

Attorney Christa O. Westerberg  
cwesterberg@pinesbach.com  
Attorney Elizabeth M. Pierson  
epierson@pinesbach.com

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Capital Area RPC  
Attn: Tanya Sime  
Via email: [tanyas@capitalarearpc.org](mailto:tanyas@capitalarearpc.org)

**Re: Supplemental Comment on MMSD's Proposed Amendment to the Dane County Water Quality Plan**

Dear Ms. Sime:

The City of Verona (“the City”) submits this brief supplemental comment in opposition to the Madison Metropolitan Sewerage District’s proposal to amend the Dane County Water Quality Plan (in turn a modification to MMSD’s WPDES permit) by cutting off the supply of treated wastewater effluent discharge to Badger Mill Creek.

Many of the comments submitted in favor of the proposal adopt a defeatist attitude towards alternatives to the proposed amendment while urging CARPC to maintain a hyper-narrow focus on technical water quality standards. For example, the City of Madison and Village of Cottage Grove both acknowledge that tertiary treatment at MMSD’s plant is an alternative to diverting flow of water from Badger Mill Creek to Bad Fish Creek and attaining water quality standards for phosphorus in Badger Mill Creek, but reject that alternative based on cost concerns. They also claim that Badger Mill Creek will not be harmed by diverting flow based on their focus on certain water quality standards – a point the City rejected in its initial comments and that several other commentors disputed.

As a further guide to its decisionmaking, the City respectfully requests that CARPC remember and consider its duty to protect the public interest, as expressed repeatedly

throughout Wisconsin's environmental statutes and regulations. The water quality standards themselves include a requirement to protect the public interest:

The department shall promulgate rules setting standards of water quality to be applicable to the waters of the state, recognizing that different standards may be required for different waters or portions thereof. Water quality standards shall consist of the designated uses of the waters or portions thereof and the water quality criteria for those waters based upon the designated use. Water quality standards shall protect the public interest, which include the protection of the public health and welfare and the present and prospective future use of such waters for public and private water systems, propagation of fish and aquatic life and wildlife, domestic and recreational purposes and agricultural, commercial, industrial and other legitimate uses. *In all cases where the potential uses of water are in conflict, water quality standards shall be interpreted to protect the general public interest.*

Wis Stat. § 281.15(1). CARPC faces a situation in which the potential uses of the treated wastewater effluent are in conflict, as evidenced by the outpouring of public opposition to the proposed amendment. It is not enough to mechanically determine whether the proposed amendment meets a set of technical requirements, as its supporters suggest. If other options for phosphorus compliance would better serve the public interest, then CARPC should explore and ultimately adopt them.

The implementing regulations for water quality standards reiterate this requirement to resolve conflicts in favor of the general public interest, which it explains "includes the protection of public health and welfare and the present and prospective uses of all waters of the state for public and private water supplies, propagation of fish and other aquatic life and wild and domestic animals, domestic and recreational purposes, and agricultural, commercial, industrial, and other legitimate uses." Wis. Admin. Code § NR 102.01(2). Considering the public interest in this way supports maintaining the flow of effluent into Badger Mill Creek.

The directive to protect the general public interest is a part of the water quality standards statute which must inform CARPC's decision pursuant to Wis. Stat. § 283.83(1m)(a). Although it is a broad directive, it is explicit, and enforceable. *See Clean Wisconsin, Inc. v. Wisconsin Dep't of Nat. Res.*, 2021 WI 71, ¶25, 398 Wis. 2d 386, N.W.2d 346 (interpreting Wis. Stat. § 227.10 and concluding "that an agency may rely upon a grant of authority that is explicit but broad when undertaking agency action, and such an explicit but broad grant of authority complies with § 227.10(2m)").

In considering the public interest, CARPC should also remember that MMSD does not propose to eliminate the treated wastewater effluent discharge entirely, and the current proposal would not improve or increase treatment of the water effluent. Any polluting effects of the water would simply be transferred to a different Wisconsin waterway.

This does not comply with the purpose of the statute governing efforts to abate pollution in our waters, which is “to restore and maintain the chemical, physical, and biological integrity of its waters to protect public health, safeguard fish and aquatic life and scenic and ecological values, and to enhance the domestic, municipal, recreational, industrial, agricultural, and other uses of water.” Wis. Stat. § 283.001. To achieve that goal, the state seeks to eliminate pollution, and until that is possible, to protect wildlife and recreation. Wis. Stat. § 283.001(a),(b),(c). MMSD’s proposed amendment will neither eliminate pollution nor protect wildlife and recreation in Badger Mill Creek.

For these reasons, as well as those articulated in its comment submitted on July 10, 2024, the City respectfully requests that CARPC advise the DNR to reject MMSD’s proposal to amend the Dane County Water Quality Plan, and find an alternative solution that better serves the public interest. We also request that CARPC enter this letter in the official public record for this matter.

Thank you.

Sincerely,

PINES BACH LLP



Christa O. Westerberg  
Elizabeth M. Pierson

cc: info@capitalarearpc.org  
Luke Diaz, Mayor, City of Verona  
Jamie Aulik, City Administrator, City of Verona