



EXECUTIVE SUMMARY
Citizen Petition for Corrective Action or Withdrawal
of NPDES Program Delegation from the State of Wisconsin

The Clean Water Act was passed in 1972 in an effort to resolve growing concerns over water degradation in the United States. The Act effectively gives authority to the Environmental Protection Agency (EPA) to regulate all pollutant discharges to the waters of the United States. Permits issued through the National Pollutant Discharge Elimination System (NPDES) are a central piece of the Clean Water Act's regulation of water quality.

While a national regulatory scheme is in place, the Clean Water Act also allows the EPA to delegate its authority to states to issue NPDES permits. The EPA may delegate its authority, yet this delegation is neither permanent nor unconditional. Delegated state programs must comply with minimum Clean Water Act laws and rules. If a state's program is not in compliance with the Clean Water Act, federal statute allows the EPA to rescind delegation of authority and resume issuing water pollution permits for that state.

Wisconsin's delegated NPDES program—WPDES—falls short of federal standards on several grounds. Most glaringly, the Wisconsin DNR has failed to address a host of deficiencies in the WPDES Program despite notice from the EPA. In July 2011, the EPA sent the Wisconsin DNR a letter detailing 75 specific ways in which the WPDES program failed to comply with federal law. To date, the DNR has failed to remedy these deficiencies in numerous ways; for example, the DNR continues to issue WPDES permits that do not comply with the Clean Water Act. As a result, severe water degradation continues to occur throughout Wisconsin.

Although these deficiencies themselves are troubling enough, the DNR lacks the staff power or funding to remedy them. In response to the EPA's deficiency letter, the DNR proposed eight

packages of rules, addressing upwards of 50 deficiencies, to bring the WPDES program into compliance with the Clean Water Act. Four years later, the DNR has not comprehensively completed rulemaking to remedy these deficiencies.

Even with appropriate staff and funding levels, the DNR lacks the legal authority necessary to bring Wisconsin into compliance with the Clean Water Act. For years, courts and legislatures have cut away at the DNR's power to make and enforce rules. Wisconsin, for instance, imposes greater restrictions on legal review of permits than federal law, violating the Clean Water Act's mandate that states give their residents the same permit challenge and enforcement opportunities as allowed under federal law. Even when presented with opportunities to expand their rulemaking authority, the DNR has failed to seize them. The Attorney General published a 2012 opinion that state law largely gave the DNR authority to bring Wisconsin into compliance with the Clean Water Act, but the DNR failed to fully support that opinion. When the DNR does decide to make rules, it generally has to follow a cumbersome process required by state law and the DNR has in several instances failed to seek necessary EPA approval, which leaves certain rules with questionable legal force.

This list of 75 deficiencies is a starting point for understanding Wisconsin's regulatory failures as they relate to the Clean Water Act. Since the 2011 letter from EPA, the DNR has not managed to address all identified issues, let alone resolve them. The DNR has now had adequate time to address Clean Water Act deficiencies, but our State has not made substantial progress toward protection of our treasured waters. This Petition for Corrective Action is filed after the failure of adequate remedies through the courts and due to lack of meaningful response by DNR to correct the technical and legal deficiencies that put our Wisconsin waters and public health at risk.

The Petition is filed by sixteen Wisconsin residents who share a personal commitment to Wisconsin's waters and are intimately impacted in their ability to fish, swim, recreate, and otherwise use our State's water resources as a result of WPDES Program deficiencies. Petitioners' testimonials demonstrate that water quality issues permeate throughout Wisconsin and are not confined to a particular area of the State. Petitioners have arrived at a conclusion that the status of the State's water quality warrants wide-sweeping change with participation and encouragement from the public as well as all levels of government.