

# **SUMMARY NOTES OF THE AUGUST 24, 2011 MEETING OF THE MENOMONEE RIVER WATERSHED-BASED PERMIT FRAMEWORK GROUP**

## **INTRODUCTION**

The August 24, 2011 meeting of the Menomonee River Watershed-Based Permit Framework Group was convened at the City of Brookfield City Hall at 10:00 p.m. The meeting was called to order by Thomas M. Grisa, Director of the City of Brookfield Department of Public Works. Attendance was taken by circulating a sign-in sheet.

In attendance at the meeting were the following individuals:

Thomas M. Grisa, Chairman	Director, City of Brookfield Department of Public Works
Michael G. Hahn, Secretary	Chief Environmental Engineer, Southeastern Wisconsin Regional Planning Commission
Joseph E. Boxhorn	Senior Planner, Southeastern Wisconsin Regional Planning Commission
Theresa Caven	Project Engineer, City of Brookfield
Cindi V. DeBruine	Senior Water Resources Engineer, R.A. Smith National, Inc. (representing the Villages of Butler and West Milwaukee)
Sharon L. Gayan	Milwaukee River Basin Supervisor, Wisconsin Department of Natural Resources
Nancy Greifenhagen	Engineering Technician, Village of Menomonee Falls
Dennis Grzezinski	Senior Counsel, Midwest Environmental Advocates
Bryan D. Hartsook	Water Resources Engineer, Wisconsin Department of Natural Resources
Lauren Justus	Engineering Assistant, Village of Germantown
Laura L. Kletti	Principal Engineer, Southeastern Wisconsin Regional Planning Commission
Jeff Martinka	Executive Director, Southeastern Wisconsin Watersheds Trust, Inc.
Ezra Meyer	Water Resources Specialist, Clean Wisconsin
Kate Morgan	Water Policy Director, 1000 Friends of Wisconsin
Cheryl Nenn	Riverkeeper, Milwaukee Riverkeeper
Jeffrey S. Nettesheim	Director of Utilities, Village of Menomonee Falls
Kevin P. O'Brien	Environmental Compliance Manager, Milwaukee County Department of Transportation and Public Works
Gail Epping Overholt	Natural Resource Educator, University of Wisconsin-Extension
Karen Sands	Manager of Sustainability, Milwaukee Metropolitan Sewerage District
Richard Sokol	Director of Neighborhood Services, City of Greenfield

Mr. Grisa noted that there were several people in attendance who were not at the last meeting and asked everyone to introduce themselves.

## **REVIEW AND DISCUSSION OF PARTIAL PRELIMINARY DRAFT OF SEWRPC STAFF MEMORANDUM, "DEVELOPMENT OF A FRAMEWORK FOR A WATERSHED-BASED MUNICIPAL STORMWATER PERMIT FOR THE MENOMONEE RIVER WATERSHED"**

At the request of Mr. Grisa, Mr. Hahn reviewed the draft SEWRPC staff memorandum. Mr. Hahn thanked the members of the Group for their attendance. He stated that participation by everyone will be essential in the development of a framework for a watershed-based municipal stormwater permit. He noted that participation by the municipalities is especially important, because their input is essential to development of an implementable framework. He added that Commission staff will try to bring more of the municipalities to the table.

Mr. Hahn thanked Mr. Meyer for taking summary notes at previous meetings of the Group. He indicated that Commission staff would draft summary notes of Group meetings, beginning with this meeting. He explained that this would allow Commission staff to document additions and revisions to the staff memorandum. He asked if the Group wanted to approve meeting summary notes at each subsequent meeting. Mr. Grisa replied that having the Group approve the notes would allow the members to offer additions and corrections. It was agreed to have the Group review and approve the summary notes.

Mr. Hahn pointed out that the document describing development of the framework is currently framed as a SEWRPC Staff Memorandum. He explained that this was done to document the process of developing a “replicable framework” for the watershed-based stormwater permit and to stimulate discussion. He indicated that there is flexibility in the format of the final document takes, and noted that he expects that the content and format of the narrative will evolve based upon discussions within the Group over the coming months.

Mr. Hahn stated that there are currently two parts to the Staff Memorandum. The first part provides background, describes the approach, identifies 11 issues related to the development of the framework, and describes three possible watershed-based permitting structures. The second part presents an inventory of water quality conditions in the Menomonee River watershed and in watersheds adjacent to the Menomonee River watershed. He indicated that the current review of the Staff Memorandum would focus on the first part.

Mr. Hahn asked that the Group provide comments and discussion on the Staff Memorandum as it is reviewed. Mr. Grisa asked that the Group should wait until the end of discussion to point out typographical errors, unless the errors change the meaning of a sentence.

Mr. Hahn reviewed the section of the Staff Memorandum that provides background information. He noted that the framework will need to recognize that the Milwaukee Metropolitan Sewerage District (MMSD) is conducting a third-party total maximum daily load (TMDL) study for the Kinnickinnic, Menomonee, and Milwaukee River watersheds and the Milwaukee Harbor estuary, and that, following completion of that study, TMDL waste load allocations will eventually have to be incorporated into the stormwater permits for municipalities in those watersheds, regardless of whether the permits are watershed-based or individual.

Mr. Hahn reviewed the section of the Staff Memorandum that describes the approach taken to develop the framework. In reference to the last sentence in the second full paragraph on page 4, Mr. Grisa asked what is meant by municipalities committing to participate in a watershed-based permit. Mr. Hahn replied that a goal of the framework development process is to obtain commitments from the municipalities to participate in the process. Mr. Grisa suggested adding the word “process” to the end of the sentence and listing the communities that have committed to this.

[Secretary’s Note: The last sentence in the second full paragraph on page 4 was revised to read (In this Secretary’s Note and in subsequent Notes, unless indicated otherwise, revised and added text is indicated in bold letters for clarification only. The Staff Memorandum text will not be bold):

“It was during this phase of the project, that 1) the group determined that it **would/would not** be feasible to implement the watershed-based permitting framework and 2) **the following** municipalities committed to participate in the watershed-based **permitting process: (to be added later in the process).**”]

Ms. Sands asked whether we know which municipalities are not committed to the process. Mr. Hahn replied that the Cities of Brookfield, Mequon, Greenfield, Milwaukee, Wauwatosa, and West Allis and the Villages of Butler, Elm Grove, Germantown, Menomonee Falls, and West Milwaukee have participated in meetings. He added that the City of New Berlin; the Villages of Greendale and Richfield; and the Towns of Brookfield, Germantown, and

Lisbon have not. He commented that, while he hopes to involve more municipalities, there is a good critical mass participating.

Mr. Hahn stated that a commitment for a municipality to be covered under a watershed-based stormwater permit will require agreement by the municipality's elected officials. He noted that the framework scope of study envisions creating a fact sheet to educate elected officials about this type of permit. He added that this will occur later in the process.

Mr. Hahn reviewed the section of the Staff Memorandum that discusses issues related to development of the framework. He noted that discussion in this section reflects questions and issues identified by the Commission staff. He asked for input from the Group on these issues.

With respect to the first issue identified—how the framework should be structured to address communities that are located in multiple watersheds – Mr. Hahn referred the Group to Table 1 of the staff memo that indicates the other watersheds in which several Menomonee River municipalities are located and that also indicates whether a municipality has a permit as part of a group. He noted that once TMDLs take effect watershed-specific pollutant loads will be developed, and there may no longer be a question of how to address multiple watershed municipalities. However, he noted that there may be an interim period between development of a framework and inclusion of TMDL waste load allocations under the municipal separate storm sewer system (MS4) permit, and he asked for the Group to consider providing comments on this issue.

Mr. Grisa asked when the requirements to meet waste load allocations related to a TMDL will go into effect following approval of the TMDL. Ms. Gayan replied that the requirements will go into the stormwater discharge permits and added that this may require some coordination. She said that WDNR has not decided if they will open a five-year permit to include TMDL allocations. Mr. Hahn asked whether the TMDL implementation plan that MMSD is going to develop as part of the TMDL process will be considered as WDNR decides how to incorporate TMDLs in stormwater discharge permits. Ms. Gayan indicated that it would be. Mr. Hahn asked whether permit conditions for a municipality would be watershed-specific. Mr. Grisa added that he does not want to be required to meet conditions imposed by a TMDL for the Menomonee River watershed in the portion of his community that is located in the Fox River watershed if water quality in the Fox River watershed is meeting its goals. Ms. Gayan responded that this issue will need to be worked out by the WDNR and the U.S. Environmental Protection Agency (USEPA).

Ms. Justus commented that answering Issue 1 (How should the permitting framework be structured to address communities that are located in multiple watersheds?) is the responsibility of USEPA and WDNR, not the municipalities. Mr. Hahn replied that it would help to know whether the municipalities would prefer to have a single set of conditions in their permits. Mr. Grisa pointed out that some of the municipalities are currently subject to differing conditions based upon only a portion of the municipality being served by MMSD. Ms. Gayan noted that the MS4 permit would be reissued before development of TMDLs is complete, and it is, therefore, important that the framework address multiple-watershed communities in a manner acceptable to the communities.

Mr. Meyer asked whether the scope of the framework development projects includes incorporating the load allocations from the TMDL into a watershed-based stormwater permit and comparing the consequences and implications of these load allocations on the relative costs and benefits of entering into either a watershed-based permit or an individual permit. Mr. Hahn replied that this may not be part of the scope. He said that the Menomonee River Group's current stormwater discharge permit expires at the end of February 2012 and the TMDL load allocations will not be available until the end of 2012; thus, it may be four years before the allocations become part of permit conditions.

The Group discussed the likelihood of some municipalities participating in the permit framework development process. Ms. DeBruine stated that she would discuss this with the Village of Greendale and ask whether they are interested in participating.

[Secretary's Note: Following the meeting, Commission staff received an electronic mail message from Ms. DeBruine indicating that she had discussed this with a representative of the Village of Greendale who stated that the Village does not wish to participate. A copy of Ms. DeBruine's email is attached hereto as Exhibit A.]

There was a general discussion regarding providing each municipality within the watershed the opportunity to participate in the framework process. Mr. Hahn noted that he intended to contact each municipality and county that was not participating as well as those who participated in past meetings, but were not in attendance at this meeting. Ms. Sands said that it would be best to get a yes or no from the counties and municipalities regarding participation in the framework process.

Mr. Hahn drew the Group's attention to the second issue identified in the Staff Memorandum—the potential benefits of county participation in a watershed-based stormwater permit. Mr. O'Brien stated that Milwaukee County is currently participating; however, it may make more sense for the County to continue to be covered under an individual permit. Mr. Grisa commented that if the County were to continue to operate under an individual stormwater discharge permit, it would not preclude any municipalities covered under a watershed-based permit from partnering with the County on activities such as pollutant credit trading or information and education efforts.

Mr. Hahn asked whether Ozaukee, Washington, and Waukesha Counties had been contacted regarding the watershed-based permit framework development process. Mr. Grisa responded that they had not been contacted. He explained that Milwaukee County is unique in the amount of riparian lands it owns in the Menomonee River watershed. He noted that Waukesha County does not own the same type of lands. Mr. Hahn stated that it might be useful to contact the other counties in order to document the process.

[Secretary's Note: Following the meeting, Mr. Hahn distributed the memorandum attached as Exhibit B to the listed counties and municipalities and the Southeast Wisconsin Professional Baseball Park District, none of which have participated to date in the framework development process. Prior to sending the memo, he discussed the watershed-based framework project with the listed County Land Conservationists, each of whom indicated interest in receiving the memo. He also contacted each of the municipalities that had participated in previous meetings, but were not in attendance on August 24 (Cities of Mequon, Milwaukee, Wauwatosa, and West Allis and the Village of Elm Grove). Each person contacted, with the exception of the Village of Elm Grove, indicated that their municipality intended to continue to participate in the framework development process. As of the date of these summary minutes, Mr. Hahn had not been able to speak with Mike Flaherty, Elm Grove Public Works Director, directly, but he will continue to follow up on that contact.]

Mr. Grisa stated that in the past participating in a group stormwater permit resulted in municipalities paying a lower fee than they would have paid for an individual permit. He noted that this was no longer the case. He asked whether there is an advantage to the WDNR in having group permits. Ms. Gayan replied that the major advantages to group permits lie in linking funding for educational and monitoring activities and in the ability to move some pollutant allocations among communities without conducting a trade. Ms. Gayan and Mr. Hahn agreed that the greatest value of developing a watershed-based permit may come from being able to consider water quality conditions in the context of the entire watershed. Ms. Gayan said that she will raise the issue of adjusting permit fees within the Department.

[Secretary's Note: Ms. Gayan has inquired within the Department regarding the issue of reducing permit fees for participants in a group MS4 permit, but there was no resolution of that issue as of the date of these summary notes.]

Mr. Hahn then initiated discussion of the third issue identified in the Staff Memorandum—what, if any, additional pollutants should be regulated under the watershed-based permit framework relative to the current MS4 permits for communities in the watershed. He explained that the second part of the Staff Memorandum provides a discussion of water quality conditions in the receiving waters that should be useful in consideration of this issue. He noted that it is not the intent to impose a greater permit compliance burden on the municipalities by considering regulation of the sources of additional pollutants. This topic was deferred to a discussion at a subsequent meeting.

Mr. Hahn drew the Group's attention to the fourth issue identified in the Staff Memorandum—what modifications could be made to the illicit discharge detection and elimination programs to better target pollutants of the most concern. He noted that Milwaukee Riverkeeper was conducting bacterial source identification monitoring of stormwater outfalls to identify outfalls with contamination from human sources and that it may be possible for municipalities to become involved in these efforts or expand upon them. He stated that as the framework is developed, illicit discharge detection monitoring requirements will be reviewed to determine where changes can be made to increase effectiveness and lower costs to the municipalities.

The Group's next considered the fifth issue identified in the Staff Memorandum—how monitoring programs under existing MS4 permits can be integrated and/or revised to provide useful results to guide future efforts to improve water quality and habitat. Mr. Grisa commented that his understanding was that stormwater monitoring was a one-time requirement for the municipalities during the first permit cycle. He noted that the municipalities have agreed that stormwater is polluted. Mr. Hahn inquired whether ongoing stormwater monitoring is required. Mr. Grisa asked what sort of monitoring requirements have been included in renewed permits for other municipal group stormwater permits. Mr. Hartsook answered monitoring was dropped from the Upper Fox River Basin Group permit upon permit renewal. He explained that the goal of the initial permit is to develop the municipalities' stormwater management program. He added that during permit reissuance, the goal is to refine the program and make the requirements less nebulous. He commented that the Department wants funding to go to those efforts that will best improve water quality.

[Secretary's Note: Based upon the discussion of the fifth issue during the meeting, an examination of NR 216 by the Commission staff, and the information provided in a September 23, 2011 electronic mail message from Bryan Hartsook of the WDNR staff, it is concluded that, under the next MS4 permit, there is not a requirement for the municipalities to monitor stormwater beyond the illicit discharge detection and elimination efforts.]

Ms. Nenn stated that the funding for her organization's stormwater outfall monitoring program will expire soon. She indicated that her group would like to coordinate their outfall testing with municipal illicit discharge detection efforts. She also noted that her group would like to examine outfalls smaller than 36 inches in diameter.

Ms. Overholt mentioned that an identification of research needs regarding the performance of urban stormwater best management practices (BMPs) might be an adequate substitute for a monitoring program.

Mr. Hahn called the Group's attention to the sixth issue identified in the Staff Memorandum—whether a watershed-based permit will achieve economic benefits. Mr. Grisa commented that this issue is more related to the costs of permit compliance rather than permit administration.

[Secretary's Note: The sentence in part a under issue 6 on page 6 was revised to read:

“a. How can group communities cooperate to avoid increasing, or to reduce permit **compliance** costs?”]

Mr. Sokol asked whether SEWRPC was active in processes to consolidate government services. Mr. Hahn answered that Commission staff has been facilitating discussions regarding a possible merger of the City and Village of Pewaukee. He indicated that he is not aware of any other similar efforts in which the Commission is involved. He noted that the idea behind a watershed-based permit is to assist communities in taking actions in a coordinated manner. Mr. Sokol responded that the Milwaukee County Executive has done some investigation into consolidating services. He added that there are some existing organizations that could facilitate consolidation. He stated that it is important that the Group know the status of consolidation efforts to prevent watershed-based permitting efforts from being in conflict with those efforts. Mr. Grisa noted that the municipalities are doing some coordination and consolidation. Mr. Nettesheim stated the Village of Menomonee Falls has worked with other entities on some issues. He commented that some municipalities in Waukesha County would be reluctant to establish a multi-municipality entity on stormwater issues.

Ms. Justus asked whether the annual report required by the municipal stormwater discharge permit could be done using a form with a checklist and fill in the blank format. Mr. Hartsook replied that he has a State optional reporting form that could be used unofficially. He commented that he prefers short annual reports that highlight recent and upcoming changes in the municipalities' stormwater management programs. He noted that NR 216 allows for biannual reporting. He stated that this appears to be a viable option for reporting for a watershed-based permit.

Mr. Hahn then began discussion of the seventh issue identified in the Staff Memorandum—what the prospects for successful water quality trading are within the watershed. Mr. Grisa commented that improvement to waterways should be added to the factors in favor of successful trading.

[Secretary's Note: Part a. under issue 7 on page 6 was revised to read:

“a. What are the factors in favor of successful trading? (community interest in minimizing costs of achieving MS4 permit compliance (avoiding expensive public works improvements or ordinance requirements that may be viewed as onerous), possibility of trading between communities that are having difficulties meeting permit requirements and those that may be able to exceed the requirements, **the potential for improvements to water quality conditions that might be achieved through trading**)”]

At Mr. Hahn's request, Mr. Boxhorn distributed and explained a handout that presents an example of how a point source to nonpoint source trade might work under the July 2011 draft trading framework developed by the WDNR.

[Secretary's Note: A copy of the handout is attached as Exhibit C.]

Mr. Boxhorn noted that this example reflects the current WDNR draft trading framework<sup>1</sup> and that this framework has not yet been approved by the State Natural Resources Board. He continued that it may change following review and discussion by the Board. He also indicated that the current draft of the trading framework mostly reflects trading for phosphorus as a pollutant. He noted that Kevin Kirsch of the WDNR staff stated at a presentation on August 10 in Lake Mills that, following approval by the Natural Resources Board, the trading framework will require at least one year of additional work and development.

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<sup>1</sup>*Wisconsin Department of Natural Resources, A Water Quality Trading Framework for Wisconsin – A Report to the Natural Resources Board, July 1, 2011.*

Ms. Gayan indicated that USEPA may not approve the use of interim credits in the draft trading framework. She explained that current USEPA regulations require that an agricultural operation be in compliance with performance standards before credits can be generated. She added that trades will be less likely in the Milwaukee area and other areas without the interim credit. Ms. Gayan also said that the interim credit is valuable for achieving long-term improvements in water quality because it provides a mechanism for bringing agricultural lands into compliance with the State stormwater runoff performance standards and for maintaining that compliance. Mr. Grisa commented that no one will trade if the requirements for making a trade are too onerous.

[Secretary's Note: The following excerpt from the draft WDNR water quality credit trading framework supplements the information set forth in Exhibit C, and illustrates how the proposed interim credit approach is designed to achieve long-term improvements in water quality:

“Interim pollutant reduction credits will be given to initially bring agricultural sources into compliance with the performance standards. This allowance is made because a cost-share rate of 70 percent of the cost of the management practices is required to make the performance standard a regulatory requirement. Once an agricultural source is brought into compliance with statewide performance standards it has to stay in compliance without additional cost share dollars.”]

Ms. Gayan stated that in the Milwaukee area the current phosphorus index is generally in the range of eight to 10.

Mr. Grisa asked what is meant by the trade duration for long-term credits. Mr. Boxhorn replied that this is usually set as the expected life of the BMP.

Mr. Grisa outlined a situation in which a farmer involved in a trade sells his land for development. He asked whether the credit purchaser still gets credit for reductions realized under urban development relative to the previous agricultural use. He added that this is one reason why the issue of trade duration is important. Mr. Hahn said that under developed conditions, the allowable credit might only be for reductions beyond the 80 percent control of TSS required for new development under the State performance standards. Mr. Grisa also asked what happens to credits when land with BMPs implemented under a credit trade is annexed by a municipality and developed. He emphasized that under these and other likely scenarios, the MS4 systems need certainty regarding credits they purchase. Mr. Boxhorn noted that in some discussion of trading systems, it has been suggested that the broker or the point sources purchase extra credits to create an insurance pool for situations where trade conditions may not be fulfilled. Ms. Sands suggested that these issues could also be dealt with in the written contracts for trades. Mr. Grzezinski suggested that trade agreements could be written to include restrictions on use of lands such that any conversion would not be allowed to cause a greater discharge of the pollutant traded for than would be discharged from the BMPs contracted for in the trade.

Mr. Hahn stated that the issues raised in this discussion will be considered during development of the watershed-based permit framework.

In the interest of time, Mr. Hahn asked to defer the discussion of the eighth, ninth, and tenth issues identified in the Staff Memorandum, and drew the Group's attention to the eleventh issue—whether the targeted performance standard procedure in Section NR 151.004 of the *Wisconsin Administrative Code* would be applied to mandate agricultural compliance with a more-stringent water quality performance standard or load allocation stated in a TMDL if it is determined that meeting the NR 151 performance standards will not achieve water use objectives and water quality criteria.

[Secretary's Note: Issues 8, 9, and 10 will be addressed during the next group meeting.]

He explained that NR 151.004 sets up a procedure for the Department to promulgate stricter targeted performances standards by rule when it can be shown that meeting the statewide NR 151 performance standards will be insufficient to achieve water quality standards and that Section NR 151.005 (2) indicates that this procedure shall be used if compliance with more stringent performance standards is required in order to meet a load allocations in an approved TMDL. Ms. Gayan responded that such a targeted standard would not be promulgated without cost sharing. She noted that the WDNR has never promulgated targeted standards using these rules. She indicated that she would seek clarification within the Department on this issue.

[Secretary's Note: As of the date of these summary notes, the WDNR staff was still considering this issue internally.]

Ms. Justus asked to discuss the tenth issue identified in the Staff Memorandum. She noted that there is a deadline of six months prior to the expiration of an MS4 permit for reapplication, and asked when the communities need to reapply. Mr. Hartsook replied that the annual reports constituted a reapplication for the permit. He indicated that he would send letters to the municipalities to that effect. Mr. Hahn asked to be copied on these letters. Mr. Hartsook stated that as a worst case, either the existing permit would be reissued or coverage under it would be extended.

Mr. Hahn informed the Group that he had received an electronic mail message from Brionne Bischke, Village of Germantown Engineer, that presented three comments on the first part of the Staff Memorandum.

[Secretary's Note: A copy of the email from Mr. Bischke is attached herein as Exhibit D.]

Mr. Hahn stated that Mr. Bischke's first comment was to ask how the Wisconsin Public Service Commission's (PSC) framework for regulating utility companies that service multiple municipalities works and whether the Menomonee River Group could benefit from using this framework. Mr. Hahn indicated that he would discuss this with PSC staff.

[Secretary's Note: Mr. Hahn discussed Mr. Bischke's question with Jeffrey Ripp, PSC Assistant Administrator for Water. Based on that conversation, and considering the differing fundamental nature of the roles of municipal water or power utilities versus stormwater utilities and the PSC's very limited role in regulating stormwater utilities, it does not appear that the PSC can offer guidance to the stormwater permit group based on PSC experience in regulating multiple-municipality utilities.]

Mr. Hahn stated the Mr. Bischke noted in his second comment that municipalities are subject to levy increase limits imposed by the State. The magnitude of these limits may differ among municipalities and may differ from year to year for any single municipality. Mr. Bischke commented in his email message that annual apportioning of costs in a watershed-based permit beyond a municipality's allowable levy increase could overburden the municipality's budget. Mr. Grisa commented that municipalities will need to deal with this issue through their budgeting processes. He added that this does not need to be addressed within the watershed-based permitting framework.

Mr. Hahn stated that Mr. Bischke third point asked whether the PSC would begin to regulate stormwater utilities over the next five years and how a watershed-based permit would respond to this. Mr. Hahn indicated that he had discussed this question with Jeffery Ripp, Assistant Administrator for Water, at the PSC. Mr. Ripp explained that, with two exceptions, any regulation of stormwater utilities would require legislation. The first exception is that wastewater utilities can seek to be voluntarily regulated by the PSC. The second exception is that the PSC has jurisdiction over allegations of unfair rate charges by stormwater utilities.

## **NEXT STEPS**

Ms. Morgan told the Group that an event to recognize and publicize the USEPA grant for the watershed-based permitting project was scheduled for Wednesday, August 31, 2011 at 11:00 a.m. at Hart Park in the City of Wauwatosa.

Mr. Hahn distributed a schedule of activities for the watershed-based permitting framework project.

[Secretary's Note: A copy of this schedule is attached as Exhibit E.]

He indicated that the second part of the Staff Memorandum, addressing water quality issues, would be discussed at the next meeting. He noted that part of the memo was quite detailed, and suggested that the members of the Group look at the summary of water quality problems section on pages 31 through 34. He noted that this section gives an idea of the purpose of the inventory.

Mr. Hahn stated that Commission staff would draft summary notes of the meeting. He added that additions and changes to the text of the Staff Memorandum will be documented in these notes. He proposed that the next meeting be scheduled for October 12, 2011 at 10:00 a.m. and he said the Commission staff would send a meeting notice to members of the Group before that meeting. Ms. Justus asked whether it would be possible to start the next meeting earlier. Mr. Hahn replied that this meeting could start at 9:00 a.m. and extend to noon, and there was general agreement on that starting time.

## **ADJOURNMENT**

There being no further business, the meeting was adjourned by unanimous consent at 12:06 p.m.

## **COMMENTS MADE BY BRYAN HARTSOOK, OF THE WDNR STAFF ON THE DRAFT SEWRPC STAFF MEMORANDUM FOLLOWING THE MEETING**

Following the August 24, 2011 meeting of the Group, the Commission staff received comments from Mr. Hartsook of the WDNR staff by electronic mail. A copy of this email message is attached herein as Exhibit F. Mr. Hartsook made four comments.

In his first comment, Mr. Hartsook indicated that the permit should identify for each pollutant of concern which BMPs will be needed and where in the watershed implementation of these practices will be of greatest concern.

In his second comment, Mr. Hartsook asked whether the permit will address dischargers other than urban nonpoint dischargers.

In his third comment, Mr. Hartsook noted that while the permit should emphasize common trends and shared concerns in the Menomonee River watershed and adjacent watersheds, it may be more practicable, in certain cases, to implement pilot programs. He asked how waterways, pollutants, and practices will be prioritized by the Group based upon the summarized data.

In his fourth comment, Mr. Hartsook indicated that he felt that the Staff Memorandum should be included as part of a cover letter or attachment to the watershed-based permit.

[Secretary's Note: Regarding Mr. Hartsook's first comment, the permit framework can address these issues in a general sense and can call for the actual permit to address specific types and locations of BMPs. Regarding the second comment, the permit framework will only address urban nonpoint source discharges, but it is expected that any consideration of water quality credit trading in the memorandum documenting the

framework development process will recognize agricultural nonpoint sources and point sources. The third comment should be a topic of discussion at the October Group meeting.]

**COMMENTS MADE BY MR. JEFFREY S. NETTESHEIM, DIRECTOR  
OF UTILITIES, VILLAGE OF MENOMONEE FALLS, ON THE DRAFT  
SEWRPC STAFF MEMORANDUM FOLLOWING THE MEETING**

Following the August 24, 2011 meeting of the Group, the Commission staff received comments from Mr. Nettesheim by electronic mail. A copy of this email message is attached herein as Exhibit G. In his email, Mr. Nettesheim commented that, for communities that are located in multiple watersheds, he would prefer to have the permit set conditions that are appropriate for each watershed, rather than have blanket, communitywide conditions. He noted that this will allow municipalities to direct resources more efficiently and effectively to the proper watersheds.

Respectfully Submitted,

Michael G. Hahn  
Secretary

#158764 V1 - MNR WBP FRAMEWORK SUMMARY NOTES 08/24/2011  
300-1099  
MGH/JEB/pk  
09/30/11

**Exhibit A**

24-Aug-2011 Hahn to DeBruine RE MRG Permit - Greendale.txt  
From: Hahn, Michael G.  
Sent: Wednesday, August 24, 2011 3:38 PM  
To: 'DeBruine, Cindi'  
Cc: Boxhorn, Joseph E.; Kletti, Laura L.  
Subject: RE: MRG Permit - Greendale

Cindi,

Thanks for letting me know so promptly.

Mike

Michael G. Hahn, P.E., P.H.  
Chief Environmental Engineer  
Southeastern Wisconsin Regional Planning Commission  
P.O. Box 1607  
W239 N1812 Rockwood Drive  
Waukesha, WI 53187-1607  
Phone: (262) 547-6722 Ext. 243  
Fax: (262) 547-1103  
E-mail: mhahn@sewrpc.org  
Web site: www.sewrpc.org

From: DeBruine, Cindi [mailto:cindi.debruine@rasmithnational.com]  
Sent: Wednesday, August 24, 2011 1:47 PM  
To: Hahn, Michael G.; Tom Grisa (grisa@ci.brookfield.wi.us)  
Cc: Roecker, Len J.  
Subject: MRG Permit - Greendale

I checked with the Village Engineer and Greendale does not want to be a participant in the Menomonee River Group Watershed-based Permit.

Cindi V. DeBruine, P.E., CFM  
Senior Water Resources Engineer  
(262) 317-3254  
(262) 781-8466 fax

R.A. Smith National, Inc.  
16745 West Bluemound Road, Suite 200, Brookfield, WI 53005-5938

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**Exhibit B**

**SOUTHEASTERN WISCONSIN REGIONAL PLANNING COMMISSION**

W239 N1812 ROCKWOOD DRIVE • PO BOX 1607 • WAUKESHA, WI 53187-1607 •

**TELEPHONE (262) 547-6721**  
**FAX (262) 547-1103**

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**MEMORANDUM**

**TO:** Mr. Andrew A. Holschbach, Director Ozaukee County Planning, Resources,  
and Land Management Department  
Mr. Paul B. Sebo, Washington County Conservationist  
Mr. Perry M. Lindquist, Manager, Land Resources Division, Waukesha County  
Department of Parks & Land Use  
Mr. J.P. Walker, City Engineer, City of New Berlin  
Mr. Joshua Schoemann, Administrator, Village of Richfield  
Mr. Richard M. Czopp, Administrator, Town of Brookfield  
Mr. Jeffrey Musche, Administrator/Clerk, Town of Lisbon  
Mr. Michael Duckett, Executive Director, Southeast Wisconsin Professional  
Baseball Park District

**FROM:** Southeastern Wisconsin Regional Planning Commission staff

**DATE:** September 12, 2011

**SUBJECT: DEVELOPING A WATERSHED-BASED STORMWATER PERMITTING  
FRAMEWORK FOR THE MEMOMONEE RIVER WATERSHED**

You are receiving this memo because:

- Your unit of government is wholly, or partially located in the Menomonee River watershed (see the attached Map 1),
- You hold a municipal separate storm sewer system (MS4) discharge permit under the Wisconsin Pollutant Discharge Elimination System (WPDES) program, or, in the case of Washington County, you may hold such a permit in the future, and
- We want to inform you of an ongoing project to explore development of a framework for a watershed-based municipal stormwater permit for the Menomonee River watershed and to invite you to participate in the process.

The Milwaukee Metropolitan Sewerage District (MMSD) has been awarded a U.S. Environmental Protection Agency (USEPA) Region 5 Water Quality Cooperative Agreement grant to develop the framework for a watershed-based municipal stormwater permit for the Menomonee River watershed. The development of the framework is being accomplished through a collaboration involving the municipalities within the watershed, MMSD, the Southeastern Wisconsin Watersheds Trust, Inc. (Sweet Water), the

Wisconsin Department of Natural Resources (WDNR), USEPA, 1,000 Friends of Wisconsin, Midwest Environmental Advocates (MEA), the Sixteenth Street Community Health Center, and the Southeastern Wisconsin Regional Planning Commission (SEWRPC).

The watershed-based stormwater permit framework will use information from recent watershed-based water quality planning efforts in the Menomonee River watershed<sup>1</sup> to address municipal stormwater runoff pollution abatement needs by considering the watershed as a whole. The approach would enable municipalities to collaborate with each other and with industries, institutions, and agricultural landowners to consider alternative ways of cost-effectively reducing point and nonpoint source pollution of receiving waters. During the framework process, the feasibility of such collaborations will be evaluated.

The project will:

- Explore the feasibility of developing a watershed-based stormwater permit for the Menomonee River watershed,
- Investigate innovative approaches to improving the quality of stormwater discharges through a watershed-based permit while considering the regulatory and financial burdens on municipalities,
- Consider cost effective permit conditions and stormwater management activities, particularly related to implementation of green infrastructure, that are tailored to the watershed and that would be expected to yield the greatest improvements in water quality,
- Consider more effective sampling requirements that are related to needs identified under recent subregional water quality management plans, and
- Recognize that a third-party total maximum daily load (TMDL) study for the watershed is being conducted by MMSD and that TMDL load allocations would eventually be incorporated in a watershed-based stormwater permit, or any individual municipality stormwater permits.

The other municipalities in the watershed, as shown on Map 1, have begun to participate in the framework development process through participation in several meetings initiating the process. Participation in meetings to discuss issues and obtain comment from the watershed communities does not indicate any commitment to ultimately participate in a group, watershed-based permit. It is anticipated that a draft framework will be developed by participating municipalities with assistance from SEWRPC at the end of this year. That framework will be further refined from January through May 2012. The success of the watershed-based permit framework as a vehicle for establishing a watershed-based MS4 permit will depend largely on whether in May of 2012 a sufficient number of watershed communities decide to proceed with a watershed-based permit. Participation is completely voluntary, and if a community decides

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<sup>1</sup>*MMSD, 2020 Facilities Plan, June 2007; SEWRPC Planning Report No. 50 (PR No. 50), A Regional Water Quality Management Plan Update for the Greater Milwaukee Watersheds, December 2007; SEWRPC Technical Report No. 39 (TR No. 39), Water Quality Conditions and Sources of Pollution in the Greater Milwaukee Watersheds, December 2007; and MMSD, Menomonee River Watershed Restoration Plan (WRP), April 1, 2010.*

not to participate it would continue to have an individual MS4 permit, or to be part of a group permit for another watershed, depending on the community's specific situation.

We recognize that the municipalities receiving this memo have relatively small land areas within the Menomonee River watershed, that the City of New Berlin is already a member of the Root River watershed stormwater discharge permit group, that the Towns of Brookfield and Lisbon are members of the Upper Fox River watershed MS4 group, and that there is little or no unincorporated area within the watershed in Ozaukee, Washington, and Waukesha Counties. Those factors may lead those municipalities and counties to decide that participation in a Menomonee River watershed-based permit is not of interest to them; however, we believe that it is important that each of your units of government be notified of the framework process and be afforded an opportunity to participate in that process.

If your community is interested in participating, you are invited to attend the next group meeting on October 12, 2011 at 9:00 a.m. at Brookfield City Hall, 2000 N. Calhoun Road. Subsequent meetings are expected in November and December 2011 and January and May 2012. If your community is interested in participating, but is unable to attend the October 12 meeting, please contact Michael G. Hahn, SEWRPC Chief Environmental Engineer at (262) 547-6722, extension 243, or [mhahn@sewrpc.org](mailto:mhahn@sewrpc.org), and he will add you to the distribution list for project work products and future meeting notices. If your community is not interested in participating, please reply to Mr. Hahn.

\* \* \*

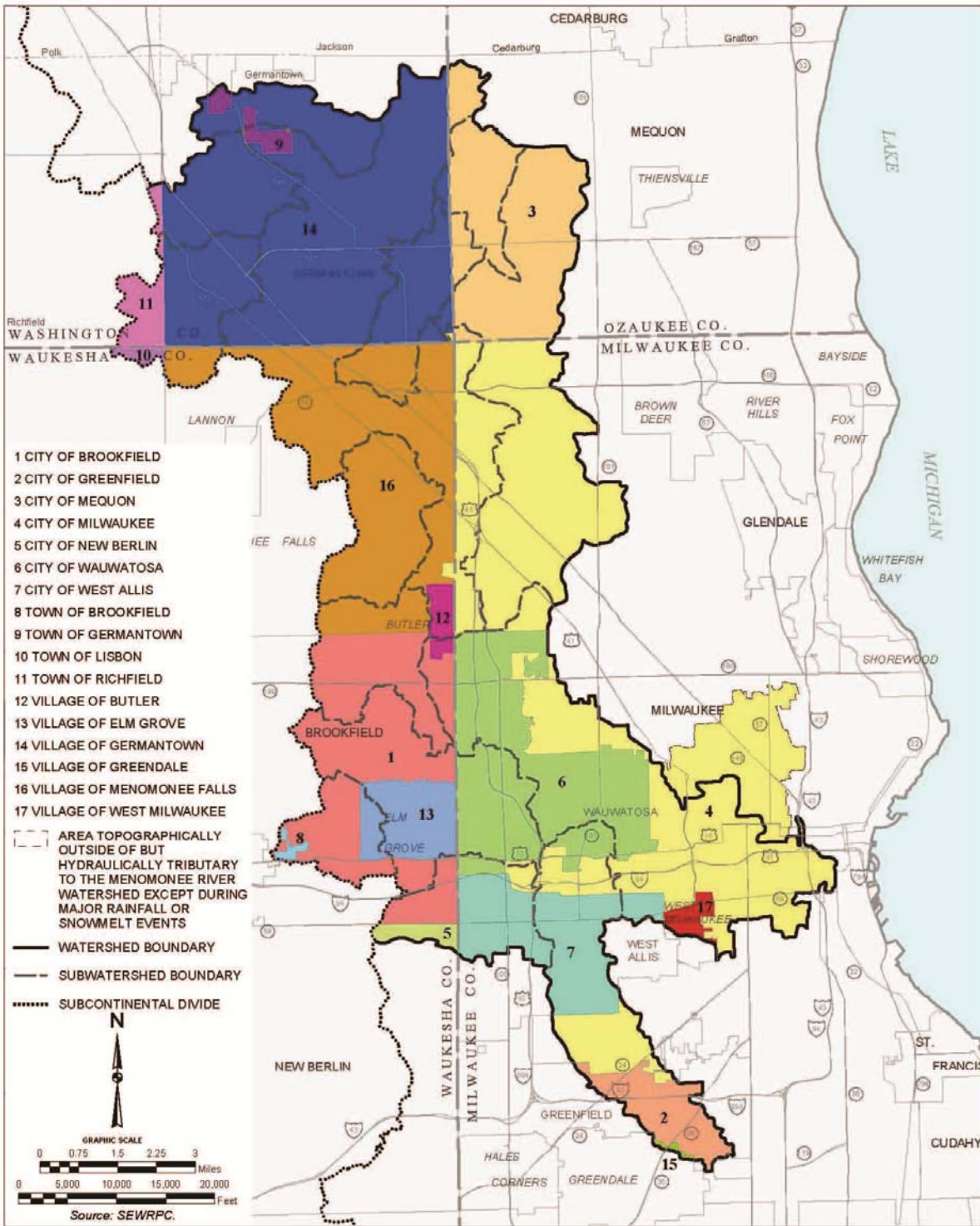
KRY/MGH/pk  
#158909 V1 - MNR WBP MUNIC MEMO

Enclosure

cc: Mr. Robert Newport, FEMA Region V  
Ms. Sharon L. Gayan, WDNR  
Mr. Bryan Hartsook, WDNR  
Ms. Karen L. Sands, MMSD  
Mr. Jeffrey Martinka, SWWT  
Mr. Thomas M. Grisa, City of Brookfield

Map 1

CIVIL DIVISIONS WITHIN THE MEMONEE RIVER WATERSHED: 2000



## Exhibit C

#158720 V1 - WATER QUALITY TRADING EXAMPLE  
 300-1099  
 JEB  
 08/23/11

### EXAMPLE OF WATER QUALITY TRADING UNDER THE DRAFT GUIDANCE FROM THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES

#### Definitions

Interim credits	Credits generated by making pollution reductions down to the credit threshold—last for 5 years
Long-term credits	Credits generated by making pollution reductions below the credit threshold—last for trade duration

#### Situation

- > A point source seeks to satisfy a requirement to reduce phosphorus discharges by 150 pounds per year through trading
- > The agricultural threshold is a Phosphorus Index (PI) of 6 (6 pounds P released per acre per year)
- > The point source pays to install BMPs on a 10 acre field that is at a PI of 16 (16 pounds P released per acre per year)
- > The BMPs bring the field down to a PI of 1 (1 pound P released per acre per year)

#### Credits Generated for the First Five-Year Permit by This Trade

Type	Reduction (lb/acre/year)	Acres	Total (lb/year)	Comments
Interim Credits	10	10	100	Generated by reducing PI from 16 to 6
Long-Term Credits	5	10	50	Generated by reducing PI from 6 to 1
Total	15	--	150	

The trade produces all of the credits the point source needs for the term of this permit.

#### Credits Generated for the Second Five-Year Permit by this Trade

Type	Reduction (lb/acre/year)	Acres	Total (lb/year)	Comments
Interim Credits	0	10	0	Interim credits have expired
Long-Term Credits	5	10	50	Generated by reducing PI from 6 to 1
Total	5	--	50	

The trade continues to produce 50 pounds of credits per year. The point source will need to obtain 100 pounds of credits per year or otherwise reduce the amount of phosphorus discharged annually by 100 pounds in order to meet permit conditions.

#### Comments

- > The above situation assumes that no TMDL has been done.
- > Lower agricultural thresholds may be set by a load allocation or performance standard related to a TMDL
- > Example does not include the effects of trade ratios for delivery of pollutants, equivalence of pollutant forms, uncertainty regarding BMP performance, and retirement of credits. The likely impact of these ratios is that a point source will need to trade for more than one pound of reduction for each pound of reduction they need to obtain.

## Exhibit D

16-Aug-2011 Hahn FW (Bischke) Prelim Draft of SEWRPC Staff Memo.txt  
From: Hahn, Michael G.  
Sent: Tuesday, August 16, 2011 2:23 PM  
To: Boxhorn, Joseph E.  
Subject: FW: Prelim Draft of SEWRPC Staff Memo

From: Brionne Bischke [mailto:bbischke@village.germantown.wi.us]  
Sent: Thursday, August 11, 2011 1:01 PM  
To: Kate Morgan; Butler@wi.rr.com; ddeangelis@elmgrovewi.org; JNettesheim@menomonee-falls.org; mmaki@wauwatosanet.net; len.roecker@rasmith.com; Grisa@ci.brookfield.wi.us; Jeff Martinka; mflaherty@elmgrovewi.org; Ricks@Greenfieldwi.us; ngreifenhagen@menomonee-falls.org; Lauren Justus;

Hahn, Michael G.; cindi.debruine@rasmithnational.com; tmorgan@riverrevitalizationfoundation.org; dennisg@midwestadvocates.org; tim.thur@milwaukee.gov; wwehrley@wauwatosanet.net; Mike Lewis; Peter Daniels; Mark Lloyd; Dan Ewert; Larry Neitzel; Sharon.Gayan@wisconsin.gov; bryan.hartsook@wisconsin.gov; caven@ci.brookfield.wi.us; kevin.o'brien@milwcnty.com; stevan.keith@milwcnty.com  
Cc: Dan Ludwig  
Subject: Prelim Draft of SEWRPC Staff Memo

In reference to the Preliminary Draft of SEWRPC Staff Memo entitled "Development of a Framework for a Watershed-based Municipal Stormwater Permit for the Menomonee River Watershed", I'd like to introduce three comments for the focus group's consideration:

1. How does the Public Services Commission (PSC) framework the regulation of utility companies (e.g., WE Energies, Time Warner Cable, AT&T, etc.) that service multiple municipalities? Can the Menomonee River Group benefit by the framework that they use? Do their frameworks permit any form of trading?
2. Municipalities are subject to levy increase limits imposed by the state of Wisconsin, the form of the limits being subject to differing ideological practices. Regardless of the ideology, the levy increase limits exist and should trickle down to the burden of the permit's aggregate costs and trickle down to the burden of the permit's annual growth of aggregate costs. For example in Year 2013, Municipality A may be subject to a 0% levy increase limit while Municipality B may be subject to a 2% levy increase limit. Then in Year 2014, Municipality A may be subject to a 1.1% levy increase limit while Municipality B may be subject to a 4% levy increase limit. Obviously, annual apportioning could be contentious and any annual apportioning beyond a municipality's levy increase limit would overburden that municipality's budget.
3. For municipalities who have or will have storm water utilities, is it possible that the PSC may begin to regulate storm water utilities within the next 5 years? If so, how would the permit respond?

16-Aug-2011 Hahn FW (Bischke) Prelim Draft of SEWRPC Staff Memo.txt

Thanks for your consideration.

Brionne R. Bischke, P.E.  
Village Engineer  
Village of Germantown  
N112 W17001 Mequon Rd.  
P.O. Box 337  
Germantown, WI 53022-0337  
W: 262-250-4724; F: 262-253-8355; M: 414-975-4699

## Exhibit E

### SCHEDULE FOR ACTIVITIES RELATED TO WATERSHED-BASED PERMITTING FRAMEWORK PROJECT FOR THE MENOMONEE RIVER WATERSHED

Project Element Group Meeting Date	Task Deadline	Actual or Proposed Group Meeting Date
Element 1: Create Watershed and Source Data Inventories	August 31, 2011	August 24, 2011
Element 2: Apply a Watershed Permitting Analytical Approach	September 30, 2011	October 12, 2011
Element 3: Construct an NPDES Watershed Framework		November 16, and December 14 , 2011
Draft Framework	December 22, 2011	January 25, 2012
Final Framework	May 31, 2012	May 2, 2012

Source: SEWRPC.

#158705 V1 - USEPA/MMSD WATERSHED-BASED PERMITTING SCHEDULE  
300-1099  
/MGH/  
08/22/11

*PRELIMINARY DRAFT*

**Exhibit F**

**Boxhorn, Joseph E.**

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**From:** Hahn, Michael G.  
**Sent:** Thursday, August 25, 2011 11:17 AM  
**To:** 'Gayan, Sharon L - DNR'  
**Cc:** Boxhorn, Joseph E.; Kletti, Laura L.  
**Subject:** RE: Prelim Draft WBP Framework Development

Thanks, Sharon.

We'll look forward to additional comments and answers to questions that came up.

Mike

Michael G. Hahn, P.E., P.H.  
Chief Environmental Engineer  
Southeastern Wisconsin Regional Planning Commission  
P.O. Box 1607  
W239 N1812 Rockwood Drive  
Waukesha, WI 53187-1607  
Phone: (262) 547-6722 Ext. 243  
Fax: (262) 547-1103  
E-mail: [mhahn@sewrpc.org](mailto:mhahn@sewrpc.org)  
Web site: [www.sewrpc.org](http://www.sewrpc.org)

---

**From:** Gayan, Sharon L - DNR [<mailto:Sharon.Gayan@wisconsin.gov>]  
**Sent:** Thursday, August 25, 2011 7:41 AM  
**To:** Hahn, Michael G.  
**Cc:** [Grisa@ci.brookfield.wi.us](mailto:Grisa@ci.brookfield.wi.us)  
**Subject:** FW: Prelim Draft WBP Framework Development

Mike,

Sending you Bryan's comments on the framework. I have routed the document to Madison for further comments along with some of the questions raised at the meeting. I will have more information for you next week. Nice work on the framework. Sharon

**Sharon L. Gayan**  
*Milwaukee River Basin Supervisor*  
2300 N. Martin Luther King Jr. Drive  
Milwaukee, WI 53212

414.263.8707

[sharon.gayan@wi.gov](mailto:sharon.gayán@wi.gov)

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Book, Bryan D - DNR  
Friday, August 24, 2011 8:19 AM  
Sharon  
Sharon L - DNR  
Prelim Draft WBP Framework Development

Good morning Kate,

I read through Mike's draft framework memo. I am hoping that I won't be too late for the discussion this morning, but I figured it would be best to send you a couple of follow up questions that could be discussed at the meeting in the event of my complete absence.

The paper is very helpful in giving us a 'one-stop-shop' look at water quality in the watershed, which is the first essential step in structuring the WBP. Now that the concerns are once again clearly brought to the front, it seems logical that the next thing the group needs to do is sort out the what, where, who, and how - the scope - of what we hope to accomplish through implementation of the WBP in its first permit term to address these concerns. Here are some initial questions that came to mind while reading:

- 1) Phosphorus, fecal coliform bacteria, total suspended solids, and chloride were the pollutants identified as having the lowest rate of compliance with surface water quality standards (with exception to TSS which does not have a standard for concentration but it is identified as a source for several 303d waters). What best management practices should the permit identify to address each pollutant and where in the watershed will implementation of these practices be the greatest concern? In other words, the permit should identify what soft practices are best for certain pollutants and what hard practices are best for others. i.e. Fecal coliform bacteria is a pollutant of concern in the Little Menomonee and has a 16.7% rate of compliance with applicable water quality standards, so having the permit introduce a program to identify and eliminate sanitary to storm cross-connections would be appropriate.
- 2) Will the permit to address dischargers other than urban nonpoint?
- 3) The permit should emphasize common trends (shared concerns) in the Menomonee and adjacent watersheds, but it may be more practicable to implement pilot programs rather than trying to satisfy a broad-brushed permit condition for a whole watershed (in certain cases). What waterways, pollutants, and practices would the group prioritize based on the summarized data?


Overall, I think having this document be included as part of a cover letter or attachment to the WBP is a must. This goes back to Bob Newport's comments on Section B of the existing permit on defining the Menomonee River Watershed.

Great foundation to work from :)

See you later this morning. I'll try to stay out of the mud!

Oh, and sorry for sending this to you last minute.

Thanks,

 *Bryan D. Hartsook*

Water Resources Engineer, Southeast Region  
Wisconsin Department of Natural Resources  
141 NW Barstow St. Room 180  
Waukesha, WI 53188

(☎) phone: (262) 574-2129

(☎) fax: (262) 574-2117

(✉) e-mail: [Bryan.Hartsook@wisconsin.gov](mailto:Bryan.Hartsook@wisconsin.gov)

Exhibit G

**Boxhorn, Joseph E.**

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**From:** Hahn, Michael G.  
**Sent:** Friday, August 26, 2011 12:44 PM  
**To:** 'Nettesheim, Jeff'  
**Cc:** Boxhorn, Joseph E.; Kletti, Laura L.  
**Subject:** RE: Watershed Based Permitting Comments

Jeff,

Thanks for your thoughtful comments. We will definitely take them into consideration, and notify the rest of the group by including them in the summary notes of the meeting.

Mike

Michael G. Hahn, P.E., P.H.  
Chief Environmental Engineer  
Southeastern Wisconsin Regional Planning Commission  
P.O. Box 1607  
W239 N1812 Rockwood Drive  
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E-mail: [mhahn@sewrpc.org](mailto:mhahn@sewrpc.org)  
Web site: [www.sewrpc.org](http://www.sewrpc.org)

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**From:** Nettesheim, Jeff [<mailto:JNettesheim@menomonee-falls.org>]  
**Sent:** Friday, August 26, 2011 11:11 AM  
**To:** Hahn, Michael G.  
**Subject:** Watershed Based Permitting Comments

Hello Mike,

For municipalities that have multiple substantial watersheds i.e. Menomonee Falls with the Menomonee River and Fox River basins (roughly 50-50% split), I would prefer that conditions appropriate for each watershed are spelled out for each and not have blanket community wide conditions. One of my frustrations with some of the previous permit conditions is that they seemed arbitrary. For instance, there did not seem to be a science based rationale behind the 20% and 40% TSS removal goals other than the presumption that future conditions in the waterways should be better. I prefer conditions or permit goals that are science-based to achieve a desired goal in the receiving water. It is easier to explain and is more logically based. We can then direct scarce resources more efficiently and effectively to the proper watersheds.

Thanks,  
Jeff  
*Jeffrey S. Nettesheim, P.E., WISECI*  
Director of Utilities  
Phone: 262-532-4848  
Menomonee Falls, WI

A Water Star Community




Overall, I think having this document be included as part of a cover letter or attachment to the WBP is a must. This goes back to Bob Newport's comments on Section B of the existing permit on defining the Menomonee River Watershed.

Great foundation to work from :)

See you later this morning. I'll try to stay out of the mud!

Oh, and sorry for sending this to you last minute.

Thanks,

 *Bryan D. Hartsook*

Water Resources Engineer, Southeast Region  
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