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January 18, 2019

VIA EMAIL

Keith Marquardt  
Wisconsin Department of Natural Resources  
625 E County Road Y, Suite 700  
Oshkosh, WI 54901

RE: Comments of the Municipal Environmental Group – Wastewater Division on the  
Upper Fox and Wolf River TMDL Report

Dear Mr. Marquardt:

We are submitting these comments on the Wisconsin Department of Natural Resources' (DNR) Total Maximum Daily Load (TMDL) Report for Total Phosphorus in the Upper Fox and Wolf River Basin on behalf of the Municipal Environmental Group–Wastewater Division (MEG). MEG is an organization of approximately 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 TMDL report.

## 1. 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. 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 Upper Fox and Wolf River TMDL area are dominated by nonpoint sources. Because point sources have already removed a substantial amount of phosphorus from their discharges, reducing phosphorus discharges from point sources to the level proposed in the TMDL will not result in meaningful water quality

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improvement. Scenarios modeled by USGS in 2016 showed only a 2% reduction in Lake Winnebago total phosphorus (TP) concentrations even if WWTP loadings were set to zero. This reduction may not even be measurable.

The Draft TMDL Report discusses reasonable assurances for reduction of phosphorus from nonpoint sources. Such efforts have, however, been historically ineffective. MEG requests that DNR provide further explanation as to how TMDL implementation will achieve the proposed reductions in nonpoint source phosphorus pollution.

## **2. Attainability**

The paleoecological study results suggest that the TP concentration in Lake Winnebago was at or above the water quality criterion of 40 ug/L prior to anthropogenic development in the area (1310-1725). The dams at the outlet to Lake Winnebago were constructed after that time, resulting in a raising of the water level. This caused increased shoreline erosion and lake area and likely reductions in groundwater inputs to the lake. Further, additional agricultural, urban, and other development occurred after that time and prior to the enactment of the Clean Water Act. There is significant in-lake recycling and internal loading of TP occurring now, and modeling indicates it will take the better part of a century to reduce the internal loading to an acceptable level after external loadings are reduced. All of these factors suggest that the 40 ug/L criterion is not attainable. It is unacceptable to require point sources to comply with the proposed stringent TP wasteload allocations now or in the future when the criterion is unattainable.

## **3. 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, reductions from such allocations will not result meaningful 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 Upper Fox and Wolf River TMDL.

#### **4. Site Specific Criteria**

MEG recommends that the DNR reconsider appropriate and attainable site specific criteria (SSC) for the pool lakes, including Lake Winnebago. The sediment core results, TP criteria from Minnesota (on which the Wisconsin lake and reservoir criteria were based), and this TMDL effort all suggest that a higher TP criterion could be justified. In addition, MEG questions the validity of applying a chlorophyll  $\alpha$  threshold from Minnesota, which was developed based on public perception of water quality in lakes, to water quality in Lake Winnebago. A phased TMDL as discussed above could be implemented initially to allow time for SSC development that would implement more appropriate phosphorus criteria.

#### **5. Development of Allocations**

MEG requests that DNR consider alternative allocation scenarios. For example, DNR should run scenarios to determine whether different allocation methods could be more cost-effective than the proportional approach used in other Wisconsin TMDLs. For this TMDL, where only a small percentage of loadings are from WWTPs and MS4s, DNR should run a scenario where all WWTPs are set at a less restrictive TP limit, such as 0.5 mg/L, at design average flow and all MS4s to the TP-equivalent of a 40% TSS reduction to determine whether this methodology would change the required nonpoint source load allocations significantly.

#### **6. Compliance Options**

With municipal dischargers potentially facing extremely stringent TMDL based limits, it is important that there be a number of viable compliance options available to dischargers. Unfortunately, using current DNR trading guidance, this TMDL will result in a credit threshold so low that long-term credits will be essentially impossible for permittees to obtain. The costs associated with interim credits make trading a much less viable option for permittees.

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DNR should reevaluate restrictions on trading and adaptive management in order to provide more flexible compliance options for point sources. Without such flexibility, municipal dischargers are likely to face substantial costs for facility upgrades well into the future that will not result in meaningful water quality improvement.

Sincerely,

STAFFORD ROSENBAUM LLP

A handwritten signature in black ink, appearing to read "Vanessa D. Wishart". The signature is written in a cursive, flowing style.

Paul G. Kent

Vanessa D. Wishart

PGK/VDW:mai