

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.

"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.**

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**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. **But 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 pretends 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 that reality.

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 allow 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.**

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**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.

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,

c..c. Gov. Jim Doyle, chairs of legislative environmental committees, Todd Ambs, Russ Rasmussen et al.