WMC

WISCONSIN MANUFACTURERS & COMMERCE

March 1, 2017

Mr. Jason Knutson
Wisconsin Department of Natural Resources
Bureau of Water Quality, WY/3
101 South Webster Street
Madison, WI 53707-7921

Via Electronic Mail Only To:
Jason.Knutson@wisconsin.gov

RE: Comments on Proposed Administrative Rule WT-12-12

Dear Mr. Knutson,

These comments are being submitted regarding the above-referenced Department of Natural Resources (DNR) proposed rule package on behalf of Wisconsin Manufacturers & Commerce (WMC). Thank you for your consideration.

WMC is Wisconsin's statewide chamber of commerce and manufacturers' association. With approximately 3,800 members of all sizes and throughout all sectors of Wisconsin's economy, WMC is Wisconsin's largest business trade association. A significant portion of WMC's membership operates under a WPDES permit and would potentially be impacted by this rule. We have several concerns with the rule as currently drafted.

I. Proposed Changes to NSPS/ELGs and Definitions of "Point Source" and "Pollutant Are Unnecessary

The rule analysis states that proposed changes to NSPS and ELGs in this rule package are meant to "clarify the authority provided in state statutes as interpreted by the Attorney General's Office and as required under federal law." However, the Attorney General's letter to the DNR dated January 19, 2012, concluded in no uncertain terms that existing code and statutory provisions comply with the requirements of federal law (*see* pages 6-7 of the letter). These proposed rule changes are therefore unnecessary and should be removed from this proposed draft rule altogether.

Furthermore, the proposed rule states that the proposed changes to the definitions of "point source" and "pollutant" are "consistent with the Attorney General's interpretation of the state statutory definitions provided in the January 19, 2012 Statement." However, as the letter from the Attorney General noted, existing regulations already met the requirements of federal law (*see* pages 8-10 of the letter). The definition changes in the rule to "point source" and "pollutant" are therefore unnecessary and should be removed from this proposed draft rule altogether.

Regulatory certainty is important for business in Wisconsin. Changing the definition when the existing definition already complies with federal law will only cause regulatory confusion and

added expense for permitted businesses and permit applicants in the state. The existing code and statutory provisions meet the requirements of federal law and should be left as-is.

II. Comparison of Rules to Other States is Inadequate Under Ch. 227

Pursuant to Wis. Stat. s. 227.14(2)(a)4, DNR is required to include in its analysis "[a] comparison with similar rules in Illinois, Iowa, Michigan, and Minnesota." The proposed rule's comparison analysis states: "All the other EPA Region 5 states (Illinois, Indiana, Michigan, Minnesota and Ohio) are subject to the EPA regulations that apply to the NPDES permit program and that are delegated to the states for implementation. Wisconsin's rules for permit processing and other permit issuance procedures should essentially be the same as those in the other states."

The DNR's proposed comparison analysis is inadequate. While it may be a factual statement that the rules should essentially be the same, it does not provide any analysis if those rules are, in fact, the same. In order to properly provide feedback on these rules and to comply with the requirements of Chapter 227, the Department should provide a more in depth analysis as to what each state is doing to meet similar federal requirements.

III. Anti-backsliding Changes Need Updating

Under the proposed Subchapter II of NR 207, there also appears to be some regulatory confusion being created. Under federal law, a discharger may receive a less stringent WQBEL where justified by a state anti-degradation policy or where justified by one of the exceptions contained in Section 402(o)(1) of the Clean Water Act.

The proposed NR 207.12 language appears to go beyond what federal law allows and place additional burdens on Wisconsin dischargers. Specifically, the proposed NR 207.12(3)(a) requires dischargers to satisfy both the anti-degradation requirements and one of the provisions contained in the proposed NR 207.12(3)(a)(1)-(7). This is inconsistent with, and more stringent than, what is required by federal law and should be updated to provide the flexibility afforded by what is required under the Clean Water Act.

Additionally, it is unclear in certain circumstances whether the proposed NR 207.12(3)(a) or (b) would apply. Where a water body is not meeting water body criteria, but has not been formally designated as in nonattainment, it is not clear which sections would apply. Revising the initial sentence of the proposed NR 207.12(3)(b) as follows would fix this issue:

> *(b) Nonattainment waters and revised TMDL or WLA. Any effluent limitation that is based upon a total maximum daily load, ~~or~~ other wasteload allocation, or other effluent limitation may also be made less stringent if the permitted discharge is to a receiving water or a downstream water that has not yet attained the applicable water quality standard, the requirements of sub. (1) (a) and (b) are satisfied, and if at least one of the following applies:*

Thank you for the opportunity to provide DNR with feedback on this proposed rule. We look forward to continuing to work with Department staff to address the issues outlined in this letter, and would be happy to provide any follow up or additional information that may be necessary.

Sincerely,

Lucas Vebber
General Counsel and Director of Environmental and Energy Policy
Wisconsin Manufacturers & Commerce