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pro bono publico

VIA ELECTRONIC MAIL

June 24, 2005

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Mr. Mike Hammers
Wisconsin Department of Natural Resources
101 S. Webster Street
P.O. Box 7921
Madison, WI 53707

Re: Comments on WPDES Permit No. WI-0001848-07-0.

Dear Mr. Hammers:

Midwest Environmental Advocates, Inc. is a nonprofit environmental law center that provides technical assistance and legal representation to communities and groups working to protect the public's right to clean air and water.

We appreciate the opportunity to comment on the Wisconsin Department of Natural Resources' Proposed Wisconsin Pollutant Discharge Elimination System ("WPDES") Permit No. WI-0001848-07-0 ("Proposed Permit"). We are submitting these comments on behalf of Clean Water Action Council of Northeastern Wisconsin.

A. The DNR Must Prepare a Reasonable Potential Analysis under 40 C.F.R. § 122.44(d)(i).

The Proposed Permit for Fort James includes a 19% increase in volume discharge from 9.68 MGD to 11.9 MGD, due primarily to a reduction in recycled wastewater by the facility. While the 1.0 mg/l effluent limitation for phosphorus has not changed, an increase in volume without a corresponding decrease in concentration results in an increase in the pollutant load.

Under the current permit, the average phosphorus discharge from Fort James is .71 mg/l, and the average monthly load of phosphorus is 1,720 pounds. The Proposed Permit allows an increased monthly load of phosphorus of 2,113 pounds. Therefore, the Proposed Permit will result in an approximate increase of 400 lbs. per month of phosphorus into the Lower Fox River, already on the 303(d) list for phosphorus. However, the DNR



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has not determined whether the monthly increase of 400 lbs. in phosphorus loading to the Fox River will cause or contribute to a violation of water quality standards.

Federal regulations require:

Limitations must control all pollutants or pollutant parameters... which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

40 C.F.R. § 122.44(d)(i). In addition, when determining whether a discharge

causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for...the dilution of the effluent in the receiving water.

Id.

The DNR has not performed this “Reasonable Potential Analysis” to determine whether Fort James’ increase in phosphorus loading to the Lower Fox River will cause or contribute a violation of water quality standards. Without this analysis, the DNR has no way of knowing what impact the monthly increase of 400 lbs. in mass phosphorus loading may have on the river and receiving waters downstream. At a minimum, increasing the phosphorus load will certainly not help the Fox River meet the Clean Water Act’s “fishable/swimmable” goals.

The DNR must perform a Reasonable Potential Analysis in order to determine whether Fort James’ increased discharge will cause or contribute to a violation of water quality standards, including narrative criteria.

B. The Proposed Permit Must Express the Effluent Limit for Phosphorus as a Maximum Daily, Average Monthly Discharge Limitation and a Mass Limit.

The Proposed Permit represents the effluent limitations of phosphorus as a rolling twelve month average, which complies with Wis. Admin. Code § NR 217.01(1)(a)(2). This standard, however, violates the Clean Water Act, which states that all permit effluent limitations must be stated as maximum daily and average monthly discharge limitations. 40 C.F.R. § 122.45(d). In addition, all pollutants limited in permits must have limitations expressed in terms of mass. 40 C.F.R. § 122.45(f). The pollutant may be expressed in additional limitations, such as concentration, but permittee must comply with both limitations. Therefore, the Proposed Permit is insufficient in solely describing the phosphorus effluent limitation in terms of concentration.

The Proposed Permit must additionally state the maximum daily and average monthly discharge limitations in terms of mass.

C. The DNR Must Perform an Anti-Degradation Analysis under Wis. Admin. Code. § NR 207.

The DNR did not perform an anti-degradation analysis for the Proposed Permit as required in Wis. Admin. Code § NR 207. An anti-degradation analysis is required by “any person proposing to increase an existing discharge...to the surface waters of the state.” Wis. Admin. Code § NR 207.01(2). An increased discharge means “any change in concentration, level or loading of a substance which would exceed an effluent limitation specified in a current WPDES permit.” Wis. Admin. Code § NR 207.02(6)(a). “Loading” means the concentration of a substance within a discharge multiplied by the flow of that discharge.” Wis. Admin. Code § NR 207.02(7).

In the current permit, multiplying the concentration of phosphorus by the flow of the discharge results in a monthly load of phosphorus of 1,720 pounds. In the Proposed Permit, this calculation results in an increased monthly load of phosphorus of 2,113 pounds. Further, the DNR has not determined whether this increased load of phosphorus will cause a violation of water quality standards or an exceedance of Wasteload Allocated Water Quality Related Effluent Limitations in Section 2.2.1.6 of the Proposed Permit. As with a Reasonable Potential Analysis, an antidegradation analysis would answer this question and allow the DNR to determine whether the increased discharge may cause an exceedance of current effluent limits or water quality standards.

CONCLUSION

The Proposed Permit allows an increase in phosphorus discharge without any limitation on the total volume of phosphorus discharge allowed. Contrary to federal regulations, it fails to represent the phosphorus effluent limitations as maximum daily and average monthly discharge limitations. No anti-degradation analysis, as required by Wisconsin regulations, was performed. Without an anti-degradation analysis, it will be impossible to measure the cumulative effects of phosphorus discharge permitted by the Proposed Permit.

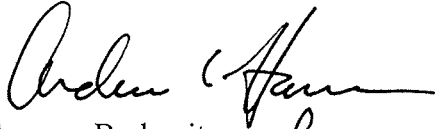
We request that the DNR revise the Proposed Permit to ensure that the Proposed Permit will not cause or contribute to a violation of water quality standards in the Lower Fox River.

Thank you for the opportunity to comment on the Proposed WPDES Permit No. WI-0001848-07-0. We hope that our comments are useful to the Department and will be taken into consideration when drafting the final permits.

Please feel free to contact me via electronic mail or telephone with any questions you may have about my comments. I look forward to your written response.

Sincerely,

MIDWEST ENVIRONMENTAL ADVOCATES, INC.

A handwritten signature in cursive script, appearing to read "Gregory Berlowitz".

Gregory Berlowitz
Law Clerk

A handwritten signature in cursive script, appearing to read "Andrew Hanson".

Andrew Hanson
Supervising Attorney