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February 15, 2022

VIA EMAIL

Laurie.Ross@wisconsin.gov

Wisconsin Natural Resources Board
c/o Laurie Ross, Board Liaison
P.O. Box 7921
Madison, WI 53707-7921

RE: Comments on Board Order WY-23-19

Dear Chairman Kazmierski and Members of the Board:

I am submitting these comments on behalf of the Municipal Environmental Group–Wastewater Division (MEG Wastewater) and the League of Wisconsin Municipalities (the “League”). Both MEG Wastewater and the League have been active participants throughout this rulemaking process, and we greatly appreciate this opportunity to comment on Board Order WY-23-19 for the revisions to chs. NR 102, 105, 106, and 219, which include establishing surface water quality standards for PFOA and PFOS.

MEG Wastewater and the League continue to be encouraged by and to support the framework the department implements in this rule package. Unlike drinking water standards, surface water standards are commonly established at the state level, and it therefore makes sense to proceed with development of these rules at this time.

MEG Wastewater and the League have long advocated for a pollutant minimization/source reduction approach to the regulation of PFOS and PFOA, as proposed in this rule. This approach addresses PFOS and PFOA in a scientifically and environmentally sound, expedient, and cost-effective manner. PFOA and PFOS cannot be removed through conventional wastewater treatment processes, and the treatment processes wastewater treatment plants would be required to implement to meet strict effluent limitations for PFOS and PFOA are neither economically feasible nor environmentally sound. The department’s establishment of narrative criteria and associated numeric thresholds is an approach that should result in actual PFAS reductions and avoid the costly and time consuming process of obtaining variances from water quality standards.

While MEG Wastewater and the League support the framework for this rule package, both groups continue to have recommendations regarding specific language contained in the rule. Those recommendations are detailed in our prior comments, which are attached hereto.

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Thank you for consideration of these comments. We greatly appreciate the opportunity to participate in this process.

Sincerely,

STAFFORD ROSENBAUM LLP

A handwritten signature in black ink, appearing to read "Vanessa D. Wishart". The signature is fluid and cursive, with the first name "Vanessa" and last name "Wishart" clearly distinguishable.

Vanessa D. Wishart

Paul G. Kent

December 15, 2021

VIA EMAIL

DNR105PFASRule@wisconsin.gov
MeghanC3.Williams@wisconsin.gov

Department of Natural Resources
Attn: Meghan Williams – WY/3
P.O. Box 7921
Madison, WI 53707

**RE: Comments of the Municipal Environmental Group – Wastewater Division
Board Order WY-23-19**

Dear Ms. Williams:

We are submitting these comments on behalf of the Municipal Environmental Group–Wastewater Division (MEG Wastewater). MEG Wastewater is an organization of over 100 municipalities statewide who own and operate wastewater treatment plants. We represent facilities ranging in size from small sanitary districts to larger utilities. As you know, MEG has been an active participant in the various department forums on PFAS over the past several years. MEG appreciates this opportunity to comment on Board Order WY-23-19 for the revisions to chs. NR 102, 105, 106, and 219, which include establishing narrative criteria for PFOA and PFOS.

MEG is encouraged by and supports the framework the department implements in this draft rule package. Surface water standards are commonly established at state level, and it therefore makes sense to proceed with development of these rules at this time. MEG has advocated for non-numeric standards and a pollutant minimization/source reduction approach to the regulation of PFOS and PFOA. This is because PFOA and PFOS cannot be removed through conventional wastewater treatment processes. And, the treatment processes wastewater treatment plants would be required to implement to meet strict effluent limitations for PFOS and PFOA are neither economically feasible nor environmentally sound. The department's establishment of narrative criteria and an associated numeric thresholds is an approach that should result in actual PFAS reductions and avoid the costly and time consuming process of obtaining variances from water quality standards. This approach addresses PFOS and PFOA pollution in a scientifically and environmentally sound, expedient, and cost-effective manner.

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With respect to the details of the proposed rule language, MEG provides the following comments for the department's consideration.

First, certain sections of the proposed rule require consideration of PFOS and PFOA in sludge and biosolids, which we do not believe is appropriate or necessary in this rule package. For example, proposed NR 106.99(1)(d) provides that PFAS minimization plans shall, "[w]here the permittee regularly monitors ... sludge, or biosolids for PFOS and PFOA," include "any changes in PFOS and PFOA concentrations over comparable historic data" in these media. Similarly, proposed NR 106.99(4) provides that the department "shall consider" the concentrations of PFOS and PFOA in "biosolids or sludge, if applicable," in reviewing the appropriate elements of a PFAS minimization plan. The proposed rule package establishes narrative criteria for surface waters and is not the appropriate mechanism for regulation regarding sludge or biosolids. Further, we understand that the department is working on guidance regarding biosolids management separately from this rule package. We request that these references to sludge and biosolids be removed from this rule language.

Second, it is still unclear how the proposed narrative standards and thresholds would apply to construction projects that involve pit trench dewatering. For instance, when will it be necessary to test for PFAS? If testing occurs and the water is under the applicable thresholds, could it be discharged to storm sewer and/or surface waters? Generally, municipal wastewater treatment plants accept contaminated groundwater from construction sites, and municipalities often undertake construction activities that require pit trench dewatering. If the water is over the applicable thresholds, would municipal treatment plants be allowed to accept it, or knowing that it contains PFAS over a threshold, would a PMP have to require treatment before discharge to a sanitary sewer? We would appreciate clarification from the department on these types of activities.

A similar question arises in the context of other known waste sources of PFAS such as landfill leachate. Will all such sources need to pretreat to the applicable thresholds before a municipal plant would be allowed to accept such waste? That is not the current practice with other contaminants, provided that the treatment plant can stay within its permit limits, and imposing that requirement here could result in substantial costs and practical issues. We would appreciate clarification from the department on this topic.

Finally, the proposed rules do not define the applicability of data for determining reasonable potential. MEG would appreciate clarification from the Department as to how data will be determined to be "representative" and what data will be included in the reasonable potential calculation. This is particularly relevant given the continued challenges with ensuring validity during PFAS sampling and analysis. MEG would also appreciate clarification from the department as to the parameters around which historic PFOS and PFOA sampling data will be used. Once a permittee has implemented a successful PFAS minimization plan as required under this rule, such that its discharge no longer creates a reasonable potential to exceed a PFOS or PFOA threshold, the permittee should be able to have that plan removed from its WPDES permit. If, however, historic PFAS sampling continues to be used in the reasonable potential calculation, the gains made in source reduction may not be adequately accounted for in determining permit requirements. MEG requests that the department clarify how historic PFAS sampling results will be used in the reasonable potential calculation for permittees that have implemented successful PFAS minimization plans.

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Thank you for consideration of these comments. MEG greatly appreciates the opportunity to participate in this process and welcomes further communication with the Department.

Sincerely,

STAFFORD ROSENBAUM LLP

A handwritten signature in black ink, appearing to read "Vanessa D. Wishart".

Vanessa D. Wishart

Paul G. Kent

VDW:mai



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December 15, 2021

Department of Natural Resources
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Via Email – MeghanC3.Williams@wisconsin.gov and DNR105PFASRule@wisconsin.gov

RE: Comments on WY-23-19 Revisions to chs. NR 102, 105, 106, and 219 relating to the Proposed Surface Water Quality Standards for PFOA and PFOS, including narrative criteria

Ms. Williams:

The League of Wisconsin Municipalities, a nonprofit and nonpartisan association of 594 cities and villages, welcomes the opportunity to submit the following comments on the proposed revision of chs. NR 102, 105, 106, and 219, which include establishing narrative criteria for PFOA and PFOS. The League has been a member of several PFAS related department working groups and recognizes the large amount of work that has gone into developing these rules.

It is important to note that municipal wastewater facilities are not generators of PFAS, but simply the end waste processors tasked with the final, and often most expensive, treatment of contaminants prior to discharge. The League appreciates the department's willingness to consider and include narrative criteria combined with associated numeric thresholds to potentially trigger a pollutant minimization plan and corresponding source reduction. The referenced framework is the most technologically and economically feasible option for municipalities to pursue while simultaneously achieving the largest environmental improvements. Numeric water quality effluent standards would only increase costs, rely on variances producing slower environmental benefits, and miss the cooperative opportunity to address source reduction.

The League supports the development of PFOA and PFOS surface water provisions at this time because these standards are typically established by states. We are very encouraged by the cooperative nature of the rule that the department has put forward and would like to offer these specific recommendations for consideration in the final rule package:

- We are concerned that the rule specifically addresses biosolids in the PFAS minimization plans that may need to be developed by municipal wastewater utilities. The proposed rule package establishes narrative criteria for surface waters and effluent discharge and therefore, this rule package is not the appropriate venue for regulating biosolids. We request that the references to sludge and biosolids be eliminated from this rule package and considered in a separate administrative revision.
- We seek clarification from the department regarding the use of the proposed narrative standards and thresholds with regard to their application in construction projects that involve pit trench dewatering and landfill leachate. Municipalities engage in several construction activities that require pit trench

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dewatering and our municipal wastewater utilities accept groundwater from construction sites. In addition, our municipal treatment plants accept landfill leachate from landfills around the state. Will we be required to test pit trench water or leachate for PFAS? Will a minimization plan require pretreatment before the water can be sent to a wastewater treatment plant? Are those costs accounted for in the environmental impact assessment because they could increase costs substantially?

- Finally, on page 22 of the proposed rule a note references that permittees may refer to the Michigan Department of Environmental Quality's "Wastewater PFAS Sampling Guidance" for recommended sampling protocols and cost contamination prevention measures. We have two questions pertaining to this note: Why reference another state's guidance in an administrative code? And will this guidance always be the best option for sampling? The note should simply reference the most commonly accepted or approved/recommended sampling protocols, so practices are continually updated. The League requests the note be deleted or clarified to state that permittees may refer to the most up to date, generally accepted sampling protocols.

In addition, to the comments outlined above, the League fully endorses the comments submitted by Vanessa Wishart and Paul Kent on behalf of the Municipal Environmental Group Wastewater Division on December 15, 2021.

Thank you again for the process the department followed in this rule revision and the opportunity to provide municipal comments on NR 102, 105, 106, and 219 as they relate to surface water quality standards and non-numeric, narrative criteria for PFOA and PFOS. The League continues to be supportive of the department's rule revision efforts with the above requests for clarification.

Kind Regards,

Toni R Herkert

Toni Herkert, Government Affairs Director, Wisconsin League of Municipalities