

**Outline: Citizen Petition for Corrective Action or Withdrawal of NPDES Program
Delegation from the State of Wisconsin**

October 20, 2015

TABLE OF CONTENTS

INTRODUCTION

PETITIONERS' INTERESTS

NOTE: Petitioner testimonials are in this section. Petitioner names are left in the body of the outline below so that readers have a quick reference to the general subject matter of each Petitioner's story.

Exception: three Petitioners speak broadly to the failure of WPDES permits to curtail nutrient pollution such as nitrates and phosphorus; with focus on impact upon Petitioners' use and enjoyment of Wisconsin's waters. (PETITIONER TESTIMONIES: Timm Zumm, Doug Jones, Jim Swanson)

LEGAL BACKGROUND

- I. The Clean Water Act Envisions Delegation of NPDES Programs to Authorized States.**
- II. The EPA has a Responsibility to Withdraw Delegated State Programs that Fail to Comply with the Clean Water Act.**
 - a. Wisconsin's Legal Authority No Longer Meets Requirements of the Clean Water Act.**
 - i. Neither the Legislature nor the DNR has promulgated or enacted authorities necessary for Wisconsin to comply with the Clean Water Act.
 - 1. *The DNR is not adequately responding to known statutory and regulatory omissions and deficiencies that Wisconsin must resolve in order to meet minimum requirements of the Clean Water Act.*
 - 2. *The DNR lacks the legal authority to implement and administer the stormwater WPDES Program in compliance with federal law.* (PETITIONER TESTIMONY: Cheryl Nenn)
 - 3. *Wisconsin has failed to enact new authorities to remedy antidegradation program deficiencies previously identified by the EPA.*
 - a. Wisconsin's antidegradation implementation regulations allow a lowering of water quality without a showing that the new or increased discharge is necessary, and lack a cap on cumulative discharges exempted as "insignificant." (PETITIONER TESTIMONY: Ron Grasshoff)
 - b. The DNR allows permitted dischargers to increase total

pollution loading to receiving waters without performing an antidegradation review.

- c. The DNR's antidegradation evaluation procedure contains exemptions that violate federal law.
- d. The DNR interprets its antidegradation rules as not requiring consideration of all reasonable alternatives before issuance of a WPDES permit. (PETITIONER TESTIMONY: Dave Marshall)
- e. Wisconsin law lacks opportunity for public input regarding whether lowering of water quality is necessary or will accommodate economic and social development.
- f. The EPA should adopt federal antidegradation implementation procedures for Wisconsin. (PETITIONER TESTIMONIES: Jim Wagner, Dean Hoegger)

ii. Wisconsin legislative action has struck down or limited Wisconsin's authority to operate the WPDES Program in compliance with the Clean Water Act.

1. *Wisconsin's statutory rulemaking process prevents the DNR from timely revising the WPDES Program to comply with federal law and regulations.*

b. The DNR's Operation of the WPDES Program Fails to Comply with the Requirements of the Clean Water Act.

i. The DNR interprets its authority to administer the WPDES Program in contradiction of the Department's commitments to the EPA, restricting the rights of Wisconsin residents.

1. *Wisconsin restricts review of WPDES permits to groups of five or more persons in violation of the Clean Water Act. (PETITIONER TESTIMONY: Lynn and Nancy Utesch)*

ii. The DNR repeatedly issues WPDES permits that violate the requirements of the Clean Water Act.

1. *Despite the DNR's adoption of phosphorus criteria and the EPA's detailed approval of Wisconsin's associated implementation rules, the DNR continues to issue WPDES permits with phosphorus terms that fail to meet state and federal requirements.*

- a. WPDES permits include excessive compliance schedules that do not comport with the purpose or intent of federal law.
- b. WPDES permits allow violation of water quality standards in downstream waters. (PETITIONER TESTIMONY: April Stone-Dahl)

- iii. The DNR's operation of the WPDES Program violates public participation requirements of the Clean Water Act. (PETITIONER TESTIMONY: Allie Raven)
- iv. The DNR fails to reissue expired permits in a timely manner.
- v. The DNR fails to seek necessary EPA approval of WPDES Program changes.
 - 1. *The EPA has not approved statutory revisions to Wis. Stat. Ch. 283 that revise the approved WPDES program as it relates to issuance of permits that authorize adaptive management option to meet water quality based effluent limits for phosphorus or TSS.*
 - 2. *Despite EPA disapproval, WPDES permits do not need to include mercury limits during the initial permit term.*
 - 3. *WPDES permits did not include WQBELs for additives in noncontact cooling water in certain circumstances.*
- vi. The DNR does not allocate sufficient staff time toward resolution of WPDES Program deficiencies. (PETITIONER TESTIMONIES: Bill Iwen, Elaine Swanson)
 - 1. *The DNR could address certain WPDES Program deficiencies by exercising its emergency rulemaking authority.*

c. The DNR Does Not Have an Adequate Regulatory Program for Developing Water Quality-Based Effluent limits in WPDES Permits.

- i. WPDES permits are not required to include effluent limitations to meet narrative water quality standards or prevent acute harm to fish and other aquatic life. (PETITIONER TESTIMONY: John Domino)

III. The Only Remedy to the DNR's Failure to Comprehensively Address the July 2011 Deficiency Letter is for the EPA to Require Prompt Corrective Action by the DNR or Withdraw the DNR's NPDES Program Authority.

- a. **The Administrative Procedure Act Requires the EPA to Respond to this Petition for Corrective Action within a Reasonable Timeframe.**
- b. **Other WPDES Program Deficiencies Require an Expedited Response from the EPA.**
- c. **The EPA Constructively Approved the WPDES Program Despite the Program's Non-Compliance with the Clean Water Act.**

CONCLUSION