

# Midwest Environmental ADVOCATES

*pro bono publico*

## VIA ELECTRONIC MAIL

December 1, 2004

Attn: Theodore Bosch  
Wisconsin Department of Natural Resources  
SER Headquarters  
2300 N. Martin Luther King Dr.  
Milwaukee, WI 53212

**Re: Comments on Proposed Reissue of WPDES Permit for Briggs  
Stratton Corp. Wauwatosa for Discharge From a Facility to the  
Menomonee River in Milwaukee County, WPDES Permit No. WI-  
0026514-07-0**

Dear Mr. Bosch:

Midwest Environmental Advocates, Inc. ("MEA") is writing to comment on the above referenced proposed Wisconsin Pollutant Discharge Elimination System permit ("Proposed WPDES 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.

## I. INTRODUCTION

We understand that the Proposed WPDES Permit is a reissue of a WPDES permit for Briggs Stratton Corp Wauwatosa ("Briggs Stratton") to discharge, among other things, noncontact cooling water ("NCCW") into the Menomonee River. We further understand that the majority of NCCW is discharged from the facility into two cooling ponds prior to discharge into the Menomonee River, although NCCW from the Research and Development building ("R&D building") appears to discharge directly into the river. The portion of the Menomonee River receiving the NCCW discharge is classified as a warm water sport fish community pursuant to Wis. Admin. Code § NR 102.04(3)(b).

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Letter to Theodore Bosch, DNR  
Re: Comments On Proposed WPDES  
Permit for Briggs Stratton Corp. Wauwatosa  
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The discharge of NCCW into surface waters has the strong potential to increase a waterbody's temperature and, consequently, result in significant adverse changes to the aquatic environment. Temperature changes can result in changes to the sustainability of aquatic ecosystems, affecting the food availability and survival rate of warm water fish. Further, as the temperature of water increases, the amount of dissolved oxygen the water is able to hold decreases. Consequently, thermal pollution from NCCW has the ability to adversely affect warm water fish species by reducing the available oxygen in the water.

## **II. COMMENTS**

### **A. The Proposed WPDES Permit Should Include a Temperature and Flow Limit For Noncontact Cooling Water that Prevents Temperature Increases or Fluctuations that Adversely Affect the Menomonee River and its Warm Water Sport Fishery**

#### **1. The WDNR Should Require a Temperature Water Quality Based Effluent Limit**

Sections 1.2.1 and 1.2.2 of the Proposed WPDES Permit establish the monitoring requirements and effluent limitations, in part, for the discharge of NCCW from the Briggs Stratton facility. Neither section establishes any temperature limitation on the discharge of NCCW. The only requirement imposed upon the facility is to monitor the temperature of the discharge on a monthly basis. State law requires that the WDNR specify levels of pollutant discharge for each permit it issues. Wis. Stat. § 283.31(5).

Wis. Admin. Code § NR 102.04 establishes standards aimed at preserving and enhancing the waters of the state. Because the Menomonee River is identified as a warm water sport fish community, it is classified for fish and aquatic life under NR 102.04(3). The temperature of Wisconsin waters classified for fish and aquatic life shall not change to the extent that they “*may* adversely affect aquatic life.” NR 102.04(4)(b)1 (emphasis added). In addition, the “[n]atural daily and seasonal temperature fluctuations shall be maintained.” NR 102.04(4)(b)2. Further, NR 102.04(4)(b)3 requires that “[t]he maximum temperature rise at the edge of the mixing zone above the existing natural temperature shall not exceed 5 [degrees] F for streams and 3 [degrees] F for lakes.” For warm water fish, such as those supported in the Menomonee River, NR 102.04(4)(b)4 restricts the water temperature from exceeding 89 degrees F.

The Proposed WPDES Permit allows for a discharge of NCCW from the Briggs Stratton facility without regulating its maximum allowable temperature. While we understand that the majority of the NCCW is discharged first into a cooling water pond, the WDNR should analyze whether the discharges have the capacity to raise the temperature in the Menomonee River when the water is eventually released into the river.

Even if the WNDNR has determined that any temperature discharge of NCCW will not increase the temperature of the receiving water above the regulatory limits, it does not negate the potential that the flow of hot water into the stream “may adversely affect aquatic life.” NR § 102.04(4)(b)1. For streams capable of supporting fish and aquatic life, the plain language of the regulations suggests that any temperature change that merely has the potential to harm aquatic life is prohibited – there need not be proof that an increase in temperature has actually caused an adverse impact.

**COMMENT:** The WNDNR should include a temperature water quality based effluent limit or provide an explanation for its determination that no temperature limit was required for NCCW discharge from the Briggs Stratton facility. Specifically, the WNDNR should demonstrate that the discharge has (1) no potential to increase the river’s water temperature above 89 degrees F; (2) no potential to increase the temperature of the water to the point of adversely affecting aquatic life; (3) no potential to alter the daily and seasonal natural water temperature fluctuations; and (4) no potential to raise the temperature of the water at the edge of the mixing zone above 5 degrees F.

## **2. The WNDNR Should Provide A Flow Rate Limitation For The Noncontact Cooling Water**

Sections 1.2.1 and 1.2.2 of the Proposed WPDES Permit do not establish a daily flow rate effluent limit for NCCW. Briggs Stratton is required only to continuously monitor their NCCW flow rate under Sections 1.2.1 and 1.2.2. We understand that the facility discharges, on average, 1.5 million gallons per day (gpd) into its cooling ponds, and an additional 10,000 gpd directly into the Menomonee River.

The rate at which NCCW enters a waterbody has a direct correlation to the extent to which a waterbody’s temperature may increase. The lack of flow rate effluent limits allows for a potentially unlimited discharge of heated waters. Depending on the rate at which the 1.5 million gpd of NCCW leaves the cooling ponds and enters the receiving water, as well as the rate at which the NCCW from the R&D building directly enters the receiving water, substantial variations in surface water temperatures will likely result. The WNDNR should analyze the relationship between the facilities’ NCCW flow rate and the temperature at which the NCCW is discharged, in order to adequately determine that the lack of a flow rate limit will not adversely impact the Menomonee river nor violate the regulatory requirements imposed under NR §102.04(4) for warm water sport fish communities. In short, how can the WNDNR know whether temperature impacts will occur if the flow rate of NCCW from Briggs Stratton is unlimited?

**COMMENT:** The Proposed WPDES Permit for Briggs Stratton should establish an effluent flow rate limit for the discharge of NCCW. The flow rate should be based on an established NCCW temperature limit, as previously discussed, and restricted to prevent an increase in temperature in the Menomonee river that raises the river’s temperature (1)

above 89 degrees F, (2) greater than 5 degrees F above its natural temperature, or (3) to such an extent that would adversely impact warm water aquatic life.

**B. The Proposed WPDES Permit Should Include a Description of the Receiving Water's Classification; Including, But Not Limited to, the Uses the Waters Have Been Classified for, Any Applicable Water Quality Standards, and Whether Such Waters Have Been Listed on the State's 303(d) List Of Impaired Waters**

One of the underlying purposes of providing a period of public notice under Wis. Stat. § 283.39 is to allow the public the opportunity, the time, and the information to comment on proposed permits prior to approval by the WDNR. Wis. Stat. § 283.45(2)(e) requires that permits for facilities discharging in excess of 500,000 gallons per day provide a description of the waterbody's use classification and applicable water quality and effluent standards within the permit's fact sheet. The WDNR should require the same description for facilities that discharge under 500,000 gallons per day. Although the public may request a copy of the fact sheet, such information should also be included on the Proposed WPDES permit. Proposed WPDES permits, regardless of the discharge rate, should allow the public to easily identify the classification of waters potentially impacted by the permit, as a means to facilitate public participation in the protection of the state's waters.

**COMMENT:** The Proposed WPDES Permit should include and clearly identify, at a minimum, the following information regarding affected receiving waters: (1) the water's water quality classification under NR 102.05(1)(b)1-5; (2) the water's "fish and other aquatic life" classification under NR 102.04(3)(a)-(e); (3) if applicable, the water's listing under the state's 303(d) list of impaired waters pursuant to 40 C.F.R. § 130.7(b)(5); and (4), if applicable, the water's antidegradation status under NR 102.10 or NR 102.11.

### III. CONCLUSION

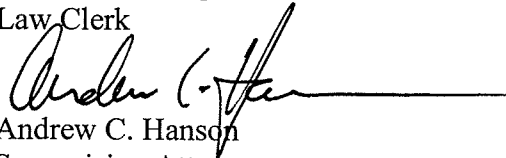
Thank you for the opportunity to comment on the Proposed WPDES Permit for Briggs Stratton. We look forward to the WDNR's response to our comments.

Sincerely,

#### MIDWEST ENVIRONMENTAL ADVOCATES



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cc: Todd Ambs  
Bob Masnado  
Lynn Broaddus