

MEMORANDUM

To: The distinguished members of the Great Lakes–St. Lawrence River Basin Water Resources Regional Body and Compact Council, c/o Conference of Great Lakes and St. Lawrence Governors and Premiers

From: Wisconsin Compact Implementation Coalition

Date: May 9, 2016

Re: Return flow considerations pertinent to the City of Waukesha Diversion Application

Enumerated below are several points covering concerns of this coalition relating to return flow considerations pertinent to the City of Waukesha Diversion Application. Please consider these in the context of our other recent submittals (dated April 29, 2016, and today). These comments address a scenario in which the Regional Body and Compact Council would move to approve a diversion for Waukesha with conditions, a decision we would not agree with (details on that position can be found in the other referenced recent communications to the Regional Body and Compact Council from this group).

Thank you for considering all of this information as you deliberate the final declaration of findings to be adopted by the Regional Body. These points are in no particular order.

1. WDNR has not addressed the comments of several local scientists and experts in the field that clearly point to the public health risks and environmental degradation to be borne by Racine residents and visitors if the City of Waukesha were to begin discharging treated wastewater, in the quantities predicted, into the Root River, especially during the summer months when the river's flow would be comprised predominantly of Waukesha's treated effluent. *See Waukesha Diversion Comments submitted by Sandra McLellan (Aug. 27, 2015) and Dr. Julie Kinzleman (Aug 28, 2015).*
2. It is inappropriate to rely on Wisconsin's antidegradation procedures to support the proposed finding that Waukesha's return flow will not have any significant impacts on the Waters or Water Dependent Resources of the Great Lakes Basin.
 - The Compact plainly and unequivocally requires a diversion applicant to demonstrate that its return flow will not result in "any significant individual or cumulative adverse impacts to the water quantity or quality of the Waters or Water Dependent Natural Resources of the Basin" – without exception. *Compact art. 4 § 4.9.4.d.* In contrast, EPA's antidegradation policy allows a lowering of water quality when necessary to accommodate important economic or social development in the area in which the waters are located. *40 CFR 131.12.*

- Further, Wisconsin’s antidegradation procedures (*NR 207*) are not consistent with federal requirements. Particularly relevant here, Wisconsin allows dischargers to consume up to one-third of a water body’s assimilative capacity without undergoing a full antidegradation review. Pursuant to Wisconsin’s regulations, such discharges are “insignificant” and the WDNR need not determine the necessity of the associated lowering of water quality. *Wis. Admin. Code §§ NR 207.04(d), 207.05(4)(a)*. WDNR acknowledged that its antidegradation procedures do not comply with federal requirements as early as 2006, but the agency has not conducted the necessary rulemaking to bring its procedures into compliance with federal law. As a result, WDNR continues to issue permits in violation of EPA’s antidegradation requirements.
3. The record does not support a finding that Waukesha’s return flow will result in a “net environmental benefit” to the Root River. *May 4, 2016 Draft Declaration of Finding 8e*. In fact, WDNR’s EIS concludes that Waukesha’s return flow **will likely have negative impacts on the water quality and aquatic life of the Root River**. *See DNR’s Preliminary Final Environmental Impact Statement at pp. 84, 86-87, and 89-91*. WDNR ultimately found that these impacts are “minimal”, however there is no analysis in the EIS or otherwise to support this finding as currently proposed. *See DNR Technical Review at p. 98*. The EIS simply deems the impacts to be minimal without any explanation or apparent analysis of their degree or significance.
 4. We urge the Regional Body to include a condition in any Final Declaration approving a diversion a requirement that Waukesha would have to meet all of its final effluent limits **immediately upon beginning a new discharge** to the Root River (i.e. WDNR should not be allowed to grant Waukesha any compliance schedules or water quality standards variances). There is uncertainty surrounding the ability of Waukesha’s WWTP to achieve several of the draft effluent limits.¹ Because WDNR’s environmental analysis was premised on compliance with the draft effluent limits, Waukesha should not be eligible or allowed to delay compliance with those limits.
 5. The City of Waukesha has already called into question the WDNR’s determination that Waukesha would be a “new discharger” to the Root River.² Whether or not Waukesha meets the regulatory definition of a new discharger is of central importance to both the WPDES permitting process and WDNR’s review of Waukesha’s diversion application. Several of the draft effluent limits referred to in the Technical Review, as well as the

¹ Neither DNR nor Waukesha has shown that it is feasible for the Waukesha WWTP to achieve the proposed effluent limits for phosphorus and chloride. Waukesha recently reported to DNR that “even with source reduction and treatment optimization, the City of Waukesha treatment system is insufficient to consistently meet [a limit of 0.075 mg/L],” and therefore indicated that the facility needs an additional *six years* to explore and implement alternatives before it can come into compliance with the 0.075 mg/L limit. The draft phosphorus effluent limits for the return flow (in the range of 0.03 mg/L to 0.069 mg/L) are significantly more restrictive than 0.075 mg/L. With respect to chloride, the Waukesha WWTP is currently operating pursuant to a water quality standards variance that allows the facility to discharge up to an average of 690 mg/l of chloride on a weekly basis.

² See Draft Memorandum, Antidegradation Evaluation for the City of Waukesha Application for a Lake Michigan Water Diversion with Return Flow, CH2MHILL, May 25, 2015 (stating that “it could be argued that the return flow does not meet” Wisconsin’s definition of a new discharge).

requirement that the return flow discharge comply with Wisconsin's antidegradation procedures, are premised on the fact that Waukesha's return flow would constitute a new discharge to an impaired stream. The final WPDES permit for the Waukesha WWTP, and accordingly, WDNR's evaluation of the environmental impacts of the return flow, would look dramatically different if this finding were reversed.

6. There is very little evidence that the change in flow that would result from Waukesha's return flow would provide a benefit to the Root River. The City of Waukesha and WDNR evaluated the flow change that would be caused by the return flow in only two spots on the Root River. *See Volume 4, Appendix K of Waukesha's Application.* Data from these two monitoring stations alone cannot be used to demonstrate positive impacts of return flow through the length of the Root River downstream of the proposed outfall. Moreover, future stocking of salmonids into Lake Michigan is very much in question due to colossal loss of forage fish, *diaporeia*, and the entire food chain in Lake Michigan. It is likely that stocking of salmonids will be greatly minimized or cease in the near future. Likewise, fish attracting flows largely come from "pulses" of flow after rain events, and returning the previous year's daily average flow every day is unlikely to provide any attractive force for salmonids unless flow would be pulsed at certain times of the year.

** The Compact Implementation Coalition, collectively representing tens of thousands of Wisconsinites, has a long history of working on the Great Lakes Compact. From ensuring the adoption and implementation of a strong Great Lakes Compact to aiding the Wisconsin Department of Natural Resources in the promulgation of administrative rules to implement the Compact, it has consistently advocated for the strongest protections available for the Great Lakes, in keeping with the spirit and the letter of the Compact. Members of the Coalition include:*

*Clean Wisconsin
Midwest Environmental Advocates
Milwaukee Riverkeeper
Waukesha County Environmental Action League
Wisconsin Wildlife Federation
Peter McAvoy*