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September 19, 2018

VIA EMAIL
DNRWisconsinRiverTMDL@Wisconsin.gov

Mr. Kevin Kirsch
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, WI 53703-7921

RE: Comments on the Wisconsin River TMDL Draft Report

Dear Mr. Kirsch:

We are submitting these comments on the Wisconsin Department of Natural Resources' (DNR) Total Maximum Daily Load (TMDL) Report for Total Phosphorus in the Wisconsin River on behalf of the Municipal Environmental Group–Wastewater Division (MEG). MEG is an organization of almost 100 municipalities statewide who own and operate wastewater treatment plants. MEG has a long history of supporting efforts to remove phosphorus from our state's waters. We greatly appreciate the opportunity to submit comments on the draft TMDL report.

I. Nonpoint Source Pollution

Wisconsin was a leader in establishing technology-based effluent limits on phosphorus back in 1992 at 1.0 mg/L. As a result, Wisconsin municipal treatment plants have already removed approximately 90% of the phosphorus in their discharges, and many have removed upwards of 97%. It is thus not surprising that most of the phosphorus impairments in Wisconsin's waters do not come from municipal treatment plants, but from nonpoint sources.

The TMDL seeks to impose extremely restrictive limits on point source dischargers, despite the fact that baseline phosphorus loadings in the Wisconsin River TMDL area are dominated by nonpoint sources. Because point sources have already removed a substantial amount of

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phosphorus from their discharges, reducing phosphorus discharges from point sources to the level proposed in the TMDL will not result in significant water quality improvement.

In response to prior comments, DNR created Appendix N, which provides the agricultural load allocation as an edge of field number expressed in the same manner as the implementation model SnapPlus. The goal is to “help aid nonpoint implementation and better inform point source compliance options.” MEG appreciates DNR’s effort to aid implementation of nonpoint source pollution reductions. However, the creation of this Appendix does not provide reasonable assurances that nonpoint source pollution reductions will occur. Efforts at nonpoint source pollution reduction have been historically ineffective, and this TMDL Report does not provide sufficient explanation for how TMDL implementation will achieve proposed reductions in nonpoint source phosphorus pollution.

The TMDL should not proceed unless and until nonpoint source phosphorus pollution can more effectively be addressed. Imposing restrictive TMDL-based limits on point source dischargers without improvement on the nonpoint front will require substantial public expenditures with likely insignificant water quality improvement.

II. Phased TMDL Implementation

MEG requests that DNR strongly consider and provide additional information on a phased TMDL implementation. This is particularly necessary for this TMDL area, where there is such significant uncertainty that the water quality criterion is appropriate and attainable. A phased TMDL would provide additional time to study and revise the criteria if appropriate, without locking permittees into stringent wasteload allocations that could be subject to antibacksliding restrictions.

A phased TMDL would also allow for achievement of interim milestones and waste load allocations while allowing time for achieving important nonpoint source reductions. A phased implementation process could include initial load reductions followed by monitoring and modeling and resulting modifications to the TMDL allocations. Without a phased approach, point sources will be forced to meet final allocations over a short timeframe as compared to nonpoint sources. And, as discussed above, such allocations will not result significant water quality improvements.

The authority to implement a phased TMDL approach exists under the Clean Water Act. The U.S. EPA has issued several guidance documents that discuss the permissible use of phased or staged TMDLs. *See Guidance for Water Quality-Based Decisions: The TMDL Process*, Environmental Protection Agency (1994); *Memorandum: Clarification Regarding “Phased” Total Maximum Daily Loads*, Environmental Protection Agency (2006). MEG requests that DNR provide further evaluation of a phased approach to the Wisconsin River TMDL.

III. Site Specific Criteria

MEG supports DNR's decision to pursue site-specific criteria (SSC) for lakes Petenwell, Castle Rock, and Wisconsin. MEG strongly objects to proceeding with finalizing the TMDL prior to successful completion of the SSC process.

As DNR is aware, an SSC must be adopted by rule in Wisconsin. This process can take a number of years. If DNR moves forward on the TMDL without first securing SSC, point sources may face implementation of extremely stringent TMDL allocations. There are a number of permittees who are facing reissuance of permits including TMDL limits in the upcoming years. If these permittees receive TMDL limits that become effective prior to completion of the SSC, they could be stuck with these limits due to antidegradation/antibacksliding restrictions. It makes little sense and could result in significant expense to point source dischargers if the TMDL were to proceed prior to finalization of SSC. The TMDL should **not** move forward unless and until completion of the SSC.

IV. Reserve Capacity

MEG requests that reserve capacity allocations should be specifically noted in the TMDL for use by point sources and not for nonpoint sources. In order to achieve water quality improvements, nonpoint source reductions from the baseline conditions must be met. Changes to point source allocations, on the other hand, would have an insignificant impact on water quality. Thus, the reserve capacity should be limited to use by point sources.

V. Compliance Options

MEG appreciates DNR's creation of Appendix O regarding adaptive management options in the TMDL area. However, the issue remains that with municipal dischargers potentially facing extremely stringent TMDL based limits, the limited availability of practical compliance options is a significant challenge. One major hurdle for trading under the Wisconsin River TMDL is that it appears that point sources would not be able to obtain credits from nonpoint source reductions unless such reductions are below a PI of 1 (in most areas) rather than the NR 151 standard of a PI of 6. This significantly reduces the credits available for trading in the TMDL area and will result in trading being an unrealistic compliance option for most municipal permittees.

Simultaneously with this TMDL process, DNR should reevaluate restrictions on trading and adaptive management in order to provide more flexible compliance options for point sources.

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Without such flexibility, municipal dischargers are likely to face substantial costs for facility upgrades well into the future that will not result in significant water quality improvement.

Sincerely,

STAFFORD ROSENBAUM LLP

A handwritten signature in cursive script that reads "Vanessa D. Wishart".

Paul G. Kent

Vanessa D. Wishart

PGK/VDW:mai