

Paul G. Kent
222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784
vwishart@staffordlaw.com
608.259.2665

Vanessa D. Wishart
222 West Washington Avenue, Suite 900
P.O. Box 1784
Madison, WI 53701-1784
vwishart@staffordlaw.com
608.210.6307

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VIA EMAIL

Mr. Kevin Kirsch
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, WI 53707-7921

RE: Comments on the Wisconsin River TMDL Draft Report

Dear Mr. Kirsch:

On behalf of the League of Wisconsin Municipalities (the League), we are submitting the following comments on the Wisconsin Department of Natural Resources' (DNR) February 21, 2018 Total Maximum Daily Load (TMDL) for Total Phosphorus in the Wisconsin River Basin Draft Report.

The League is made up of 190 cities and 398 villages in Wisconsin. Some of these communities have MS4 responsibilities and will be significantly impacted by the Wisconsin River TMDL. The League greatly appreciates the opportunity to comment on the TMDL Report at this stage in development.

The League has the following comments and concerns.

I. Nonpoint Source Pollution

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 agriculture sources. 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 significant water quality improvement.

Madison Office

222 West Washington Avenue
P.O. Box 1784
Madison, Wisconsin
53701-1784
608.256.0226
888.655.4752
Fax 608.259.2600
www.staffordlaw.com

Milwaukee Office

1200 North Mayfair Road
Suite 430
Milwaukee, Wisconsin
53226-3282
414.982.2850
888.655.4752
Fax 414.982.2889
www.staffordlaw.com

Chapter 7 of the TMDL discusses reasonable assurances for reduction of phosphorus from nonpoint sources. Such efforts have, however, been historically ineffective. The League requests further explanation from the DNR as to how the DNR plans to achieve the proposed reductions in nonpoint source phosphorus pollution.

II. Phased TMDL Implementation

The League requests that DNR strongly consider a phased (or adaptive or staged) TMDL implementation. A phased TMDL would 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. Without a phased approach, point sources would be forced to meet final allocations over a short timeframe as compared to nonpoint sources. And, as discussed above, such allocations will not result in 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). The League requests that DNR provide further evaluation of a phased approach to the Wisconsin River TMDL.

III. Site Specific Criteria

The League supports DNR's decision to pursue site-specific criteria (SSC) for lakes Petenwell, Castle Rock, and Wisconsin. However, the TMDL Report is not clear as to the process DNR plans to use to develop SSC. In particular, it is not at all clear from the report whether DNR plans to secure an SSC prior to finalizing the TMDL. To the extent that DNR is proposing to move forward on finalizing the TMDL prior to successful completion of the SSC process, the League strongly objects to that process.

An SSC must be adopted by rule in Wisconsin. This process can take a number of years. If DNR were to move forward on the TMDL without first securing SSC, point sources could face implementation of extremely stringent TMDL allocations. It makes little sense and could result in significant expenses 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

The League 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

With municipal dischargers potentially facing extremely stringent TMDL based limits, the limited availability of practical compliance options becomes even more of a challenge. DNR should reevaluate implementation of 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 significant water quality improvement.

Respectfully Submitted,

STAFFORD ROSENBAUM LLP



Paul G. Kent
Vanessa D. Wishart

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