



**To: Wisconsin Senate Committee on Environment**  
**From: Nick George, President - Midwest Food Processors Association**  
**Date: July 28, 2010**  
**Re: Opposition to CR 10-035 (NR 102 and NR 217 related to phosphorous water quality standards criteria)**

Thank you for taking the time to schedule this hearing. Members of the Midwest Food Processors Association (MWFPA) are opposed to CR 10-035, relating to changes to NR 102 and NR 217 as approved by the Natural Resources Board on June 23, 2010. We respectfully ask that this committee send the rule back to DNR to make changes.

We would like to make it clear that MWFPA members are NOT opposed to lowering phosphorus limits in their wastewater. In fact food processors are continually trying to lower phosphorus discharges and have made great progress over the years. Even without this rule our members will continue to lower discharges as much as is economically and technologically feasible. However as written, the rule is unclear and will add additional costs to the food processing industry with no appreciable reductions in phosphorus.

In addition we would like to acknowledge the time and effort DNR Secretary Frank and his staff took to address our concerns and those of other business and agricultural organizations. Unfortunately, the unbending demands of EPA and threat of lawsuits by environmental organizations, put DNR policy makers and point-source phosphorus dischargers in a “no-win” situation. Attempts to address our concerns only caused more uncertainty.

For example, the adaptive management option in the rule (NR 217.18) is meant to give some flexibility and options for dischargers that cannot meet the phosphorus levels because they are either too costly or the technology does not exist. However, as drafted the option is almost unworkable and opens the door to lawsuits.

Attempts to clarify downstream impacts also fell short. It is very unclear how phosphorus levels downstream will impact a discharger up stream. Will a discharger in central Wisconsin be responsible for phosphorus levels on the lower Mississippi? No one knows. If so, shouldn't this rule clarify the point?

Cost of compliance is a concern. The rule may be extremely costly for food processors and all dischargers. DNR estimates the cost of compliance to be about \$1.5 billion and the Municipal Sewage Districts estimated that the costs are closer to \$4 billion. These costs will be an

additional burden to Wisconsin businesses at a time when they are all struggling to stay competitive and maintain jobs. Our members estimate that costs will range anywhere from \$100,000 to \$1 million per facility for capital costs; and \$30,000 to \$250,000 for yearly operational costs. These estimates do not include the additional costs that will be charged by the municipal sewage districts.

Our concerns of the economic impact from this rule are so great that in December 2008, MWFPA joined six other business and agricultural organizations in a petition to Wisconsin Department of Administration Secretary Michael Morgan asking for an economic impact report on this rule (attachment A). In his reply, Secretary Morgan did acknowledge that there would be a cost to dischargers.

Finally, it should be noted that these costs do not guarantee or provide assurance with a reasonable degree of scientific certainty that phosphorus goals will be achieved. In the end every business and home in Wisconsin will pay for a phosphorus regulatory system that does not lower phosphorus levels sufficiently to improve water quality. The DNR has characterized statewide nutrient loadings as being 80% from non-point sources and 20% from point sources. This rule targets that 20%. By the department's own admission this rule will not lower phosphorus levels and will cost the citizens of Wisconsin over \$1.5 billion.

It is almost unimaginable that such a complicated, costly, ineffectual rule went through the regulatory process in just three months.

Other organizations opposing this rule have made specific recommendations for changes. We support all of those recommendations. In addition, we believe Wisconsin should defer action on this rule until there is a uniform national approach that deals equitably with both point and non-point sources, and DNR should take the lead among states in working with EPA to develop such an approach. Meanwhile, point sources will continue to work on ways to reduce phosphorus discharges.

This rule should be sent back to the DNR because it is too costly; it may jeopardize jobs; it adds uncertainty to NR 102 & 217; and it will not lower the amount of phosphorus in Wisconsin's surface waters. Again, thank you for listening to our concerns and holding this hearing.

(Attachment A)

December 23, 2008

Secretary Michael Morgan  
Wisconsin Department of Administration  
101 E. Wilson Street  
Madison, WI 53703

**RE: Petition for an Economic Impact Report for Proposed Phosphorus Rule**

Dear Secretary Morgan:

Pursuant to Wis. Stat. §227.137, the Midwest Food Processors Association, Dairy Business Association of Wisconsin, Wisconsin Dairy Products Association, Wisconsin Cheese Makers Association, Wisconsin Federation of Cooperatives, Wisconsin Paper Council, and the Wisconsin Manufacturers & Commerce hereby petition the Wisconsin Department of Administration (DOA) to direct the Department of Natural Resources (DNR) to prepare an economic impact report on DNR's proposed phosphorus rule.

According to its September 2008 scope statement, DNR is developing additions to Chapters NR 102 and 104 to incorporate nutrient water quality criteria for lakes and streams. In addition, DNR is proposing additions to Chapters NR 106 and 216 to incorporate provisions for developing nutrient criteria-based water quality based effluent limits. Based on previous meetings, DNR envisions establishing water quality-based effluent limits for phosphorus between 0.1 milligrams per liter (mg/L) to 0.075 mg/L.

If implemented, the proposed rule will be extremely costly to Wisconsin businesses and local governments. As noted below, we estimate the rule as currently envisioned by DNR would have a \$10 billion price tag. These costs would be borne by businesses and municipalities at time when the state can ill afford to lose more jobs and place further constraints on the business climate. Moreover, because Wisconsin already has in place stringent water quality-based effluent limits for phosphorus, this proposed rule will provide little in the way of environmental benefits. Therefore, we deem it vital that the DOA direct DNR to perform an economic impact report to assess the effect the proposed phosphorus rule would have on the various sectors and the economy.

**Affected Parties Issuing Petition for Economic Impact Report**

The affected parties assert that the proposed phosphorus rule, if adopted, would cost well in excess of \$20 million a year for the first five years after the rule's implementation. Furthermore, the affected parties argue that the proposed rule would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, and local governments. *See* Wis. Stat. §227.137 (2) (a)-(b). Below are the affected parties petitioning DOA for an economic impact report:

- The Midwest Food Processors Association (MWFPA) represents the food processing industry in the Midwest with food processor members operating 100 facilities in Wisconsin, Illinois, and Minnesota. In addition, MWFPA has over 200 Associate Members consisting of firms in allied industries. MWFPA has a substantial interest in the proposed phosphorus rule because a number of its members will be adversely affected by the proposal.
- The Dairy Business Association of Wisconsin (DBAW) is the statewide organization of dairy producers, vendors, allied industry partners, and professionals actively working to assure that dairy products, large and small, remain an active and thriving part of Wisconsin's economy, communities, and food chain. DBAW has a substantial interest in the proposed phosphorus rule because a number of its members will be adversely affected by the proposal.
- The Wisconsin Dairy Products Association (WDPA) is a statewide trade association that represents all segments of the dairy industry. It represents member companies (both cooperative and proprietary) that process fluid milk, cheese, butter, ice cream, yogurt, dried milk and dried whey, as well as market fluid milk, package cheese and distribute a wide variety of dairy products. WDPA members are responsible for 80 percent of the milk and dairy products marketed in Wisconsin. WDPA has a substantial interest in the proposed phosphorus rule because a number of its members will be adversely affected by the proposal.
- The Wisconsin Cheese Makers Association (WCMA) has for 117 years been the voice of Wisconsin dairy processors on national and state issues that affect its members' businesses. WCMA's mission is to maintain a positive and competitive climate for Wisconsin's cheese and butter manufacturers and marketers. WCMA has a substantial interest in the proposed phosphorus rule because a number of its members will be adversely affected by the proposal.
- The Wisconsin Federation of Cooperatives (WFC) is the statewide association representing a variety of cooperatives, including farm supply, health, dairy marketing, consumer, credit, livestock marketing, telephone, electric, housing, insurance, and cable communications. Wisconsin cooperatives employ 23,400 residents within the state, paying nearly \$700 million in wages and benefits annually, producing more than \$65 million in taxes each year. More than 2.9 million cooperative members in Wisconsin depend on approximately 800 co-ops to market, manufacture, and supply agricultural products as well as provide credit, electricity, telephone service, health care, housing, insurance and many other products and services. WFC has a substantial interest in the proposed phosphorus rule because a number of its members will be adversely affected by the proposal.
- Wisconsin Paper Council (WPC) is a business trade representing the pulp, paper, and allied industry. Wisconsin has led the nation in papermaking for the last 50 years. WPC represents 21 member firms and has been in existence since 1950. Most of the member firms operate wastewater treatment systems and would be subject to the proposed standard. WPC has a substantial interest in the proposed phosphorus rule because a number of its members could be adversely affected by the proposal.
- Wisconsin Manufacturers & Commerce (WMC) is a business trade organization with more than 4,300 members statewide in the manufacturing, energy, commercial and service sectors. Roughly

one-quarter of the private sector employees in Wisconsin are employed by WMC members. WMC has a substantial interest in the proposed phosphorus rule as it has numerous members who will be adversely affected by the proposal.

### **Why an Economic Impact Report Should Be Issued**

Pursuant to Wis. Stat. § 227.137 (2), after an agency publishes a scope statement under Wis. Stat. § 227.135 and before the agency submits the proposed rule to the legislature for review under Wis. Stat. § 227.19 (2), a municipality, or an association that represents a farm, labor, business, or professional group may submit a petition to the secretary of the DOA requesting that he/she direct the agency—in this case the DNR—to prepare an economic impact report for the proposed rule.

The secretary is required to direct the agency to prepare an economic impact report for the proposed rule before submitting the proposed rule to the legislature for review if the secretary determines that all of the following apply:

- (a) The petition was submitted to the department of administration no later than 90 days after the publication of the statement of the scope of the proposed rule under s. 227.135 (3) or no later than 10 days after publication of the notice for a public hearing under s. 227.17, whichever is earlier.
- (b) The proposed rule would cost affected persons \$20 million or more during each of the first 5 years after the rule's implementation to comply with the rule, or the rule would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities. (Emphasis added).

Wis. Stat. § 227.137 (2) (a)-(b).

An economic impact report shall contain information on the effect of the proposed rule on specific businesses, business sectors, and the state's economy. The agency, in preparing the report, is required to solicit information and advice from the Department of Commerce and from governmental units, associations, businesses, and individuals that may be affected by the proposed rule. *See* Wis. Stat. § 227.137 (3).

Specifically, an economic impact report shall include of the following:

- (a) An analysis and quantification of the problem, including any risks to public health or the environment, that the rule is intending to address.
- (b) An analysis and quantification of the economic impact of the rule, including costs reasonably expected to be incurred by the state, governmental units, associations, businesses, and affected individuals.
- (c) An analysis of benefits of the rule, including how the rule reduces the risks and addresses the problems that the rule is intended to address.

Wis. Stat. § 227.137 (3).

As demonstrated below, this petition is timely filed. Moreover, the affected parties argue that, if adopted, the proposed phosphorus rule would adversely affect the economy, productivity, competition, jobs, and local governments.

### **Petition Was Timely Filed**

The DNR's scope statement for the proposed phosphorus rule was published on September 30, 2008. The petition was placed in the mail on December 23, 2008, well within the 90-day time limit.

### **The Proposed Rule Will Cost Well in Excess of \$20 Million during the First Five Years after Implementation and Will Adversely Affect the Economy, Productivity, Competition, Jobs, and Local Governments**

Although it is difficult to estimate exactly how much the proposed rule will cost each of the various sectors, one study<sup>1</sup> found that achieving the proposed effluent phosphorus concentrations would cost publicly owned treatment works (POTWs) \$2.9 to \$4.9 billion based on capital costs, and \$4.0 to \$7.0 billion on a 20-year present worth basis (see Attachment A).

For the purpose of developing statewide aggregate costs, this cost study extrapolated capital and 20-year present worth costs to an estimated 500 Wisconsin POTWs that discharge to surface waters. Site-specific costs were developed for Green Bay, Madison, Milwaukee, and Racine by those agencies. For example, the Green Bay Metropolitan Sewerage District would see total *annual* costs around \$27 million. In turn, these costs will be passed on to homeowners and businesses.

Note that these costs do not include any of the industrial and private wastewater treatment plants that are also subject to the existing phosphorus rule and that will be required to meet new DNR limits. There are currently 394 such facilities in Wisconsin that hold individual WPDES permits and there are more that have general permits for cooling water and similar discharges. Given that these facilities would see comparable compliance challenges, we believe it is fair to assume the overall costs to affected parties could exceed \$10 billion.

In addition, the attached study did not include site-specific considerations such as land acquisition, special construction for unfavorable subsurface conditions, or similar factors. The generic and site-specific costs also do not take into consideration greenhouse gas emissions and other negative environmental impacts associated with increases in energy, chemical production and transport, and sludge management. Therefore, this analysis should be considered a baseline and conservatively low compared to the actual costs of complying with DNR proposal.

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<sup>1</sup> *Opinions of Probable Cost for Achieving Lower Effluent Phosphorus Concentrations at Wastewater Treatment Plants in Wisconsin*, Report for Municipal Environmental Group, Wisconsin, Strand Associates, Inc., Aug., 2008.

Given these estimates, it is clear that this proposal far exceeds the \$20 million threshold for five years under Wis. Stat. § 227.137 (2) (b).

Moreover, the cost of achieving lower effluent will adversely affect Wisconsin's economy, numerous sectors, productivity, competition, jobs, and local governments—especially at a time when the state is facing a recession. *See* Wis. Stat. § 227.137 (2) (b).

For example, the food processing sector would be particularly affected. If required to comply with the proposed regulations, certain Wisconsin food processing companies will be forced to spend millions of dollars in equipment and annual operating costs. This in turn would make these companies less competitive with other companies.

Wisconsin food processors are already at a disadvantage compared to plants in southern and western states, which have longer growing seasons and therefore are able to operate longer. Food processors operate on thin margins and look for a three to six-month return on investments. For many fruit and vegetable processors, attaining these margins is made difficult because they operate at full capacity from late May through early November. Having to comply with more stringent water quality criteria for phosphorus will undoubtedly place Wisconsin's food processing sector at a major competitive disadvantage with companies in other regions of the country.

## **Conclusion**

Given that all of the prerequisites under Wis. Stat. § 227.137 are met, the affected parties request the DOA to direct DNR to prepare an economic impact report. In addition, we ask that any such report be undertaken in a collaborative fashion, with input from all affected parties. *See* Wis. Stat. § 227.137 (3).

Thank you for your consideration. Please let me know if you have any questions regarding this petition.

Sincerely,

Nickolas C. George, Jr.  
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Association

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Scott Manley  
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Cc: Governor Jim Doyle  
Matthew J. Frank, Secretary of Department of Natural Resources  
Patrick Henderson, Deputy Secretary of Department of Natural Resources