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October 26, 2011

Cathy Stepp
Secretary, Department of Natural Resources
P.O. Box 7921
Madison, WI 53707-7921

RE: Follow up to Meeting on Stormwater

Dear Secretary Stepp,

Thank you for meeting with us on October 5th to discuss our concerns regarding municipal stormwater treatment. As we indicated our concerns primarily center on the requirements contained in the Total Maximum Daily Load (TMDL) studies the Department has recently approved for the Rock River and Lower Fox River Basins. In each of these reports the calculated total suspended sediment (TSS) removal required for many municipalities exceeds 65%. We had previously indicated that achieving a 40% TSS reduction was going to be challenging and that a reduction in the range of 65% or more was simply not attainable. We also expressed concerns that the TMDLs have been approved by the Department and sent to EPA for approval without an established implementation plan for these proposed reductions.

We understand that the TMDL process is being required by EPA, but states do have latitude in how TMDLs are developed and implemented. We are writing at this time to ask that the Department undertake the following specific actions to provide as many options as possible to municipalities as they struggle with addressing this set of requirements:

1. For municipalities subject to TMDLs, adopt the long term stormwater management provisions in NR 151.13(2)(b) as part of the Department's implementation plan and reference that plan in the next MS4 general permit.
2. Actively promote the attached changes to Wis. Stat. §283.84 to allow for watershed based trading that would include MS4 communities and remove the pilot program restrictions.

3. For municipalities subject to TMDLs, expand the ability of municipalities to use in-line ponds in all navigable waters under NR 151.003(2)(d) to achieve water quality standards.
4. The Department needs to develop guidance or include as part of the TMDL implementation plan provisions to address when variances are appropriate based on the existing Clean Water Act concept of “maximum extent practicable” (MEP).

Thanks for considering our recommendations. We look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Dan Thompson". The signature is written in a cursive, slightly slanted style.

Dan Thompson
Executive Director
League of Wisconsin Municipalities

Amendments to 283.84 -- Water Quality Trading of water pollution credits.

Section 283.84 is amended to read as follows:

(1) The department shall administer ~~at least one pilot project to evaluate the a~~ program of water quality trading of water pollution credits. ~~The department may only administer a pilot project if the pilot project is~~ consistent with the federal Water Pollution Control Act, 33 USC 1251 to 1387. Subject to sub - (1m), ~~a pilot project may~~, the program shall authorize a person required to obtain a permit to increase the discharge of pollutants above levels that would otherwise be authorized in the permit if the person does one of the following:

(a) ~~Reaches an agreement~~Enters into a contract with another person who is required to obtain a permit under which the other person agrees to reduce the discharge of pollutants ~~in the project area~~ below the levels that would otherwise be authorized in the other person's permit.

(b) ~~Reaches an agreement~~Enters into a contract with another person who is not required to obtain a permit under which the other person agrees to reduce the amount of water pollution that it causes ~~in the project area~~ below the levels of water pollution that it causes in the project area when the agreement is reached.

(c) ~~Reaches an agreement~~Enters into a contract with the department or a local governmental unit, as defined in s. 16.97(7), ~~),~~ under which the person pays money to the department or local governmental unit and the department or local governmental unit uses the money to reduce water pollution ~~in the project area~~or to provide cost share dollars under s. 281.16 for projects to reduce water pollution.

~~(1m) A pilot project~~

~~(d) For situations where a person holds more than one permit under this chapter, the person may increase the discharge of pollutants above levels that would otherwise be authorized in one permit if it agrees to decrease the pollutants below levels that are required by another permit.~~

~~(1m) The program~~ may authorize a person to increase a discharge of pollutants above levels that would otherwise be authorized in the permit only if all of the following apply:

(a) The agreement under sub- (1) ~~(a), (b) or (e)~~ results in an improvement in water quality.

(b) The ~~authorized~~ increase in pollutants and the reduction in pollution provided for ~~in the agreement~~ under sub. (1) ~~sub. (1) (a), (b) or (e)~~ involve the same pollutant or the same water quality standard-

~~(c) The term of the agreement under sub. (1) (a), (b) or (e) is not more than 5 years.~~

~~(2) and are approved by~~ the department ~~may select an area as a project area under this section only if all of the following apply:.~~

~~(a) The area is the watershed or a portion of the watershed of an impaired water body that the department has identified to the federal environmental protection agency under 33 USC 1313 (d) (1) (A).~~

~~(b) The area includes both agricultural and municipal sources of water pollution and both point sources and nonpoint sources.~~

~~(c) Potential participants located in the area exhibit an interest in participating in a pilot project.~~

~~(3) (a) The department shall appoint a local committee for each pilot project to advise the department concerning the pilot project. The local committee shall include representatives of persons in the project area who hold permits.~~

~~(b) A committee appointed under s. 281.65 (4) (dr) satisfies the requirement under if it includes the members required under par. (a).~~

~~(c) The trade occurs within a basin or other subset of a basin as approved by the Department.~~

~~(3m) A person engaged in mining, as defined in s. 293.01 (9)s. 293.01 (9),₂ prospecting, as defined in s. 293.01 (18)s. 293.01 (18),₂ or nonmetallic mining, as defined in s. 295.11 (3)s. 295.11 (3),₂ may not enter into an agreement under sub. (1) sub. (1) (a), (b) or (c).~~

~~(3r) The department shall include terms and conditions related to a trade in a new or reissued permit.~~

~~(4) The department shall ~~amend~~ modify the existing permits of persons entering into agreements under sub. (1)sub. (1) to enable the agreements to be implemented.~~

~~(5) Beginning no later than September 1, 1998, and to include terms and annually thereafter, the department shall report conditions related to the governor, the secretary of administration and the land and water conservation board on the progress and status of each pilot project in achieving water quality goals and coordinating state and local efforts to improve water quality. trade.~~

~~(6) The department may promulgate rules to implement this section.~~