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April 18, 2025

Wisconsin Department of Natural Resources
Attn: Permits Section – WQ/3
101 S. Webster St.
Madison, WI 53707-7921

Submitted via email to DNRphosphorus@wisconsin.gov

Re: League of Wisconsin Municipalities Comments on Draft Water Quality Trading Guidance

DNR WPDES Permitting Team,

The League of Wisconsin Municipalities (League) appreciates the opportunity to submit written comments on the Wisconsin Department of Natural Resources' (DNR) draft *Guidance for Implementing Water Quality Trading in WPDES Permits, Edition 3* (Guidance Number: 3800-2025-DRAFT).

Wisconsin's cities and villages are leaders in environmental protection. Employees from the more than 600 municipal wastewater treatment facilities (WWTFs) that hold Wisconsin Pollution Discharge Elimination System (WPDES) permits are some of the state's most committed water quality professionals. While our members understand the need to protect the environment from excess phosphorus overloads, there is also a necessity to ensure that goal is balanced with technological and economic feasibility. Considering this balance is especially important as DNR estimates have shown that less than one-fifth of all phosphorus loading is due to point source dischargers.

Water quality trading is one tool in the toolbox for Wisconsin's WWTFs. For more than two decades, water quality trading has been utilized by WWTFs for WPDES permit compliance resulting in greater outcomes for regional water quality than achievable through infrastructure upgrades, providing a new source of revenue to farmers and other nonpoint source dischargers for their conservation practices, and keeping costs under control for municipal wastewater rate and fee payers.

2019 Act 151 was a promising step in expanding accessibility to water quality trading for Wisconsin municipalities. Establishing a third-party water quality trading clearinghouse served to remove some of the administrative burden, substantial regulatory risk, and other barriers for municipalities looking to explore this option for permit compliance. Unfortunately, five years after this bill was signed into law, only six trades have been completed. While the League appreciates the need of the DNR to retain oversight in the permit compliance space, the evidence from more than 70 projects statewide have proven the effectiveness of water quality trading both in party-to-party trades and in third-party trades.

Act 151 was created to provide an additional practitioner review, certification, and ongoing maintenance obligations for trading through the clearinghouse. This framework provided less compliance risk for municipalities and minimized the review time and process for DNR due to the contract with a qualified and vetted third party. The League would encourage more of an oversight role for the Department, trusting the work of the clearinghouse and serving to verify the credits that have already been certified through the third party. This model should be providing significant water quality improvements in the state. We are disappointed with the movement with this innovative compliance mechanism to date that has prevented these significant improvements. The Department's role should be limited to comply only with their responsibilities under Act 151 and other associated statutes.

The guidance document proposed by the DNR makes no progress in that direction. Ultimately, the heavy handedness by which the DNR asserts measures for plan elements, trading ratios, uncertainty factors, sampling, and modeling fail to have a basis in statute. Further, in our opinion, many sections of this guidance document constitute regulations that should be promulgated through administrative rules. If DNR staff are instructed to utilize this document as the standard for reviewing and approving trades, rather than relying on external expertise with an internal process to confirm the expertise, it cannot be viewed as anything other than a regulation. Rulemaking would ensure an open and transparent process wherein all parties impacted would have the opportunity to express feedback.

If the DNR is unwilling to promulgate rules constituting elements of the guidance document, the League would encourage wholesale revisions to the draft. The Department needs to limit verification authority to the statutory requirements. The clearinghouse was established by law to reflect the flexibility necessary for water quality trading to occur in an efficient, effective, and user-friendly manner. The DNR and Department of Administrative were very selective in the award for the clearinghouse. We now have contracted experts in place to ensure greater water quality results for Wisconsin's surface waters while targeting phosphorus at its source. To have a successful third-party clearinghouse, the League would encourage the following substantial revisions to this guidance, including, but not limited to:

- a less detailed list of water quality trading plan elements, instead relying on external parties to provide the information they deem relevant and Department staff to request more as needed,
- removal of trading ratios and uncertainty factors, instead relying on statutory authority for the Department to ensure a greater degree of pollutants removed than permit flexibility awarded,
- less reliance on strict modeling requirements to allow for newer technologies and expertise from clearinghouse officials and municipal permitees to be utilized, and
- clarity on the DNR's statutory role to review and approve third-party trades.

The DNR has shown willingness to adopt innovative permit compliance options for Wisconsin's restrictive phosphorus discharge standards, including in party-to-party water quality trades, the Phosphorus Multi-Discharger Variance, and adaptive management. These initiatives have been driven by local permitees and other stakeholders, not Department staff. The League would encourage the same flexibility and discretion to be utilized in consideration of this guidance document.

Thank you for your time and attention to the League of Wisconsin Municipalities' comments on the draft *Guidance for Implementing Water Quality Trading in WPDES Permits, Edition 3*. In addition to our comments, the League would encourage any future revisions and processes to include consideration from our partners also seeking success for third-party water quality trades. If you have questions or require clarification, please feel free to contact me at your convenience at therkert@lwm-info.org.

Sincerely,

Toni Herkert

Toni Herkert
Government Affairs Director
League of Wisconsin Municipalities