



FOR IMMEDIATE RELEASE
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STORM WATER RULES WORRY LOCAL GOVERNMENTS

MADISON — Local leaders from 27 communities across the state are urging the Department of Natural Resources to adopt runoff rules for Wisconsin lakes and streams that are both effective and cost effective.

Not doing so could saddle property taxpayers with billions of dollars in costs that contribute little to the goal of clean water, they told DNR Secretary Matt Frank in a letter.

State and federal law requires communities to clean up their storm water discharges to the "maximum extent practicable," but nowhere does the state or federal government define what that phrase means.

And nowhere does the state propose to regulate polluted runoff in the most cost-effective manner, local officials added.

"There must be a 'maximum extent affordable' standard built into the rules. The DNR must evaluate the local fiscal impacts of its rules," the local leaders wrote. "We need a definition of 'maximum extent practicable' that recognizes ... the fiscal constraints on communities that make the expenditure of billions of dollars with little promise of state or federal aid totally impracticable."

The DNR rules have been delayed for four years, but there has been no relaxation of deadlines proposed in the rules, the local officials added.

"Taxpayers just can't afford to pay for reaching these goals in the time frames given, particularly if there are more cost-effective ways to achieve clean water," they wrote. "Communities need time to analyze the most cost-effective solutions and budget for them."

Signers of the letter to Secretary Frank implored the DNR to rewrite the various runoff rules that are wending their way through the DNR.

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Storm Water Worries
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They said:

- The rules must recognize that different waters require different levels of protection. In Dane County, for example, it makes no sense to regulate Black Earth Creek the same as the Wisconsin River.
- The rules must recognize watershed realities — that streams flow from one political jurisdiction to another.
- They must allow for pollution trading within a watershed, even if it takes legislative authority to achieve that.
- Citizens need flexibility for local governments to meet clean-water goals, not flexibility for the DNR to determine what those goals should be.
- DNR rules must quantify the admittedly hard-to-quantify efforts by communities to reduce polluted runoff through such strategies as leaf collection, parking-lot sweeping, road-salt reductions, lawn-chemical restrictions and public information and education.
- Rules must focus on long-term planning to reduce runoff through smart growth and smart retrofitting.
- The DNR must not change the rules in the middle of the game.

"Any serious yet fiscally responsible approach to clean water must allow for pollution trading to meet both (separated sewer system) permit requirements, total maximum daily load (TMDL) limits, and phosphorous standards," they wrote.

Their recommendations were crafted by storm water engineers following a conference in Manitowoc. The conference brought more than a hundred local officials, engineers and consultants together.

Signers of the letter to Secretary Frank included top officials from Appleton, Ashland, Beloit, Glendale, Greendale, Greenfield, Hartford, Hartland, Kaukauna, La Crosse, Manitowoc, Marinette, Marshfield, Menomonie, Merrill, Monona, Monroe, Neenah, New Berlin, Oconomowoc, Pewaukee, Saukville, Superior, Watertown, Waukesha, Waupun and Whitewater.

Other local officials say they plan to write their own letters to Secretary Frank, incorporating additional concerns specific to their communities.

The five-page letter follows.

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September 26, 2008

Secretary Matt Frank
Department of Natural Resources
101 S Webster St.
P.O. Box 7921
Madison, Wisconsin 53707-7921

Re: Storm Water Mandates on Municipalities

Dear Secretary Frank:

The undersigned are concerned that proposed rules wending their way through your department may not serve the interest we share in cleaning up Wisconsin's rivers and lakes, while requiring communities to spend billions of dollars in a clean-up effort that will fall far short of its goals.

This is a mandate impossible to meet under statewide levy limits.

We ask for a more logical approach to reducing the flow of sediments into Wisconsin waterways than the one your agency is pursuing.

The most glaring shortcoming of the agency's proposed rules is that they seem to set an impossibly high bar for some communities to meet. At the same time, state policy seems to be to allow the agricultural community to walk across the regulatory finish line without having to jump any hurdles at all.

A standard in the proposed rules of reducing the flow of suspended solids from a community's storm sewers by 20% this year, and 40% by 2013 is concrete evidence of that shortcoming. Nowhere in federal law is there such a standard. Wisconsin is the only state in the country that has created such a standard.

Well, it's really not a standard, but it is a goal, Russ Rasmussen, director of watershed management for the DNR, told a clean-water conference in July.

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"Really, the standard is 'maximum extent practicable' with a goal of 40%," he told the conference.

But nowhere does the DNR define "maximum extent practicable," nor does the Environmental Protection Agency.

We need a definition of "maximum extent practicable" that recognizes "knee of the curve" cost constraints used in analyzing fiscal impacts of the current goals and recognizes the fiscal constraints on communities that make the expenditure of billions of dollars with little promise of state or federal aid totally impracticable.

There must be a "maximum extent affordable" standard built into the rules. The DNR must evaluate the **local** fiscal impact of its rules, including land costs.

Wisconsin municipalities are committed to the goal of clean water, but in its rules the DNR must also provide enough time for communities to reach that goal. The agency delayed the issuance of permits to more than 200 Phase II communities by nearly four years, making it almost impossible for those communities to reach the 20% and 40% goals by the deadlines given in the code.

Reaching those goals becomes particularly difficult when you add in expenditure restraints and emerging research that reduces the removal efficiency credits given for certain practices, like street sweeping, that were used in analyzing the fiscal impacts of the rule. **In these increasingly difficult economic times, "maximum extent affordable" becomes even more important. State taxpayers just can't afford to pay for reaching these goals in the time frames given, particularly if there are more cost-effective ways to achieve clean water.** Communities need time to analyze the most cost-effective solutions and to budget for them.

To best serve citizens and the environment, the rules also must recognize that different waters require different levels of protection. The current and proposed rules may marginally improve some waters, but limits do not seem to go far enough for waters that warrant the highest level of protection, like Black Earth Creek in Dane County. **Regulating to the average puts such exceptional waters at risk.**

The evidence suggests that in the majority of watersheds, all sediments and phosphorous could be eliminated from urban storm water flow without improving lake and river quality one iota unless there is also a significant reduction in runoff from farmland.

Yet the DNR would tie the hands of communities that are really serious about the goal of water quality. Water quality knows no political boundaries, yet proposed DNR rules pretend that water quality issues are switched on and off as a stream flows from one political jurisdiction to another. We can't clean up waterways like the Rock River without recognizing watershed realities.

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We need flexibility, for local governments to meet clean-water goals (that may not be solely total suspended solids [TSS]), not for the DNR to determine what those goals should be.

The DNR must allow, and seek legislative authority if necessary, to provide for pollution trading within a watershed. Any serious yet fiscally responsible approach to clean water must allow for pollution trading to meet both MS4 permit requirements; total maximum daily load (TMDL) limits; and phosphorous standards.

Further, if DNR rules are to set numeric standards, they must quantify the admittedly hard-to-quantify efforts toward behavioral changes by residents, business owners and municipal staff that communities receive no credit for today toward meeting that 40% standard or goal. Leaf collection, parking lot sweeping, road-salt reductions, lawn-care chemical restrictions, information and education and public involvement are among those efforts.

In addition, a focus of the rules should be on long-term planning to reduce runoff through smart growth, expanding the inventory of pervious surfaces, green roofs and rain gardens in our existing communities.

This, combined with the 80% TSS reduction required of all new development, would move us toward reasonable water quality improvements that can be expected from developed and developing areas. These improvements, combined with improvements in agricultural runoff water, can be expected to improve water quality in the receiving waters.

Finally, the DNR must not change the rules in the middle of the game, putting many millions of dollars of public investment at risk. And if it does, it must cover local governments' additional cost of compliance.

Specifically, this concern relates to the issue of street sweeping.

When the original rules were promulgated (and as reflected by notes in the current code) it was clear the intent of the department was for communities to either meet or go a long way towards meeting these requirements with street sweeping operations. For the 40% benchmark, this would require high efficiency sweepers.

However, since the original rule promulgation additional research has been completed by the department indicating that the reductions associated with street sweeping are far less than was originally anticipated (approximately 10%).

We do not fault the Department for completing this research; however, neither do we accept that approximately midway through the implementation time (after many communities have already committed significant fiscal resources) this new information becomes the responsibility of the regulated community to address on their own.

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We believe that had this information been available at the time of rule promulgation the required goal numbers would have been different (and likely significantly lower).

Thank you for considering these concerns. We are willing and able to assist the DNR in obtaining the legislative authority it may need to effect these changes.

Sincerely,

Timothy Hanna
Mayor
City of Appleton

Gene Rosin
Mayor
City of Kaukauna

Ronnie G. Marsh
Mayor
City of Monroe

Ed Monroe
Mayor
City of Ashland

Mark Johnsrud
Mayor
City of La Crosse

George Scherck
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City of Watertown

Larry Nelson
Mayor
City of Waukesha

Kevin Brunner
City Manager
City of Whitewater

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c.c.:

Gov. Jim Doyle; chairs of relevant legislative committees: Reps. Scott Gunderson, Mark Gottlieb and Daniel LeMahiew, and Sens. Mark Miller and Robert Jauch; and Todd Ambs, administrator, division of water, Wisconsin DNR ; Russ Rasmussen, director of watershed management, Wisconsin DNR.