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pro bono publico

VIA ELECTRONIC MAIL

November 12, 2004

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Attn: Tom Gilbert
Wisconsin Department of Natural Resources
Bureau of Watershed Management
PO Box 7921
Madison, WI 53707-7921

Re: Comments on Proposed General Permit for Facilities Discharging Domestic Wastewater to a Subsurface Soil Absorption System, WPDES Permit No. WI-0062901-01.

Dear Mr. Gilbert:

Midwest Environmental Advocates, Inc. ("MEA") is writing to comment on the above-referenced proposed Wisconsin Pollutant Discharge Elimination System ("WPDES") permit ("Proposed General Permit"). MEA is a 501(c)(3) non-profit environmental law center that provides legal representation and technical assistance to communities working for clean air and water in the upper Great Lakes region. MEA is submitting these comments on behalf of the Sierra Club – John Muir Chapter.

We understand that the Proposed General Permit is applicable to private onsite wastewater treatment systems ("POWTS") with the design capacity of 12,000 gallons per day, or serving more than the equivalent of 85 residential bedrooms. We further understand that POWTS are typically associated with residential subdivisions in rural areas that are out of reach of municipal wastewater treatment facilities. Because of the potential the Proposed Permit creates for urban sprawl, poorly planned land use, and groundwater quality throughout Wisconsin, it is important the Proposed General Permit protect public health and safety.

I. THE PROPOSED GENERAL PERMIT SHOULD INCLUDE A SPECIFIC TECHNOLOGY-BASED STANDARD FOR NITROGEN REMOVAL.

Proposed General Permit Section 1.1.1.3 states that a POWTS component must be "designed to remove nitrogen." DNR acknowledges that the proposed permit does not establish specific nitrogen removal requirements. DNR states that the purpose of the Proposed General Permit is to assure that large systems under this permit employ nitrogen removal technology that is technically and economically feasible.

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11/12/2004
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Organizations listed for identification purposes only.

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Wis. Stats. § 283.31(5) requires the DNR to identify the maximum levels of discharges in a WPDES permit. However, the Proposed General Permit does not define “designed to remove nitrogen,” and it does not include a nitrogen-based effluent limit designed to require compliance with groundwater or surface water standards. Further, the Proposed General Permit does not state how much nitrogen must actually be removed by the POWTS. The Proposed General Permit only cross-references Chapter COMM 83.

COMMENT: The Proposed General Permit should include a specific technology-based nitrogen effluent limit, consistent with Wis. Stats. § 283.31(5), where compliance with that effluent limit will demonstrate to the DNR that the POWTS will not cause or contribute to a violation of groundwater quality or surface water quality standards.

II. PROPOSED GENERAL PERMIT SECTION 1.1.2 SHOULD INCLUDE CRITERIA DEFINING WHEN THE DNR WILL REQUIRE AN INDIVIDUAL PERMIT.

Section 1.1.2 of the Proposed General Permit states that the permit applies to discharges to groundwater from publicly owned treatment works that discharge via subsurface soil absorption systems that meet NR 100 and NR 206, Wis. Adm. Code, “unless the Department determines that an individual permit is necessary.” However, it is not clear how the DNR will determine whether an individual permit is required. If the Department will look outside the requirements of Chapters NR 100 and NR 206, what factors/requirements will the Department use to determine whether a general or individual permit is more appropriate for the publicly owned treatment works?

COMMENT: Section 1.1.2 of the Proposed General Permit should include a list of factors the DNR will apply in determining whether an individual permit will be required for a publicly owned treatment works discharging to groundwater.

II. PROPOSED GENERAL PERMIT SECTION 1.1.3 SHOULD IDENTIFY CRITERIA FOR DETERMINING “SUBSTANTIAL EQUIVALENCE” BETWEEN DOMESTIC AND NON-DOMESTIC WASTEWATER.

Section 1.1.3 of the Proposed General Permit states that the permit applies to discharges that meet the applicability criteria contained in Sections 1.1.1 or 1.1.2 and that “contain a mixture of domestic and non-domestic wastewater that the [DNR] determines is substantially equivalent to domestic wastewater.”

We recognize that Section 1.1.3 is intended to be inclusive, but it is not clear what "substantial equivalence" to domestic wastewater means, or how the DNR will make that determination. Will the DNR have any maximum levels of effluent beyond which a mixed wastewater cannot be "substantially equivalent" to domestic wastewater?

COMMENT: The Proposed General Permit should include criteria for establishing how the DNR will define “substantial equivalence” to domestic wastewater so that the public can determine whether general permit coverage is required for a given POWTS.

III. PROPOSED GENERAL PERMIT SECTION 1.2 DOES NOT DEFINE HOW THE DNR WILL WAIVE THE INDIVIDUAL PERMIT REQUIREMENT FOR POWTS' WITHIN SOURCE WATER PROTECTION AREAS.

Section 1.2 of the Proposed General Permit states that the permit does not apply to systems that discharge within a source water protection area. It is not clear whether this means that no POWTS may discharge in a source water protection area, or that an individual WPDES permit is required to discharge within a source water protection area. Nevertheless, the DNR may waive this requirement on a case-by-case basis "if [it] determines that the proposed facility will not adversely affect the safety of the public water system." The Proposed General Permit does not include any detail on how the DNR will determine whether a POWTS will adversely affect the safety of public water system, or what the POWTS will have to submit to show that it will not adversely affect a public water system.

COMMENT: The Proposed General Permit should clarify that no POWTS may discharge in a source water protection area unless criteria established in the final General Permit have been satisfied according to the DNR and after an opportunity for public participation.

COMMENT: Section 1.2 of the Proposed General Permit should include criteria that the DNR will use to determine whether a public water system in a source water protection area may be impacted by POWTS subsurface discharge.

IV. OPERATION AND PERFORMANCE REQUIREMENTS IN SECTIONS 2.2, 2.7, AND 2.13 ARE VAGUE AND UNENFORCEABLE.

Section 2.2 of the Proposed General Permit states that whenever the permittee intends to make "significant operational changes," the management plan must be amended and be submitted to the appropriate agency for approval. The Section directs the reader to COMM 83.54(1)(d) and NR 206.01(2)(h). COMM 83.54(1)(d) states that a plan must be amended if the owner wishes to operate or maintain a POTWS differently than specified in the management plan. NR 206.01(2)(h) states the management plan must be amended if "operational changes" are needed.

It is not clear how the DNR defines "significant operational changes" or whether the DNR sees "significant operational changes," "maintaining differently than specified," and "operational changes" as equivalent thresholds for determining when a management plan must be amended. Further, it appears that the "significant operational changes" is a higher threshold for amendment than those in COMM 83.54(1)(d) and NR 206.01(2)(h), which simply requires amendments to the management plan whenever a POWTS proposes to operate different than specified in the management plan.

COMMENT: The Proposed General Permit should be made consistent with COMM 83.54(1)(d) and NR 206.01(2)(h) by requiring an amendment to the management plan whenever a POWTS proposes to operate the system differently than specified in the management plan or when operational changes are needed. That management plan and any updates should be submitted to the DNR as part of the Compliance Maintenance Annual Report ("CMAR") in Proposed General Permit Section 3.1.

Section 2.7 of the Proposed General Permit states that the permittee may not discharge liquid wastes to the subsurface soil absorption system that contain toxic or hazardous substances at levels "exceeding those normally present in domestic wastewater." However, it is not clear what levels of toxic or hazardous substances are "normally present" in domestic wastewater. How does the Department determine these levels? Does the Department intend to use a state-wide standard for consistency, or will there be a case-by-case determination of "normal" levels of toxic and hazardous substances?

Further, how will the DNR require the POWTS to monitor and treat discharges of household hazardous wastes, such as used motor oil, paint, cleaning products, detergents, and other toxic substances that are frequently poured down the drain? The Proposed General Permit does not contain any effluent limits or monitoring requirements for these substances. Do these toxic substances fall within the definition of domestic wastewater, and would they exceed levels normally present in domestic wastewater? How will the POWTS treat those substances to prevent them from reaching groundwater and causing a violation of groundwater standards? Without these details, Section 2.7 is virtually unenforceable and will likely do little, if anything, to protect public health by preventing groundwater contamination.

COMMENT: Section 2.7 of the Proposed General Permit should identify specific effluent limits that prohibit the discharge of specific concentrations of toxic or hazardous substances, rather including the vague and unenforceable comparison to domestic wastewater.

IV. REPORTING REQUIREMENT 3.1 DOES NOT PROVIDE SUFFICIENT DETAIL.

Section 3.1 of the proposed general permit states that all systems subject to the permit shall complete a Compliance Maintenance Annual Report (CMAR). In the case of a POTW, the municipality's governing body must submit a resolution accompanying the CMAR that deals with how the permittee will address the problems identified. However, the CMAR should include a reporting requirement that documents how the permittee actually addressed problems identified in the CMAR, and the effectiveness of the actions taken.

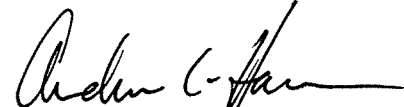
COMMENT: Section 3.1 should require that the permittee document in the CMAR, or in a follow-up addendum to the CMAR, what actions were actually taken to address problems and the effectiveness of those actions.

V. CONCLUSION

Thank you for the opportunity to comment on the Proposed General Permit for POWTS. We look forward to the DNR's response to our comments.

Sincerely,

MIDWEST ENVIRONMENTAL ADVOCATES, INC.



Andrew C. Hanson

cc: Caryl Terrell, Sierra Club – John Muir Chapter
Lisa McKinnon – 1,000 Friends of Wisconsin