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VIA ELECTRONIC MAIL

March 11, 2005

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Michael Hammers
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Madison, WI 53707-7921

**Re: COMMENTS ON PROPOSED MODIFICATION TO
WPDES PERMIT NO. WI-0003026-07-1, WAUSAU-
MOSINEE PAPER CORPORATION**

Dear Mr. Hammers:

Midwest Environmental Advocates (MEA) appreciates the chance to comment on the proposed modification of the WPDES permit for Wausau-Mosinee Paper Corporation, WPDES Permit No. WI-0003026-07-1.

1) General Comments

COMMENT: Wausau-Mosinee Paper Corporation should not be allowed to discharge any mercury into the Wisconsin River since it is an impaired waterway which does not have a TMDL.

The receiving water body for this discharge is the Wisconsin river, which is listed on the DNR's 2002 and proposed 2004 303(d) list as impaired with mercury and having a fish consumption advisory.¹ There is no approved TMDL for this river segment.

Federal law prohibits the issuance of NPDES permits to new dischargers if the discharge from its operation will "cause or contribute to the violation of water quality standards."² "New discharger" is defined to include existing dischargers who never received final NPDES permits for discharges at the particular location.³ Although Wausau-Mosinee Paper has an NPDES

¹ Wisconsin Department of Natural Resources, 2002 303(d) List Approved by EPA, Sept. 15, 2003, p. 10, <[http://dnr.wi.gov/org/water/wm/wqs/303d/Lists303d/2002_303\(d\)_Approved_by_EPA_public_version.pdf](http://dnr.wi.gov/org/water/wm/wqs/303d/Lists303d/2002_303(d)_Approved_by_EPA_public_version.pdf)>

² 40 C.F.R. § 122.4(i).

³ 40 C.F.R. § 122.2



permit for the particular location, it does not include and has never included any mercury discharge limit. However, currently it is being allowed to discharge mercury with only a minor effluent testing requirement. As a newly regulated discharge, it should have to either conform to water quality standards. In effect, Wausau-Mosinee Paper is being allowed to have an unregulated discharge of mercury even though measurements for 2004 show that the facility does appear to “cause or contribute to the violation of water quality standards.”⁴ As the first year of testing data shows, the facility’s effluent was above the state WQS more than 78% of the time.⁵ Wausau-Mosinee Paper should not be allowed to skirt WQS regulations in this way.

Wisconsin statutes say that “[t]he discharge of any pollutant into any waters of the state . . . is unlawful unless such discharge or disposal is done under a permit.”⁶ Permits may be issued for the discharge of pollutants only if the discharges meet a host of requirements, including that they conform to any limitations necessary to meet state or federal water quality standards.⁷ At the moment, Wausau-Mosinee Paper’s permit gives it no obligation to meet the relevant WQS for mercury even though testing has shown that the facility is discharging mercury into waters of the state. Even though a limit of 1.3 ng/L for mercury has been set as a statewide WQS, and although the Wisconsin river is on the 303(d) list due to high mercury, Wausau-Mosinee Paper is currently getting a “free ride” for mercury discharges. A permit allowing mercury discharges should not be issued since the facility does not meet WQS.

DNR has not made it clear why Wausau-Mosinee Paper is allowed to discharge mercury into a waterbody which is impaired by mercury. Even if it was previously discharging mercury and there is no net increase in such discharge, now that the discharge is quantifiable, Wausau-Mosinee Paper should be subject to WQS’s immediately. Instead, DNR is allowing it to operate under a variance procedure which allows it to simply measure mercury levels and not take any immediate action. A Pollutant Minimization Plan (PMP) is not even required until December 31, 2006. Wausau-Mosinee Paper should be required to take immediate action on the PMP and to eliminate its discharges of mercury.

2) WPDES Permit, Section 2.2.2, p. 7:

COMMENT: Even if DNR allows a discharge of mercury from Wausau-Mosinee (which it is not allowed to do), it should not allow decreased frequency of monitoring of mercury effluent, as a lack of monitoring will hamper the collection of information regarding the sources and amounts of mercury being discharged into the mercury-impaired Wisconsin River.

⁴ Wisconsin Department of Natural Resources, Wausau-Mosinee Paper Corporation Permit Modification Fact Sheet, p. 2 (2005).

⁵ *Id.*

⁶ Wis. Stat. § 283.31(1) (2004).

⁷ Wis. Stat. § 283.31(3)(d)(1).

The modification to Wausau-Mosinee Paper Corporation's WPDES permit involves a reduction in monitoring frequency for mercury. NR 106.145(3)(a)(6) allows for the DNR to reduce mercury monitoring frequency from monthly to quarterly after at least twelve representative results have been generated. Reducing monitoring frequency in this way, however, will reduce the quantity, and possibly the quality, of representative data on mercury discharges to the Wisconsin River.

Reducing monitoring frequency seems inappropriate for four reasons.

1) First, the DNR states in its findings under NR 106.145(1)(b) that representative data on mercury concentrations in wastewater are rare and that methods for collecting that data have been developed only recently. Specifically, EPA came out with a new monitoring method for mercury in water, Method 1631, on July 8, 1999.⁸ This method allows the measurement of vastly lower levels of mercury than was previously possible. Since such data is new and rare, monitoring should be as frequent as possible, and certainly should not be reduced. Maintaining current monthly monitoring would serve to increase data on how much mercury is released through such wastewater treatment facilities. Since this effluent data is used by the DNR to assess what mercury limits, if any, the facility will have in their future WPDES permit, more information would provide for a more accurate picture of actual and average releases.

2) Second, as part of NR 106.145, dischargers of mercury falling under the variance must implement Pollution Minimization Programs (PMP's).⁹ PMP's can be an effective way to reduce pollution. They allow for flexibility in minimizing pollution and can also help reduce polluted sludge that results from wastewater treatment. However, PMP's should be implemented along with frequent and regular monitoring. Without such monitoring, it is impossible to tell if the PMP is working effectively. Quarterly monitoring is not frequent enough to realistically monitor a facility's progress in achieving WQS's.

3) Third, the monthly monitoring data is used to look for variability, and "a highly variable discharge should require more frequent monitoring"¹⁰ Wausau-Mosinee Paper Corporation's monthly discharge reports for 2004 show a moderately low variability for mercury. Yet the highest recorded number is still more than twice the lowest. This is in addition to the fact that there are only twelve representative data points for the year. This is a small data set on which to base strong conclusions about a permittee's discharge variability. This is especially important since Wisconsin has a Water Quality Standard (WQS) for protection of wildlife set at 1.3 ng/L for mercury, well within the range of Wausau-Mosinee's proven discharge potential.¹¹ Continued monthly monitoring would give a stronger showing of potential variability, whereas quarterly monitoring will give only snapshots that may not be representative of actual, ongoing discharges. Such infrequent monitoring seems to go against the goal of gaining as much

⁸ Guidelines Establishing Test Procedures for the Analysis of Pollutants, 64 Fed. Reg. 30417 (1999).

⁹ Wis. Admin. Code § NR 106.145(7) (2005).

¹⁰ U.S. EPA NPDES Permit Writers' Manual, EPA-833-B-96-003, p. 119, (1996).

¹¹ NR 105.07(1)(b); Permit Modification Factsheet, Permit No. WI-0003026-07-1 (2005).

data as possible. The DNR has not stated whether there are any potential seasonal or other variations which might not be noticed with infrequent monitoring.

4) Lastly, Wisconsin has a Water Quality Standard (WQS) for protection of wildlife set at 1.3 ng/L for mercury.¹² This limit is set in order to “protect[] Wisconsin's wildlife from adverse effects resulting from ingestion of surface waters of the state and from ingestion of aquatic organisms taken from surface waters of the state.”¹³ Wausau-Mosinee Paper Corporation's effluent reporting shows that its discharges exceeded this limit on ten occasions in 2004-05.¹⁴ This means that more than *seventy five percent* of its mercury effluent tests showed levels above the state WQS at the point of discharge. If anything, more, not less, monitoring should be done to get a better idea of how often Wausau-Mosinee Paper causes or contributes to the exceedence of a WQS. DNR should not lessen monitoring when it appears probable, or even likely, that a facility's discharges are causing or contributing to violations of state Water Quality Limits.

CONCLUSION

Thank you again for the chance to comment on the proposed modification to WPDES Permit No. WI-0001341-07-1 for Wausau-Mosinee Paper Corporation. Mercury is a highly toxic, bioaccumulative pollutant, and we are concerned about mercury levels in the Wisconsin River. We believe it is a poor choice to allow facilities to continue discharging pollutants that are contributing to a violation of Water Quality Standards. Further, we believe that as much information about mercury effluent as possible should be collected to help determine safe, adequate permit limits. We hope that our comments are useful to the Department and will be taken into consideration when drafting the final permit.

Please feel free to contact me with any questions you may have about my comments. My number is (608) 251-5047, ext. 1.

Sincerely,

MIDWEST ENVIRONMENTAL ADVOCATES, INC.



Erin Chalmers
Law Clerk



Andrew Hanson
Supervising Attorney

¹² NR 105.07(1)(b).

¹³ NR 105.07(1).

¹⁴ Wisconsin Department of Natural Resources, Wausau-Mosinee Paper Corporation Permit Modification Fact Sheet, p. 2 (2005).