



## Attorneys

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VIA EMAIL AND U.S. MAIL

Wisconsin Department

Dear Ms. Minks:

Municipal Environmental Group–Wastewater Division (MEG). MEG is an organization of over

Wisconsin was a leader in establishing technology based effluent limits on phosphorus back in 1992 at 1.0 mg/L. As a result, Wisconsin municipalities 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.

Nevertheless, MEG has continued to support measures to further reduce phosphorus from an

reduces only a small percent of the phosphorus in Wisconsin's waters is not cost effective and

12/16/2015 11:29 AM

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or more of the phosphorus in their discharges, treating that last few percent often requires advanced filtration technologies at enormous cost.

As noted above, there are existing alternatives that allow point sources to work with nonpoint sources on more cost effective phosphorus reduction options. MEG has supported and continues to support trading and adaptive management. The problem with these programs, however, is that they are not available or practical for many communities, especially small communities. Trading is not available to those communities at the wrong end of a watershed, and it also involves various trade ratios and administrative issues that have proved to be difficult to work through. There are very few areas where trades are being actively pursued. Adaptive management is limited by rule to certain stream segments. It also requires staff resources, data, cooperative partners and a willingness to take on risk. It is a comprehensive collaborative effort between point and nonpoint sources. For many communities, especially those outside major urban areas, they lack the data, staff, or administrative capability to effectively undertake adaptive management or trades. These communities need another option.

The answer to addressing phosphorus is finding mechanisms that require reasonable reductions from point sources over time and focuses resources on nonpoint programs. That is what the MDV was designed to do.

The Department of Natural Resources has done an admirable job developing guidance on the multi-discharger variance, and we commend them on their efforts. There are, however, a few areas in which we have remaining concerns as this variance now goes forward to review by the Environmental Protection Agency (EPA).

### **Eligibility Criteria**

First, we continue to be concerned with the methodology used to develop screening criteria for municipal facilities. Those criteria now exclude even more municipal facilities from eligibility for the multi-discharger variance. In the original documents six counties were either ineligible or required sewer charges to exceed 2% median household income (MHI). Many communities, particularly larger communities will have costs in the 1% to 2% range within those counties, are effectively eliminated from using the MDV.

The number of counties that are ineligible or require a 2% MHI has now grown to 15 counties: Brown, Calumet, Chippewa, Dane, Dunn, Eau Claire, Green, La Crosse, Lafayette, Monroe, Outagamie, St. Croix, Trempealeau, Washington, and Waukesha. Communities in these counties account for 41 facilities with a design capacity over one million gallons per day (mgd). Facilities at 1 mgd or more would generate the most income under the variance if they were otherwise eligible. The 41 facilities in these counties constitute approximately 40% of the facilities *statewide* that have design capacities of 1 mgd or more. These 15 counties also account for a total of 144 communities out of a total of 649 communities statewide, or nearly 25% of the total communities in the state.

The more facilities excluded from the MDV, the smaller the amount of dollars will be available for nonpoint source phosphorus reduction efforts. And, as we explained earlier, facilities

excluded from the variance will face steep costs to attain only a minimal amount of further phosphorus reduction. The criteria adopted by DNR has already substantially undercut the value that the MDV program can provide to addressing nonpoint sources and has limited the relief intended to be provided to POTWs. As this proposal moves forward to review by the EPA we would strongly object to further limitations on eligibility that would further erode the value of this program.

### **Highest Attainable Condition Implementation**

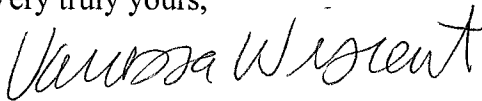
We are also concerned about implementation of the "highest attainable condition" requirement with respect to more restrictive interim limits. Phosphorus is susceptible to fluctuations during rainfall events or from slight operational changes which necessitates a flexible approach to setting interim limits. While we believe that the Department is taking an approach that accounts for phosphorus variability in setting interim limits, we want to reiterate the importance maintaining such flexibility.

### **Timing and Next Steps**

Finally, we urge the Department and EPA to continue to move forward quickly with respect to approval and implementation of this variance. Hundreds of municipal permittees are already "on the clock" because they have permits that require them to make a choice on compliance options within the next year or two. They need to know whether the multi-discharger variance is a viable option for them. If the only option is for those communities to build additional treatment, the window of opportunity to channel funds to nonpoint efforts will be closed. We therefore encourage prompt EPA review of the variance that does not further constrain the communities that can participate in this effort.

For more information or any questions, please contact Paul Kent at the address listed at the top of this letter.

Very truly yours,



Paul G. Kent  
Vanessa D. Wishart

PGK:mai  
VDW:mai  
cc: MEG Steering Committee