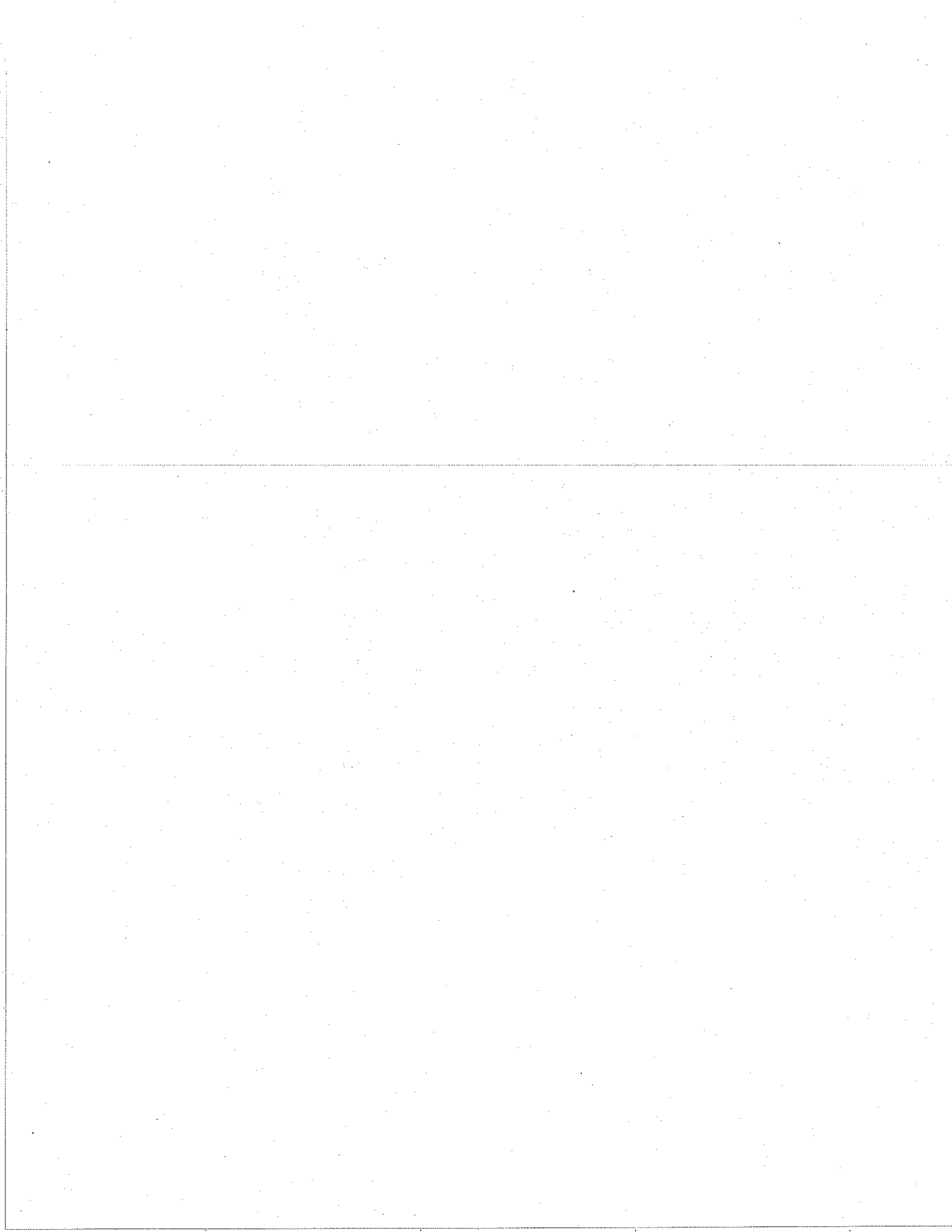
Our concerns of the economic impact from this rule are so great that in December 2008, MWFPA joined six other business and agricultural organizations in a petition to Wisconsin Department of Administration Secretary Michael Morgan asking for an economic impact report on this rule (attachment A). In his reply, Secretary Morgan did acknowledge that there would be a cost to dischargers.

Finally, it should be noted that these costs do not guarantee or provide assurance with a reasonable degree of scientific certainty that phosphorus goals will be achieved. In the end every business and home in Wisconsin will pay for a phosphorus regulatory system that does not lower phosphorus levels sufficiently to improve water quality. The DNR has characterized statewide nutrient loadings as being 80% from non-point sources and 20% from point sources. This rule targets that 20%. By the department's own admission this rule will not lower phosphorus levels and will cost the citizens of Wisconsin over \$1.5 billion.

It is almost unimaginable that such a complicated, costly, ineffectual rule went through the regulatory process in just three months.

Other organizations opposing this rule have made specific recommendations for changes. We support all of those recommendations. In addition, we believe Wisconsin should defer action on this rule until there is a uniform national approach that deals equitably with both point and non-point sources, and DNR should take the lead among states in working with EPA to develop such an approach. Meanwhile, point sources will continue to work on ways to reduce phosphorus discharges.

This rule should be sent back to the DNR because it is too costly; it may jeopardize jobs; it adds uncertainty to NR 102 & 217; and it will not lower the amount of phosphorus in Wisconsin's surface waters. Again, thank you for listening to our concerns and holding this hearing.



(Attachment A)

December 23, 2008

Secretary Michael Morgan
Wisconsin Department of Administration
101 E. Wilson Street
Madison, WI 53703

RE: Petition for an Economic Impact Report for Proposed Phosphorus Rule

Dear Secretary Morgan:

Pursuant to Wis. Stat. §227.137, the Midwest Food Processors Association, Dairy Business Association of Wisconsin, Wisconsin Dairy Products Association, Wisconsin Cheese Makers Association, Wisconsin Federation of Cooperatives, Wisconsin Paper Council, and the Wisconsin Manufacturers & Commerce hereby petition the Wisconsin Department of Administration (DOA) to direct the Department of Natural Resources (DNR) to prepare an economic impact report on DNR's proposed phosphorus rule.

According to its September 2008 scope statement, DNR is developing additions to Chapters NR 102 and 104 to incorporate nutrient water quality criteria for lakes and streams. In addition, DNR is proposing additions to Chapters NR 106 and 216 to incorporate provisions for developing nutrient criteria-based water quality based effluent limits. Based on previous meetings, DNR envisions establishing water quality-based effluent limits for phosphorus between 0.1 milligrams per liter (mg/L) to 0.075 mg/L.

If implemented, the proposed rule will be extremely costly to Wisconsin businesses and local governments. As noted below, we estimate the rule as currently envisioned by DNR would have a \$10 billion price tag. These costs would be borne by businesses and municipalities at time when the state can ill afford to lose more jobs and place further constraints on the business climate. Moreover, because Wisconsin already has in place stringent water quality-based effluent limits for phosphorus, this proposed rule will provide little in the way of environmental benefits. Therefore, we deem it vital that the DOA direct DNR to perform an economic impact report to assess the effect the proposed phosphorus rule would have on the various sectors and the economy.

Affected Parties Issuing Petition for Economic Impact Report

The affected parties assert that the proposed phosphorus rule, if adopted, would cost well in excess of \$20 million a year for the first five years after the rule's implementation. Furthermore, the affected parties argue that the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, and local governments. See Wis. Stat. §227.137 (2) (a)-(b). Below are the affected parties petitioning DOA for an economic impact report:

- The Midwest Food Processors Association (MWFPA) represents the food processing industry in the Midwest with food processor members operating 100 facilities in Wisconsin, Illinois, and Minnesota. In addition, MWFPA has over 200 Associate Members consisting of firms in allied industries. MWFPA has a substantial interest in the proposed phosphorus rule because a number of its members will be adversely affected by the proposal.
- The Dairy Business Association of Wisconsin (DBAW) is the statewide organization of dairy producers, vendors, allied industry partners, and professionals actively working to assure that dairy products, large and small, remain an active and thriving part of Wisconsin's economy, communities, and food chain. DBAW has a substantial interest in the proposed phosphorus rule because a number of its members will be adversely affected by the proposal.
- The Wisconsin Dairy Products Association (WDPA) is a statewide trade association that represents all segments of the dairy industry. It represents member companies (both cooperative and proprietary) that process fluid milk, cheese, butter, ice cream, yogurt, dried milk and dried whey, as well as market fluid milk, package cheese and distribute a wide variety of dairy products. WDPA members are responsible for 80 percent of the milk and dairy products marketed in Wisconsin. WDPA has a substantial interest in the proposed phosphorus rule because a number of its members will be adversely affected by the proposal.
- The Wisconsin Cheese Makers Association (WCMA) has for 117 years been the voice of Wisconsin dairy processors on national and state issues that affect its members' businesses. WCMA's mission is to maintain a positive and competitive climate for Wisconsin's cheese and butter manufacturers and marketers. WCMA has a substantial interest in the proposed phosphorus rule because a number of its members will be adversely affected by the proposal.
- The Wisconsin Federation of Cooperatives (WFC) is the statewide association representing a variety of cooperatives, including farm supply, health, dairy marketing, consumer, credit, livestock marketing, telephone, electric, housing, insurance, and cable communications. Wisconsin cooperatives employ 23,400 residents within the state, paying nearly \$700 million in wages and benefits annually, producing more than \$65 million in taxes each year. More than 2.9 million cooperative members in Wisconsin depend on approximately 800 co-ops to market, manufacture, and supply agricultural products as well as provide credit, electricity, telephone service, health care, housing, insurance and many other products and services. WFC has a substantial interest in the proposed phosphorus rule because a number of its members will be adversely affected by the proposal.
- Wisconsin Paper Council (WPC) is a business trade representing the pulp, paper, and allied industry. Wisconsin has led the nation in papermaking for the last 50 years. WPC represents 21 member firms and has been in existence since 1950. Most of the member firms operate wastewater treatment systems and would be subject to the proposed standard. WPC has a substantial interest in the proposed phosphorus rule because a number of its members could be adversely affected by the proposal.
- Wisconsin Manufacturers & Commerce (WMC) is a business trade organization with more than 4,300 members statewide in the manufacturing, energy, commercial and service sectors. Roughly

one-quarter of the private sector employees in Wisconsin are employed by WMC members. WMC has a substantial interest in the proposed phosphorus rule as it has numerous members who will be adversely affected by the proposal.

Why an Economic Impact Report Should Be Issued

Pursuant to Wis. Stat. § 227.137 (2), after an agency publishes a scope statement under Wis. Stat. § 227.135 and before the agency submits the proposed rule to the legislature for review under Wis. Stat. § 227.19 (2), a municipality, or an association that represents a farm, labor, business, or professional group may submit a petition to the secretary of the DOA requesting that he/she direct the agency—in this case the DNR—to prepare an economic impact report for the proposed rule.

The secretary is required to direct the agency to prepare an economic impact report for the proposed rule before submitting the proposed rule to the legislature for review if the secretary determines that all of the following apply:

- (a) The petition was submitted to the department of administration no later than 90 days after the publication of the statement of the scope of the proposed rule under s. 227.135 (3) or no later than 10 days after publication of the notice for a public hearing under s. 227.17, whichever is earlier.
- (b) The proposed rule would cost affected persons \$20 million or more during each of the first 5 years after the rule's implementation to comply with the rule, or the rule would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. (Emphasis added).

Wis. Stat. § 227.137 (2) (a)-(b).

An economic impact report shall contain information on the effect of the proposed rule on specific businesses, business sectors, and the state's economy. The agency, in preparing the report, is required to solicit information and advice from the Department of Commerce and from governmental units, associations, businesses, and individuals that may be affected by the proposed rule. *See* Wis. Stat. § 227.137 (3).

Specifically, an economic impact report shall include of the following:

- (a) An analysis and quantification of the problem, including any risks to public health or the environment, that the rule is intending to address.
- (b) An analysis and quantification of the economic impact of the rule, including costs reasonably expected to be incurred by the state, governmental units, associations, businesses, and affected individuals.
- (c) An analysis of benefits of the rule, including how the rule reduces the risks and addresses the problems that the rule is intended to address.

Wis. Stat. § 227.137 (3).

As demonstrated below, this petition is timely filed. Moreover, the affected parties argue that, if adopted, the proposed phosphorus rule would adversely affect the economy, productivity, competition, jobs, and local governments.

Petition Was Timely Filed

The DNR's scope statement for the proposed phosphorus rule was published on September 30, 2008. The petition was placed in the mail on December 23, 2008, well within the 90-day time limit.

The Proposed Rule Will Cost Well in Excess of \$20 Million during the First Five Years after Implementation and Will Adversely Affect the Economy, Productivity, Competition, Jobs, and Local Governments

Although it is difficult to estimate exactly how much the proposed rule will cost each of the various sectors, one study¹ found that achieving the proposed effluent phosphorus concentrations would cost publicly owned treatment works (POTWs) \$2.9 to \$4.9 billion based on capital costs, and \$4.0 to \$7.0 billion on a 20-year present worth basis (see Attachment A).

For the purpose of developing statewide aggregate costs, this cost study extrapolated capital and 20-year present worth costs to an estimated 500 Wisconsin POTWs that discharge to surface waters. Site-specific costs were developed for Green Bay, Madison, Milwaukee, and Racine by those agencies. For example, the Green Bay Metropolitan Sewerage District would see total *annual* costs around \$27 million. In turn, these costs will be passed on to homeowners and businesses.

Note that these costs do not include any of the industrial and private wastewater treatment plants that are also subject to the existing phosphorus rule and that will be required to meet new DNR limits. There are currently 394 such facilities in Wisconsin that hold individual WPDES permits and there are more that have general permits for cooling water and similar discharges. Given that these facilities would see comparable compliance challenges, we believe it is fair to assume the overall costs to affected parties could exceed \$10 billion.

In addition, the attached study did not include site-specific considerations such as land acquisition, special construction for unfavorable subsurface conditions, or similar factors. The generic and site-specific costs also do not take into consideration greenhouse gas emissions and other negative environmental impacts associated with increases in energy, chemical production and transport, and sludge management. Therefore, this analysis should be considered a baseline and conservatively low compared to the actual costs of complying with DNR proposal.

¹ *Opinions of Probable Cost for Achieving Lower Effluent Phosphorus Concentrations at Wastewater Treatment Plants in Wisconsin*, Report for Municipal Environmental Group, Wisconsin, Strand Associates, Inc., Aug., 2008.

Given these estimates, it is clear that this proposal far exceeds the \$20 million threshold for five years under Wis. Stat. § 227.137 (2) (b).

Moreover, the cost of the achieving lower effluent will adversely affect Wisconsin's economy, numerous sectors, productivity, competition, jobs, and local governments—especially at a time when the state is facing a recession. *See* Wis. Stat. § 227.137 (2) (b).

For example, the food processing sector would be particularly affected. If required to comply with the proposed regulations, certain Wisconsin food processing companies will be forced to spend millions of dollars in equipment and annual operating costs. This in turn would make these companies less competitive with other companies.

Wisconsin food processors are already at a disadvantage compared to plants in southern and western states, which have longer growing seasons and therefore are able to operate longer. Food processors operate on thin margins and look for a three to six-month return on investments. For many fruit and vegetable processors, attaining these margins is made difficult because they operate at full capacity from late May through early November. Having to comply with more stringent water quality criteria for phosphorus will undoubtedly place Wisconsin's food processing sector at a major competitive disadvantage with companies in other regions of the country.

Conclusion

Given that all of the prerequisites under Wis. Stat. § 227.137 are met, the affected parties request the DOA to direct DNR to prepare an economic impact report. In addition, we ask that any such report be undertaken in a collaborative fashion, with input from all affected parties. *See* Wis. Stat. § 227.137 (3).

Thank you for your consideration. Please let me know if you have any questions regarding this petition.

Sincerely,

Nickolas C. George, Jr.
President
Midwest Food Processors Association, Inc.
Association

Bradley A. Legreid
Executive Director
Wisconsin Dairy Products Association
Association

Ed Wilusz
Vice President, Governmental Relations

Laurie Fischer
Executive Director
Wisconsin Dairy Business

John T. Umhoefer
Executive Director
Wisconsin Cheese Makers

William Oemichen
President & CEO

Wisconsin Paper Council
Cooperatives

Wisconsin Federation of

Scott Manley
Director of Environmental Policy
Wisconsin Manufacturers & Commerce

Cc: Governor Jim Doyle
Matthew J. Frank, Secretary of Department of Natural Resources
Patrick Henderson, Deputy Secretary of Department of Natural Resources



Wisconsin Land and Water
Conservation Association, Inc.



Wisconsin Association
of
Land Conservation Employees

Position Statement

July 2010

County Staffing Grants through the SWRM Program

Background

As part of a major state program redesign in 1997, county Land and Water Resource Management Plans were added to Chapter 92 State Statutes as a new method of addressing nonpoint pollution and other land conservation efforts in Wisconsin. In 1999, the statutes were further modified to describe what each county was required to include in their LWRM plans, including how they will “ensure compliance” with state promulgated nonpoint pollution performance standards and prohibitions. At the same time, \$6 million in staffing grant funds were transferred from the DNR Priority Watershed Program to the DATCP Soil and Water Resource Management (SWRM) program to create a single state grant to counties to support a base level of staffing to implement LWRM plans. For direction on how future SWRM grants would be administered to counties, the legislature added the following language to section 92.16(6)(b) Wis. Statutes:

“...the department [DATCP] shall attempt to provide funding under this section for an average of 3 staff persons per county with full funding for the first staff person, 70% funding for the 2nd staff person, and 50% funding for any additional staff persons and to provide an average of \$100,000 per county for cost-sharing grants.”

This new statutory language moved the state away from the previous “boom or bust” funding through the Priority Watershed program to a more stable “base level” of staff funding to all counties to implement their LWRM plans, with the potential to apply for additional “targeted” grants. Eight new state administrative rules were promulgated by DNR and DATCP in 2002 to carry out the new program, including ATCP 50 for SWRM grants, NR 151 for the nonpoint pollution performance standards and NR 153 for Targeted Runoff Management grants.

Program Funding Trends

During promulgation of the 2002 rule package, DATCP prepared a fiscal estimate for implementing the new nonpoint performance standards and prohibitions through county LWRM plans. At that time, DATCP estimated the need for an *annual increase of \$2 - 4 million*, or a 20 - 40% increase in county staffing grants over the next 10 years. However, as illustrated in Figures 1 and 2 (attached), the opposite has occurred.

Figure 1 shows state grant amounts to counties for conservation staff before and after the above noted fund transfer from DNR to the DATCP, including subsequent state budget cuts. Figure 1 shows that there was a net loss in staffing grants of about \$4 million from 1997 to 2004, while total staffing grant amounts remained relatively stagnant since 2004. This figure also illustrates the funding gap in supporting existing county land conservation staff, a stated “high priority” under s. ATCP 50.30 (Grant Priorities).

Figure 2 shows the net “buying power” of the state grants in full time equivalent (FTE) staff positions at the county level, based on actual salaries and benefits. Figure 2 illustrates the net loss in county FTE staff funding due to state budget cuts and inflation. It should be noted that state imposed levy caps on counties limit a county’s ability to make up for the lost buying power, and make it very difficult for local conservation programs to compete with other core county government services, such as highways, human services, law enforcement, courts and jails. To date, this has resulted in a net loss of 40 county conservation staff positions (10%) since the program redesign began in 1997. Together, Figures 1 and 2 illustrate an unsustainable staff funding strategy for county land conservation employees, and therefore the implementation of state land conservation and clean water programs.

Looking Ahead

County land conservation staff have proven to be a cost-effective delivery system for state land conservation and nonpoint pollution abatement programs, and will continue to serve in that role. However, to meet state program goals, additional state funding for county land conservation staff is clearly needed to reverse the current downward trend in local staffing. The SWRM program is currently about \$3 million short of meeting the statutory goal of an “...*average of three staff persons per county*...”. (Note: All SWRM grants are based on 2-year old staffing costs, so the 2010 allocation plan only shows a \$2 million shortfall.) To address this issue, WALCE and WLWCA suggest that the state redirect existing SWRM program SEG funds to county staffing grants. We also suggest that the state reconsider current cost-sharing mandates defined in ATCP 50, particularly for nutrient management.

DATCP has occasionally proposed revisiting the above noted state law regarding the funding of local conservation staff, or creating a new staff funding “formula” that may result in each county being allocated a percentage of available funds. WALCE and WLWCA are strongly opposed to such proposals because they would hide the true impacts of reduced state grants on local staff, invite unnecessary program conflict, and divert attention away from the real issue – state funding shortfalls. (Note: This issue is well documented in a 2004 WALCE position statement on this topic.) We believe the current statutory funding formula has proven to be a fair way to meet base level conservation staff funding needs in all counties, and shows the annual impacts of state funding shortfalls. However, to significantly improve landowner compliance with state agricultural nonpoint pollution performance standards, additional incentives, cost-sharing and long-term targeted staffing grants are needed over and above the base level SWRM grants. We suggest that these be provided through the DNR’s Targeted Runoff Management (TRM) grant program, and that a new segregated funding source is needed. One potential funding source that has been suggested is the elimination of the current sales tax exemption for bottled water.

Summary of WALCE/WLWCA Position

- Additional SWRM program funding is needed to sustain a base level of conservation staff in each county. We suggest this come from redirected SEG cost-sharing funds.
- Additional incentives, cost-sharing and targeted staff funding over and above the SWRM program are needed to improve landowner compliance with state agricultural nonpoint pollution performance standards. We suggest these grants should be administered through the DNR’s TRM grant program, and that an additional segregated funding source is needed to implement.



Senate Environment Committee

July 28, 2010

STATEMENT IN SUPPORT

Clearinghouse Rule 10-035

Water Quality Standards Criteria and Permit Limits (NR 217)

Toni Herkert
Policy Director
608-661-4313

Dear Senator Miller and Committee Members:

Thank you for the opportunity to voice our support for the water quality standards criteria and permit limits contained in Clearinghouse Rule 10-035. Wisconsin Lakes is a statewide, nonprofit organization that works to conserve, enhance and restore the lake resources in this state. It is in the best interest of lakes, Wisconsin's \$13 billion tourism industry and all the people who enjoy boating, fishing, swimming, and living on lakes to have clean water, healthy fisheries and proactive, sustainable management of our lake resources so generations to come can enjoy Wisconsin Lakes.

Phosphorus continues to be the final frontier for water resource management in the State. Excess phosphorus, nutrients and sedimentation can result in lower oxygen levels which threaten fisheries and aquatic life, cause excessive vegetation growth and contribute greatly to the nuisance and sometimes dangerous algae blooms in our lakes and along our beaches.

In the last legislative session major strides were taken to reduce the amount of phosphorus reaching our state waters. We would like to thank the members of this committee and the full legislative body for the passage of Wisconsin Acts 9 and 63 relating to the phosphorus lawn fertilizer ban and requiring more stringent limits for phosphorus in dishwashing detergents.

It is this type of continual improvements that will help protect and restore the state's lakes and rivers. WI Lakes believes that through the innovative use of pollutant trading, TMDL's and adaptive management in NR 217 that the Department recognizes that the solution to the phosphorus problem in this state is not one dimensional. It is apparent that we need a combined point and nonpoint source reduction plan that will allow the greatest accomplishments on a per watershed basis. This rule package, combined with NR 151, will balance the competing interests and allow greater collaboration on actually solving the problem at its roots. Some watersheds will require greater point source controls and others will require greater nonpoint controls. Allowing both rules and the innovative



WISCONSIN LAKES

Conserving ~ Enhancing ~ Restoring

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management strategies in NR 217 to work together will result in the greatest reduction in phosphorus to our precious water resources.

The members of this Committee know full well that lakes matter in Wisconsin. They provide recreation for untold numbers of anglers, boaters and swimmers. They anchor our recreational economy and the property tax bases of many Wisconsin communities. Many of you have probably seen or heard stories from constituents on the unrelenting algae blooms that are all too common on our lakes. But I am not sure we have focused enough on the hard economic value of lakes and streams.

The Department of Revenue's property valuation records are aggregated mostly using taxing jurisdictions and property use classes (such as residential and agricultural). As a result, there is no statewide data that shows the economic significance of land on or near our lakes and streams. But WI Lakes has done some homework to help you better recognize the significance of the property bordering lakes -- lakes that are exposed to damage from phosphorus and nutrients whose impacts state lawmakers struggle to address due to the hard and fast economic factors involved.

WI Lakes has looked at Department of Revenue assessed valuation data for a series of the state's larger town sanitary districts and lake districts located on major lakes in Southern Wisconsin. The trend would no doubt be repeated on thousands more lakes across the State. Here are some highlights:

We looked at the 2009 assessed valuation of property in the Green Lake Sanitary District, the Buffalo Lake Management District and the Lake Puckaway Management District which are located in Marquette and Green Lake Counties. Each of these special districts includes substantially all of the waterfront property on these lakes and very few nonriparian lots. Here's what we found: The Green Lake Sanitary had a 2009 assessed valuation of just under \$1.1 billion. This compares with a *total value of all the taxable property in Green Lake County* of just over \$2 billion. That means that the ribbon of lakefront homes and lots on Big Green Lake have a value exceeding all the rest of the property in the county and contribute more than half of the tax dollars that support the public schools, the sheriff's department, the highway department and others. Just down the road, the Lake Puckaway Management District had a 2009 valuation of \$56,259,295, which totals just under half of the total value of taxable property in the entire Town of Mecan (which had a 2009 valuation of \$115,403,000). A little further west, the Buffalo Lake Management District in the Montello area had a 2009 valuation of \$92,868,630 in two towns and the City of Montello. Of that, \$64,190,562 of property value was in the Town of Packwaukee, where the lake district property accounted for almost 36 percent of that town's property value.

Further southeast, in Waukesha, Walworth and Kenosha Counties, the story is about the same. The Pewaukee Lake Sanitary District, Delavan Lake Sanitary District, Lauderdale Lake Management District, Fowler Lake Protection and Rehabilitation District, Camp and Center Lake Rehabilitation District and Powers Lake Management District all contribute hugely to the tax bases of

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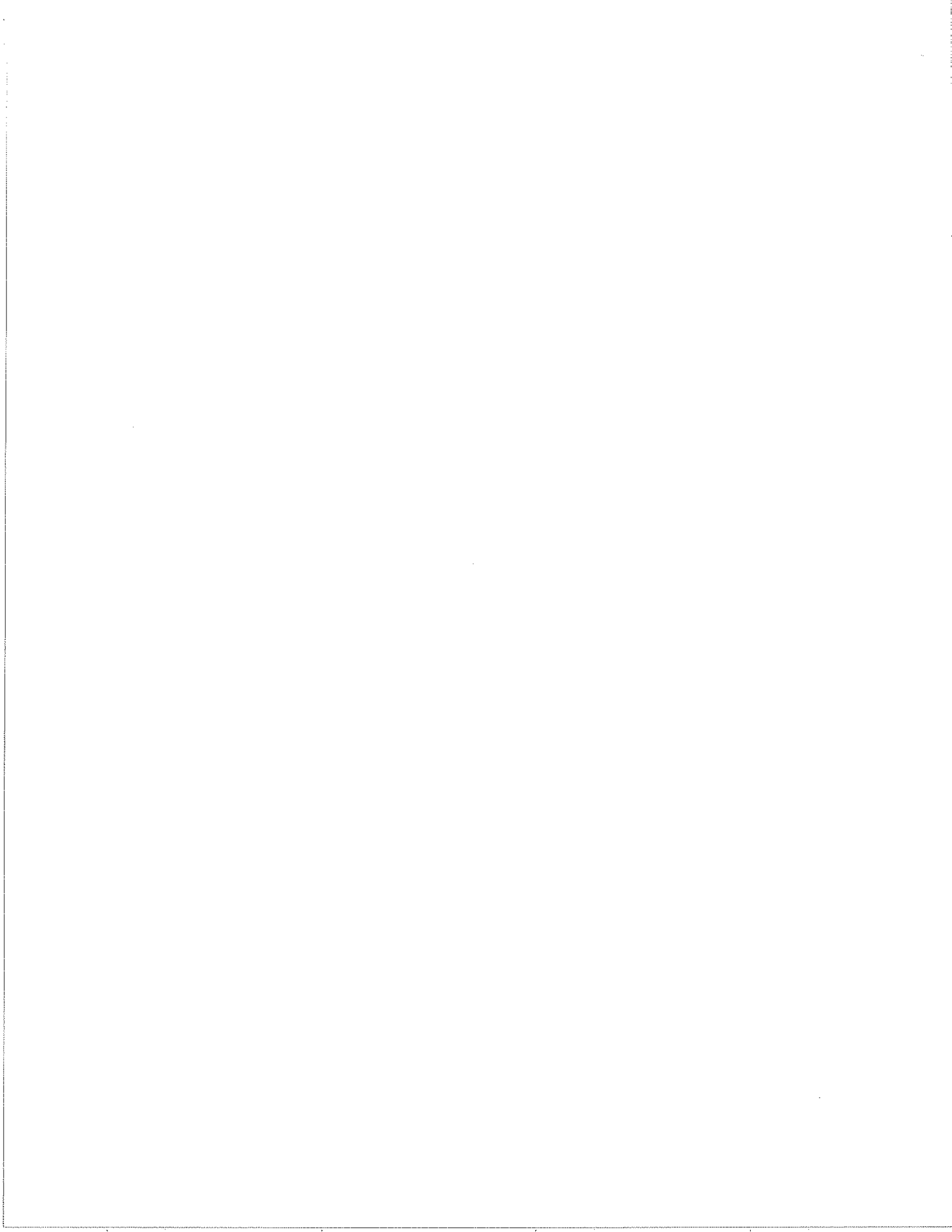
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the towns in which they are located, with the lake property constituting between 23 percent to 85 percent of the total value of property in the jurisdictions in which they are located.

Of course, the state's inland lakes do far more for our state's economy beyond serving as an engine of property taxes. These water resources are central to the how people in Wisconsin actually live and the reason so many of us love the state. We thank the committee for taking time out of your busy summer schedules to hear our comments on this very important set of rules. We encourage you to support this rule and take the necessary steps to move our lakes closer to becoming the prized jewels we know they can be.



**Testimony of Betsy Lawton, Midwest Environmental Advocates
Before the Senate Committee on Environment**

**Clearinghouse Rule 10-035
July 28, 2010**

Honorable Members of the Committee, thank you for the opportunity to testify before you today regarding the Wisconsin Department of Natural Resources' (DNR's) proposed revisions to ch. NR 102 and 217, as they relate to the phosphorus water quality criteria.

Midwest Environmental Advocates, Inc. is a nonprofit environmental law center that provides technical and legal assistance to communities and families working for clean air and clean water. In the interest of protecting Wisconsin's valuable water resources, we urge you to finalize the DNR's proposal to establish protective water quality criteria for phosphorus.

Phosphorus pollution wreaks havoc on Wisconsin waters every summer, contributing to thick mats of cladophora on Lake Michigan and toxic algae blooms on Petenwell and Castlerock impoundments. Phosphorus pollution is not an isolated problem in Wisconsin, it affects property owners, small business owners, the tourism industry and Wisconsin residents who recreate on and enjoy Wisconsin's tremendous water resources. Water quality problems associated with phosphorus fueled algae growth keep many Wisconsin citizens from recreating, fishing and boating in and on Wisconsin waters. This, now serious and statewide water quality problem, also threatens the economic viability of local family owned small businesses reliant on the tourism and recreation industry. Even worse, phosphorus pollution contributes to a variety of health problems that can result from exposure to blue green algae: in 2009 the Wisconsin Department of Health Services received a total of 35 HAB-related health complaints ranging from dermal rashes, gastrointestinal distress, respiratory complaints and flu-like symptoms.

Midwest Environmental Advocates commends DNR's decades long effort to collect data and develop scientifically sound numeric water quality criteria for phosphorus. For the past two years DNR has weighed input received from a variety of environmental groups, municipalities, and industrial groups and developed rules that provide broad flexibility for point sources and nonpoint sources of pollution to work together using a watershed approach to develop economically viable and water quality based solutions for water quality improvement.

Wisconsin is not alone in adopting numeric phosphorus criteria. Under the Clean Water Act EPA expects all states to adopt criteria and several midwestern states are working toward

adoption and implementation of numeric criteria. Minnesota has adopted nitrogen and phosphorus criteria for lakes and is in the process of adopting river criteria. Likewise Iowa and Missouri have established a clear process for adopting numeric nutrient criteria. In Michigan, water pollution permits contain phosphorus limits lower than 1 mg/L based on a narrative criteria intended to prevent plant growth from impairing water quality.

It is true that not all phosphorus pollution originates from pipes at municipal and industrial facilities. But adoption and implementation of these phosphorus criteria will improve water quality. For example, in a recently proposed TMDL for the Lower Fox River, DNR estimates that 36% of the phosphorus pollution load to the Lower Fox River basin is attributed to municipal and industrial wastewater treatment facilities, while 45% is attributable to agricultural sources. And approximately 80% of the phosphorus load to the main stem of the Lower Fox River is attributable to municipal and industrial point sources.

There will be costs for municipal and industrial treatment plants to comply with these new criteria. But, the Clean Water Act, and this phosphorus rule, provide flexibility to defray those costs and bring facilities into compliance over time, including:

- Limited term Variances where achieving criteria is not economically viable
- Compliance schedules that allow time to come into compliance with the criteria
- Adaptive management plan, which would allow point and nonpoint sources to develop a more comprehensive approach to addressing water quality problems on a watershed level.

On the other hand there are significant costs if this rule is not promulgated. Not surprisingly Wisconsin relies heavily on recreation-based tourism for income. Failing to address this significant pollution source will threaten Wisconsin's fishing industry, and the over 30,000 jobs and estimated \$2.75 billion in economic benefits that industry supports. Without clean water these economic benefits will disappear as tourists travel elsewhere to find clean waters to fish and boat in. Likewise, phosphorus pollution puts investments by small recreationally based tourism businesses and lakefront property owners at risk.

Again, we urge you to finalize DNR's proposal to protect Wisconsin waters, citizens, and tourism based industry from the harmful impacts of phosphorus pollution.



PLOVER WASTEWATER UTILITY

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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 it 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.

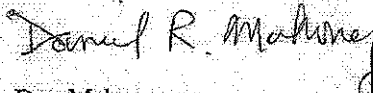
Wisconsin also has a national reputation as a leader in water quality issues and environmental protection. A comprehensive and common sense approach to reducing phosphorus discharges will benefit the environment more than the narrow focus of these proposed regulations. We strongly urge the DNR to allow 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

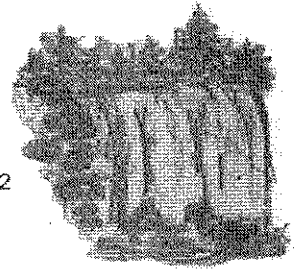
cc: Julie Lassa
Louis Molepske Jr
Amy Sue Vruwink

Wisconsin State Senator
Wisconsin State Representative
Wisconsin State Representative

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 Sloten. All can be reached with a response to the address above.

MADISON METROPOLITAN SEWERAGE DISTRICT

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Madison, WI 53713-3398
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Jon W. Schellpfeffer
Chief Engineer & Director



Protecting Public Health and the Environment

COMMISSIONERS

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Commissioner

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

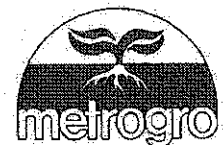
Dear Senator Miller:

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



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.

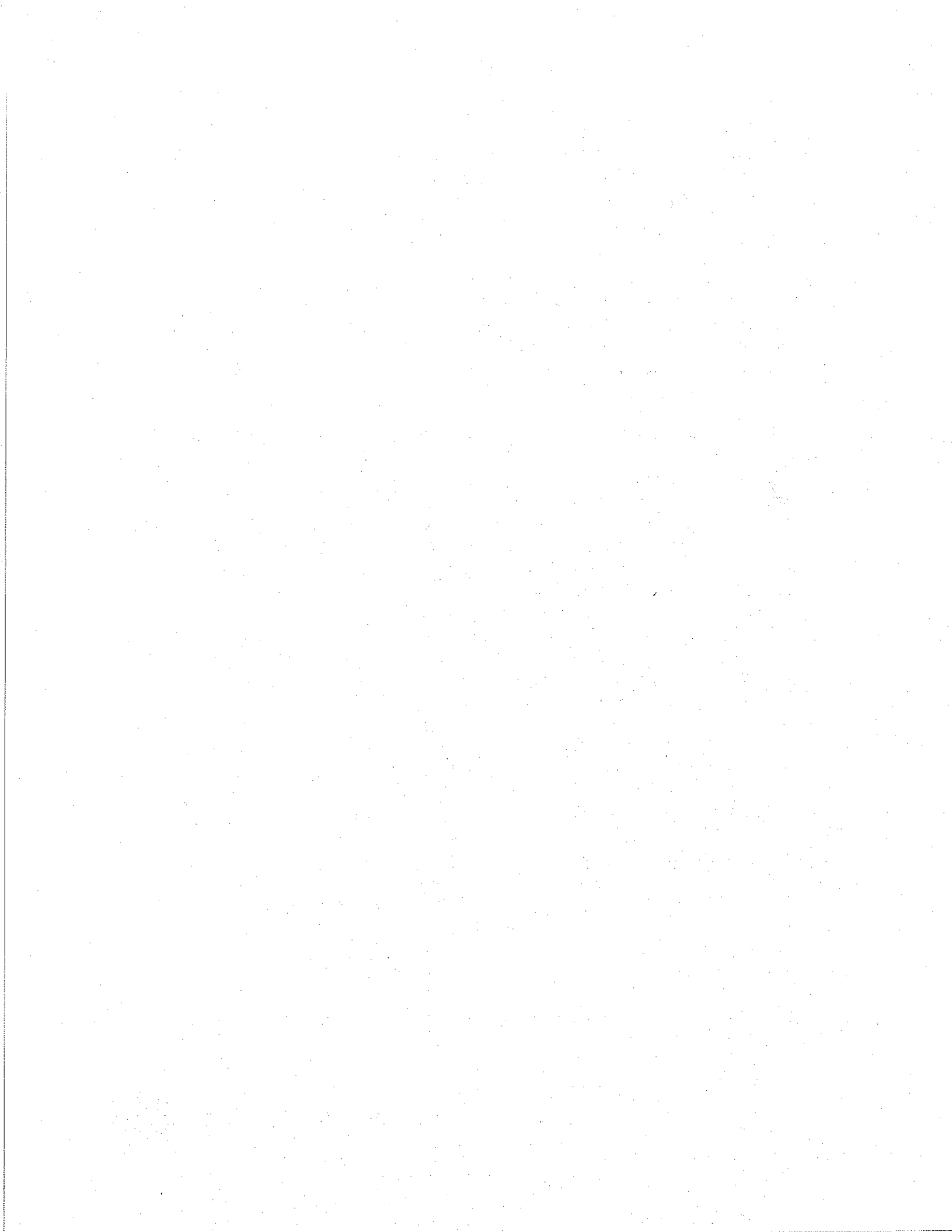
It does not make sense to spend billions of dollars to address a small percentage of the phosphorus load, while major sources of phosphorus are not effectively regulated. This approach would not result in meaningful water quality improvements and would be an inefficient use of the public's money. A better 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 trading¹ 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.

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.



TOWN & COUNTRY

Resource Conservation
& Development, Inc.

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July 22, 2010

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

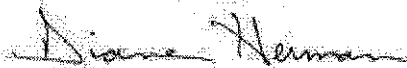
RE: Numeric Nutrient Standards Rule (NR 217)

Dear Senator Miller and Members of the Senate Environment Committee,

On behalf of the Town and Country Resource, Conservation and Development Council, 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.

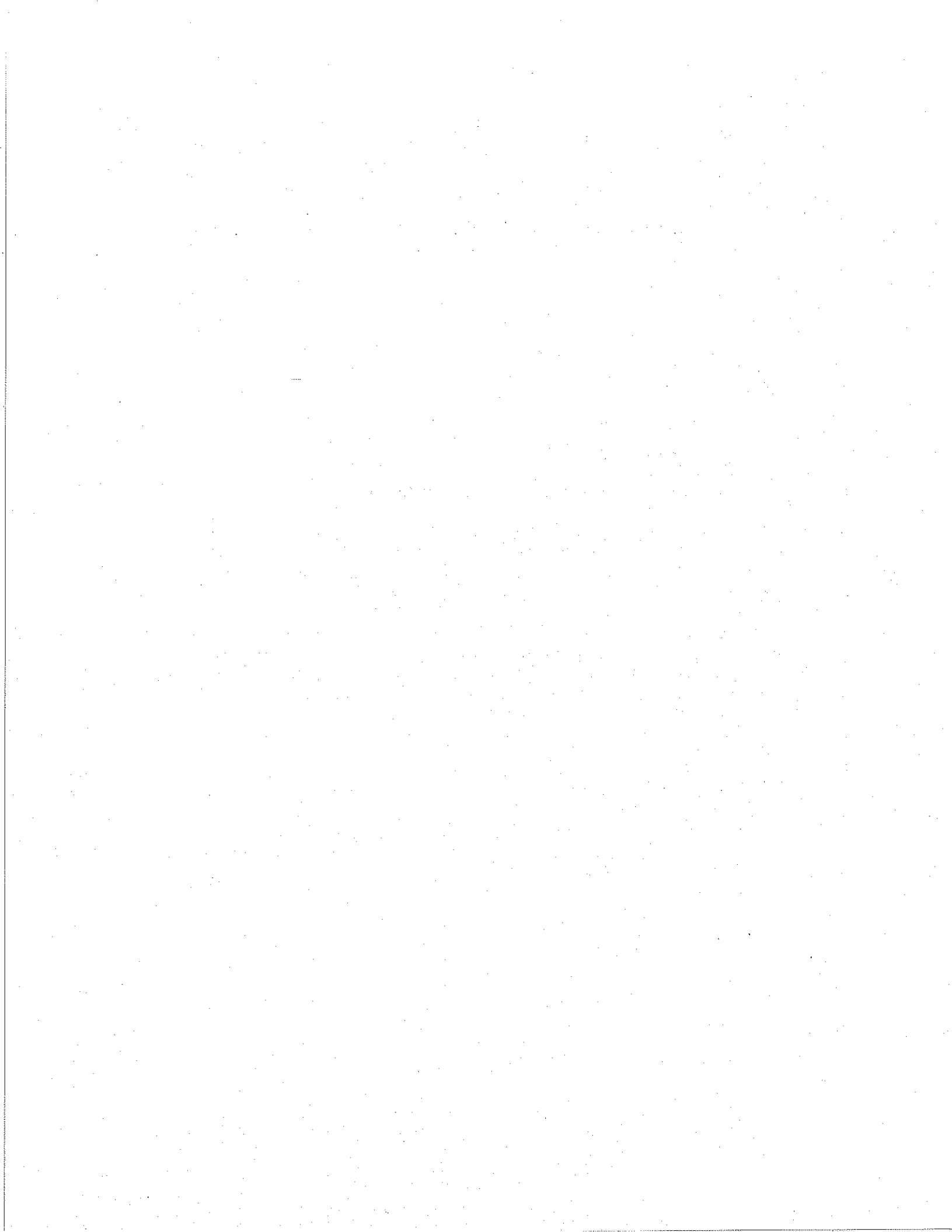
Wisconsin's tourism industry, farms, businesses, human health, and our quality of life depend on clean rivers, streams and lakes. Scientifically based standards will give us the targets to shoot for in order to achieve fishable, swim able lakes, rivers and streams that we want for Wisconsin. This is an important tool needed for our cleanup plans as we work together for better water quality.

Sincerely,



Diane Herman, President

Serving Columbia, Dane, Dodge, Green Lake, Jefferson, Kenosha, Milwaukee,
Ozaukee, Racine, Rock, Walworth, Washington, and Waukesha Counties
And all or part of the following river basins: Fox (III) River, Rock River, Milwaukee River, Root – Pike River,
Sheboygan River, Sugar – Pecontonica River, Lower Wisconsin River, and Upper Fox River Basins





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 its basin.

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

Sincerely,

A handwritten signature in black ink that reads "Lisa Conley". The signature is written in a cursive style with a large, looped "L" and "C".

Lisa Conley, Board of Directors

