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April 29, 2021

To: Amy Minser, Wisconsin Department of Natural Resources Bureau of Watershed Management

RE: Comments Related to the NR 216 Rule Revision, WT-09-19

Ms. Minser:

Please accept the submission of these comments on behalf of the League of Wisconsin Municipalities. The League represents cities and villages across the state, including Municipal Separate Storm Sewer System (“MS4”) permittees. The League appreciates the opportunity to comment on the proposed revisions to NR 216.

Current stormwater discharge permits, unlike wastewater discharge permits, do not include numeric water quality standards and do not measure compliance by numeric end of pipe standards. Nor would it be practicable to impose such numeric standards in stormwater discharge permits. Instead, stormwater discharge permits include best management practices (“BMPs”) designed to achieve compliance with water quality criteria.

However, certain portions of the language cited below could be interpreted to lead to the imposition of numeric standards in stormwater discharge permits:

SECTION 6. NR 216.007 is created to read:

NR 216.007 Water quality standards. The department, in individual and general WPDES permits issued under subchs. I to III, shall specify the terms and conditions under which storm water may be discharged to waters of the state **for the purpose of achieving and implementing water quality standards contained in chs. NR 102 to 105, 140, and 207**. The department, in individual and general permits issued under subchs. I to III, shall include an expression of the applicable wasteload allocation consistent with the assumptions and requirements laid out in the TMDL.

(Emphasis added.)

SECTION 16. NR 216.07 (intro.), (1) (intro.), (5) (a), and (6) (a) are amended to read:

NR 216.07 (intro.) Permit requirements. The Department shall establish permit conditions **to reduce the discharge of pollutants from the MS4 to the maximum extent practicable, to protect water quality, and to achieve and implement the water quality standards contained in ch NR 102 to 105, 140, and 207**. The

department shall issue permits using the information provided by the applicant and other pertinent information when developing permit conditions. **Permit conditions shall be expressed in clear, specific, and measurable terms.** Permits shall, at a minimum, require development and implementation of written storm water management programs that address all of the following ...

(Emphasis added.)

The League understands that these revisions relate to the National Pollutant Discharge Elimination System (“NPDES”) MS4 General Permit Remand Rule and that this language is not intended to lead to the imposition of numeric standards in stormwater discharge permits. However, the League respectfully requests a clarification and assurance that numeric standards are not intended. To that extent, the Department could add text to the administrative code language or add a clarifying note in NR 216.07 providing as follows:

NOTE: Reduction of pollutants and compliance with water quality standards are intended to be monitored and achieved through the implementation of best management practices (“BMPs”).

The League would be pleased to discuss this proposed revision further with the department prior to finalization of this rule.

Kind Regards,

Toni R Herkert

Toni Herkert, Government Affairs Director
Wisconsin League of Municipalities