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*pro bono publico*

## VIA ELECTRONIC MAIL

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June 5, 2006

**Bryan Ellefson**  
Wisconsin Department of Natural Resources  
Oshkosh Service Center  
625 E. County Road Y  
Oshkosh, WI 54901

**Re: Comments on WPDES Permit No. WI-0063355-01-0, Kenn Buelow  
d.b.a. Holsum Elm.**

Dear Mr. Ellefson:

Midwest Environmental Advocates is a nonprofit environmental law center that provides technical assistance and legal representation to communities and families working for clean air, clean water, and clean government.

We are writing to comment on the proposed WPDES Permit to be issued to Kenn Buelow, d.b.a. Holsum Elm ("Holsum Elm"). Our specific objections follow.

State and federal law prohibit states or the U.S. Environmental Protection Agency from issuing NPDES permits to new dischargers that will cause or contribute to a violation of water quality standards. 40 C.F.R. § 122.4(i); Wis. Stat. § 283.31(4) (requiring compliance with federal law in issuing WPDES permits). Specifically, federal regulations state:

No permit may be issued:

(i) To a new source or new discharger, if the discharge from its construction or operation will cause or contribute to a violation of water quality standards.

40 C.F.R. § 122.4(i). The DNR may issue the WPDES permit where the stream that will receive the new discharge is impaired, the DNR has prepared a Total Maximum Daily Load ("TMDL") for the pollutant to be discharged, there are sufficient remaining load allocations for the new discharge, and the existing dischargers to the stream are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. 40 C.F.R. § 122.4(i)(1) and (2).

Based on this federal standard, the DNR may not issue the Proposed WPDES Permit because 1) Holsum Elm is a new discharger under federal law; 2) Holsum Elm's new discharge will cause or contribute to a violation of water quality standards; and 3) there is no TMDL on the North Branch of the Manitowoc River that identifies sufficient remaining pollutant load allocations for pollutants leaching from Holsum Elm's land application areas, and that requires existing discharges to come into compliance with water quality standards.

The North Branch of the Manitowoc River is not meeting its designated use due to excessive nutrient loadings and sedimentation to the waterbody. This is exactly the kind of pollution that the WPDES permit authorizes and attempts to minimize. Further, landspreading activities by Holsum Elm will be conducted on fields that drain to the North Branch of the Manitowoc River. The DNR knows that phosphorus in manure can discharge from land application areas, whether through acute runoff events or through chronic leaching, even when done in compliance with NRCS Standard 590. This phosphorus contributes to excessive algal growth and low dissolved oxygen, a problem that is occurring the North Branch of the Manitowoc River.

We understand that information submitted by Byron Shaw, Ph.D, an Emeritus Professor of Water Resources, concluded that Holsum Elm's land application practices, based on practices at the similar Holsum Irish facility, may allow elevated soil test phosphorus levels on Holsum Elm's land application areas, resulting in a risk of phosphorus-laden sediment runoff to the North and South Branch of the Manitowoc River and its navigable and non-navigable tributaries. This indicates that Holsum Elm's operations under the WPDES permit have the potential to cause or contribute to a violation of surface water quality standards.

Although the proposed WPDES permit states that Holsum Elm must submit a phosphorus strategy which "will not further the impairment of a Clean Water Act Section 303(d) listed waterbody," that strategy is not due until July 1, 2006 and will not be available for public comment to determine whether, in fact, Holsum Elm's practices will cause or contribute to a violation of standards. (*See Proposed WPDES Permit Section 2.3*)

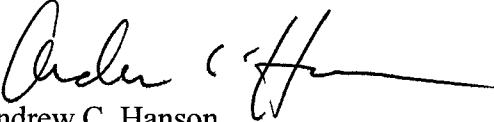
Further, Dr. Shaw indicated that there is a considerable amount of information missing from Holsum Elm's manure management plan that was submitted for public review and comment, including maps of spreading fields that would identify land features that could contribute surface runoff or groundwater contamination. He also noted the risk of groundwater contamination from the manure lagoons where Holsum Elm will store its waste. Without that information, the DNR cannot determine whether the permit will create the risk of, and even legalize, discharges from land application areas that could contribute to violations of surface water and groundwater quality standards.

Because it appears that, based on Dr. Shaw's review, the Holsum Elm landspreading operations will cause or contribute to a violation of surface water and groundwater quality standards, in the absence of clear, measureable requirements to draw down soil test phosphorus levels, the DNR's issuance of the WPDES permit to Holsum Elm violates 40 C.F.R. 122.4(i) and, as such, would be illegal.

We respectfully request that the DNR withdraw the proposed WPDES permit until it can determine whether and to what extent practices allowed under the permit will cause or contribute to a violation of surface water or groundwater quality standards.

Sincerely,

**MIDWEST ENVIRONMENTAL ADVOCATES, INC.**

  
Andrew C. Hanson

cc: Ric Van Sistine, Calumet County Advocates