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February 14, 2011

Mr. Kevin Kirsch, WT/3  
Wisconsin Department of Natural Resources  
Bureau of Watershed Management  
P.O. Box 7921  
Madison, WI 53707-7921

Re: Rock River TMDL Comments

Dear Mr. Kirsch:

Our office has represented the League of Wisconsin Municipalities on stormwater issues over the past year. In particular, we have worked with the Department of Natural Resources (DNR) on proposed revisions to NR 151 relating to urban stormwater standards for the MS4 permitted communities. The revisions were prompted because many MS4 communities were finding that reaching a 40% reduction in total suspended solids (TSS) by 2013 was not achievable, or was not achievable in a cost-effective manner. The proposed revisions allow for extended compliance schedules through the use of an extended implementation plan over 10 years or more beyond 2013.

We are writing today to comment on the Rock River TMDL as it relates to MS4 issues. It is our understanding that the proposed TMDL will result in TSS reduction requirements for some MS4 communities in excess of 70%.

We have two major concerns in this regard. First, based on our experience in trying to achieve 40% reductions through best management practices, we do not believe that communities will be able to reach a 70% reduction or more. This is simply an unrealistic and unmanageable goal.

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Second, regardless of the ultimate TSS reduction goal, implementation of a TMDL is critical. Currently the TMDL simply states, “[o]nce a TMDL has been state and federally approved, the permit for a point source that has been allocated a WLA by the TMDL may not be reissued without a limit that is consistent with the WLA.” (Draft TMDL Report, § 7.2.3). At the same time, the TMDL recognizes that there needs to be an implementation plan. (Draft TMDL Report, § 7.2)

We need to clarify what “consistent with” actually means and coordinate the implementation of the TMDL with other TSS management issues.

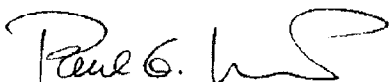
The TMDL must allow for an implementation plan that provides flexibility in the timing and methods for meeting whatever standard is ultimately chosen. Communities will certainly not be able meet reductions of 70% in the course of the next 5-year MS4 permit. If an implementation plan is not included in the final TMDL, it must, at a minimum, acknowledge that the proposed allocations will not be enforceable in MS4 permits prior to the development of an implementation plan.

In addition, the TMDL TSS allocations must be integrated with DNR’s recently-approved NR 151 rule package. As noted above, the League worked with the Department to establish a long term planning process to achieve TSS reductions. There is no reference to NR 151 in the TMDL or how those provisions will be integrated into the NR 151 process. In the absence of an integrated plan, the TMDL must make clear that the proposed allocations will not be enforceable in MS4 permits until an implementation plan is developed.

We believe that implementation is an important enough concept to warrant additional development and public comment before the TMDL is finalized. We appreciate the opportunity to submit these comments.

Very truly yours,

**STAFFORD ROSENBAUM LLP**



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cc: Curt Witynski, League of Wisconsin Municipalities