

Response to Comments on Proposed Multi-Discharger Variance Reauthorization

May, 2025

General Support for Reauthorization

Toni Herkert , Government Affairs Director, League of Wisconsin Municipalities

In summary, the phosphorus MDV has been found to be exceedingly effective at improving water quality while providing the time necessary for municipal WWTFs to undergo phased facility upgrades that will be needed to comply with the stringent 2010 phosphorus effluent limitations. The League strongly supports the DNR's statements in draft Multi_discharger.Variance.Justification. from February 2025 that state "complying with phosphorus water quality-based effluent limitations will cause a substantial and widespread impact to the state and cannot be met for at least another 10 years in an economically viable way" and "therefore, the Department believes a second 10-year MDV timeline is justified." We request that these determinations are not amended prior to the submittal of the MDV Package to the EPA.

Vanessa Wishart, Attorney, Municipal Environmental Group

MEG Wastewater appreciates the opportunity to comment on the Department of Natural Resources' ("DNR") Multi-Discharger Variance ("MDV") reauthorization package. MEG Wastewater was instrumental in passage of the MDV, which was designed to provide municipal wastewater utilities with options for permit compliance while simultaneously focusing resources on nonpoint sources to achieve greater phosphorus reductions in our waterbodies. MEG Wastewater strongly supports continued implementation of the MDV.

John T. Umhoefer, Executive Director, Wisconsin Cheese Maker's Association

The Board of Directors and membership of the Wisconsin Cheese Makers Association support the extension of a variance program that:

- Allows small and large dairy processors to remain economically viable and able to retain their workforces, keep local dairy farms thriving, and purchase goods and services from other small businesses in their communities.
- Allows time for water treatment technology to migrate to the dairy industry for enhanced wastewater treatment at costs that will decline as volume of adoption increases.
- Builds in financial support for nonpoint projects that curb phosphorus runoff from farmland, making the program far more impactful for water quality.

We urge the U.S. Environmental Protection Agency to approve the extension of Wisconsin's Multi-Discharge Variance for Phosphorus through 2035.

Ethan Hofland, HSE Manager, Ellsworth Creamery

The MDV program allows our company to continue to reduce phosphorus levels while maintaining economic viability. We provide 298 full-time, family supporting jobs in Wisconsin, and continue to purchase milk from Wisconsin dairy farms. We strongly support this public private partnership that recognizes both the need for optimal water quality and support for rural communities in Wisconsin.

Craig Summerfield on behalf of the Midwest Food Products Association (MWFPA), Wisconsin Manufacturers & Commerce (WMC), and the Wisconsin Paper Council (WPC)

As explained in the above comments, MWFPA, WMC, and WPC support reauthorization of the statewide phosphorus MDV. The joint DOA/DNR report provides strong justifications for reauthorizing the MDV. A recent draft report from DNR also demonstrates that significant pollution reductions have been achieved under the MDV. Our organizations appreciate the opportunity to provide comments and the efforts of DOA and DNR to seek reauthorization of the statewide phosphorus MDV.

Response: The Department acknowledges strong support for MDV reauthorization from various industry and municipal discharger groups.

Limitations of Treatment Technology

Vanessa Wishart, Attorney, Municipal Environmental Group

In addition, MEG Wastewater concurs with the analysis in the MDV Implementation Policy Document regarding reconsideration of the MDV. As the Policy Document notes, while a subset of Wisconsin facilities can achieve lower effluent limits than the originally-specified 0.5 mg/L with biological or chemical treatment, this is not true of the larger category of wastewater utilities. To the contrary, most utilities using the MDV cannot meet limits lower than 0.5 mg/L without a major facility upgrade. MEG Wastewater also concurs with the analysis in the Policy Document regarding new technologies. MEG Wastewater is not aware of any new technologies that would enable consistent compliance with phosphorus limitations at a lower cost than tertiary filtration. In fact, some emerging technologies that offered promising results from initial pilot testing have proven unworkable in the municipal wastewater treatment setting.

Response: The MDV policy document retains the previously-established default interim limits of 0.8, 0.6, and 0.5 mg/L. The bulk of discussion on this matter is located in the treatment technology evaluation document, which is an appendix of the Updated Economic Determination. The Department will continue to review treatment capabilities on a facility-specific basis.

Environmental Outcomes of the Variance

Vanessa Wishart, Attorney, Municipal Environmental Group

Finally, MEG Wastewater wishes to reemphasize the significant benefits of the MDV program highlighted in DNR's 2022 Highest Attainable Condition Review of Wisconsin's Multi-discharger Phosphorus Variance Report. This Report concluded that the MDV provides a pollutant reduction

15% greater than would be achieved absent the MDV. Continued implementation of the MDV therefore alleviates the widespread and substantial social and economic impact of compliance with phosphorus limits while also providing a significant environmental benefit through increased reduction of nonpoint phosphorus loadings.

Toni Herkert , Government Affairs Director, League of Wisconsin Municipalities

The MDV is one important option to help municipalities find more economical ways to comply with ratcheted WPDES effluent reduction requirements over multiple permitting cycles while ensuring regional water quality sees continued improvement. In the DNR's draft Evaluation of Nonpoint Source Phosphorus Reductions Achieved Under Wisconsin's Multi-discharger Phosphorus Variance report from February 2025, the 811 unique best management practices installed with MDV funding has kept 58,123 pounds of nonpoint pollution from entering Wisconsin's waters. This represents a 20% greater reduction than if those facilities had installed treatment to meet effluent limits. Additionally, the cumulative impact of those practices guaranteed to remain on the landscape raises the avoided nonpoint pollution to 176,585 pounds.

Robert Wills, President, Cedar Grove Cheese Inc.

During the transition period afforded by the MDV, Cedar Grove Cheese made payment to counties to help offset the excess phosphorus in our treated wastewater. Covering 14 months, Cedar Grove Cheese paid \$10,680.31 to Sauk County and \$132.08 to Vernon County. Those payments enabled the counties to direct phosphorus remediation efforts to the most important and efficient opportunities in their jurisdiction. The payments probably were much more effective in those projects than the same expenditure would have been at our factory or its immediate vicinity. This partnership between our permit-driven phosphorus reduction effects and county phosphorus reduction efforts is a win-win for improving the quality of state waters. Statewide, permit holders supported county pollution control efforts with \$5.8 million from 2018 to 2024.

Ethan Hofland, HSE Manager, Ellsworth Creamery

As part of the MDV program, our business has financially supported Wisconsin county-level nonpoint source pollution control activities and staffing. In total, through the MDV program, our organization has forwarded a total of \$234,377.57 to Pierce and St. Croix counties. This partnership between our permit-driven phosphorus reduction effects and county efforts to reduce nonpoint phosphorus runoff provides a win-win for improving the quality of state waters.

Tim Krueger, Director of Safety, Health, and Environmental, Grande Cheese

As part of the MDV program, our business has financially supported Wisconsin county-level nonpoint source pollution control activities and staffing. In total, through the MDV program, our organization has forwarded a total of \$407,009 to two counties. This partnership between our permit-driven phosphorus reduction effects and county efforts to reduce nonpoint phosphorus runoff provides a win-win for improving the quality of state waters.

Melissa Schlupp, Deputy Director, Sauk County Land Resources & Environment

We appreciate DNR's flexibility with the MDV program. It has become a popular cost share program in our county and we have been able to install some really great projects.

Ted Winkelman, Environmental Director, Agropur

As part of the MDV program, our business has financially supported Wisconsin county-level nonpoint source pollution control activities and staffing. In total, through the MDV program, our organization has forwarded a total of \$30,612.11 to Sheboygan, Calumet, Ozaukee, and Manitowoc counties. This partnership between our permit-driven phosphorus reduction effects and county efforts to reduce nonpoint phosphorus runoff provides a win win for improving the quality of state waters.

Jim DeSonia, Director of EHS, Foremost Farms USA

As part of the MDV program, our business has financially supported Wisconsin county level nonpoint source pollution control activities and staffing. In total, through the MDV program, our organization has forwarded a total of \$ 179,988 to 9 counties. This partnership between our permit driven phosphorus reduction effects and county efforts to reduce nonpoint phosphorus runoff provides a win-win for improving the quality of state waters.

Response: The department acknowledges funding paid by cheese makers, amongst other dischargers, to further the work of county conservation departments statewide. The document Evaluation.of.Nonpoint.Source.Phosphorus.Reductions.Achieved.Under.Wisconsin's.Multi-discharger.Phosphorus.Variance tabulates phosphorus reductions to arrive at a cumulative load reduction of 58,123 pounds over several years. On an annual basis, counties are expected to reduce phosphorus loading by roughly 20,307 lbs/year. This value is somewhat less than the ~24,000 – 29,000 lbs/year reduction that would result from point sources meeting their final water quality based effluent limits. See Table 10 of the nonpoint source evaluation document for exact values.

Economic Impacts of Phosphorus Compliance

Vanessa Wishart, Attorney, Municipal Environmental Group

MEG Wastewater previously provided comments on the Department of Administration's Updated MDV Economic Determination. Those comments are attached hereto for your reference. In sum, MEG Wastewater agrees with the conclusion in the Updated MDV Economic Determination that the 2015 economic determination finding that phosphorus effluent limits would result in substantial and widespread adverse social and economic impacts remains true today. This conclusion is underscored by DOA's finding that "absent continued use of the phosphorus MDV, Wisconsin municipalities and businesses would incur \$900 million worth of capital cost expenditures in the coming years, resulting in an estimated 1,341 fewer jobs and gross state product reduction by at least \$209.9 million." This demonstrates a continued substantial and widespread adverse social and economic impact across the state due to implementation of phosphorus limits absent the MDV.

Toni Herkert , Government Affairs Director, League of Wisconsin Municipalities

The Wisconsin Department of Administration's Economic Impacts of Wisconsin's Phosphorus Regulations: An Updated Determination report from December 2024 further builds on the evidence that the phosphorus MDV is an effective and important tool to continue controlling municipal costs. Absent the reauthorization of the MDV, more than \$900 million in projected capital expenditures will be seen, a figure which could rise above \$1 billion with financing costs included. Approximately 72% of these capital costs will be incurred by municipalities. This extensive capital project need will cause substantial increases to sewerage ratepayers in communities throughout the state. Even those municipalities not presently utilizing the MDV may experience the impacts if reauthorization is not granted due to the projected loss of 1,341 jobs and \$209.9 million in gross state product.

Robert Wills, President, Cedar Grove Cheese Inc.

The MDV has assisted our facility by giving us time to work toward meeting water quality standards for discharge of water containing phosphorus from our water treatment plant. Without the MDV, our facility would immediately face major facility upgrades costing in excess of \$1.5 million. That expense would cause severe and probably terminal financial damage to our business and surrounding communities. Cedar Grove Cheese purchases about \$8 million of milk from 28 local farms and has 26 employees. We also use many local vendors and distributors. Cedar Grove Cheese has made cheese in its current location since 1878 through gradual investments and improvements. Our cheese has won many awards and has national and international distribution.

Cedar Grove Cheese Inc. strongly supports the MDV. It enables us to stay in business. This public-private partnership recognizes the need for both optimal water quality and businesses that support Wisconsin's rural communities.

John T. Umhoefer, Executive Director, Wisconsin Cheese Maker's Association

Statewide, dairy manufacturers would face \$26 million in capital costs and \$1.5 million in operating costs if the MDV program did not exist and installation of tertiary treatment systems became immediately necessary, according to data collected by the Wisconsin Department of Natural Resources (DNR). WCMA believes these DNR-estimated costs grossly understate the real costs to install and operate new treatment systems. Even a single new tertiary treatment system can cost more than \$1 million/year to operate. The statewide estimate of \$1.5 million for operational costs vastly understates true costs. The reality of the expense of these systems makes this variance program even more important than DNR estimates show.

DNR Response: Thank you for voicing your concerns regarding costs of phosphorus treatment and the broader economic impacts these costs would cause throughout the State of Wisconsin.

Suggested MDV Policy Modifications

Robert Wills, President, Cedar Grove Cheese Inc.

We think that consideration should be given to making the MDV permanent to enable counties to address the highest needs and most efficient remediation opportunities. We also would suggest

that rules should enable companies to participate in the MDV while partially offsetting with trading and continuing to work on phosphorus reduction. It is our understanding that current rules do not permit that hybrid transition.

DNR Response: State statute for the MDV limits the duration of coverage for any given facility to a maximum of four permit terms. (see s. [283.16\(6\)\(a\)4.](#), Wis. Stats.) Federal code requires that all variances are time-limited. See water quality standards variance definition at 40 CFR 131.3(o)

MDV watershed offset requirements, as defined under s. [283.16\(6\)\(b\)](#) require an annual offset to be achieved using either a self directed, third-party, or county payment mechanism. The department has found some flexibility to allow for a “blended approach” under which permittees transition from county payments to a watershed offset project within the same permit term. The transition must occur at an annual timestep, however, as there is no ability to blend watershed options used within a single year. See p. 34 of the draft MDV policy document for more information.

Leo A. Kucek, P.E., Applied Technologies

It appears that the Department’s stated rationale for the “population change” secondary indicator should be based on updated decadal population projections, rather than the previous decadal population change

... the rationale behind eligibility for the MDV is based on how a community WILL grow (or decline) and how those changes WILL affect hardship if tertiary treatment costs led to increased user fees. Tertiary treatment costs would be expected to typically be borne over a 20-year planning period as part of a 20-year Clean Water Fund Program Loan. Therefore, the number of sewer customers over the planning period would be a better metric than the change in the number of sewer customers in the past decade. I have attached two excel files that demonstrate how these two methodologies would affect Wisconsin’s 72 counties. It is proposed that the 2020-2040 or the 2020-2050 average decadal population projection be used in lieu of the prior decadal population change to evaluate each county’s population change. I request that the Department consider Column Y of the attached Proj_Co_State_2020_2050.xlsx file, along with the map provided by the Department at the link below. <https://dnr.wisconsin.gov/sites/default/files/topic/Wastewater/Munimap.pdf>

Without making this proposed change, or other changes to secondary indicators, it is anticipated that many municipalities (including the Village of Genoa City, the Village of East Troy, and the Lyons Sanitary District No. 2) in several counties (including Walworth County), would lose eligibility for the MDV in future permit terms.

DNR Response: Section [283.16\(3\)\(a\)](#), Wis. Stats. requires that DOA and DNR evaluate whether the initial determination remains accurate, and does not instruct DOA and DNR to revise the broader variance eligibility framework. As such, DOA and DNR did not propose to modify any of the secondary indicator scoring metrics as part of the Updated Economic Determination.

The Department appreciates the critical look at this secondary indicator score with the intent of improving the metric. All secondary indicator scores that use a rate of change to evaluate economic resiliency do so using historic data. To dismiss the use of historic data in favor of projections would

require revisions to multiple secondary indicator scores. In addition to the greater potential for errors or mischaracterizations inherent to projections, broader revisions to the secondary indicator scores would result in less certainty for permittees currently covered under the MDV.

Chris Murphy, Nutrient Trading Manager, Wisconsin Water Quality Trading Clearinghouse

1. Amend the MDV justification process to require WPDES permittees to evaluate the availability and cost effectiveness of water quality trading credits through the Wisconsin Statewide Clearinghouse for Water Quality Trading prior to MDV approval. The MDV outreach and evaluation process did not account for the existence of the Clearinghouse and the ease it provides to wastewater discharge permit holders to complete a cost-effective water quality trade providing a more permanent approach to meeting permit requirements.
2. In cases where economically competitive and viable water quality trading credits are available to achieve compliance with phosphorus limits, those permittees should not fall within the scope of the MDV economic determination at s. 283.16(2), Wis. Stats. The MDV outreach and evaluation process did not account for the ability of the Clearinghouse to complete water quality trades that reduce more amounts of phosphorus runoff entering states waters. Requirements of water quality trading dictate higher amounts of phosphorus must be reduced on the land (trade ratios of 1.2 to 4) versus the 1:1 ratio used for MDV payments.
3. The use of MDV has been described as a temporary measure with the desire for wastewater discharge permit holders to achieve a more permanent solution. Currently ‘temporary’ is defined as 4 permit terms which equals 20 years. Please revise this to one permit cycle (5 years) as there are cost-effective alternatives now (i.e. water quality trading through the Clearinghouse, chemicals, other technologies) that permit holders can evaluate and determine a course of action.
4. MDV offers the option to participate in an MDV watershed management plan which is temporary and eventually must be converted to a water quality trading plan. The MDV watershed management plan allows trading at a 1:1 trade ratio. Water quality trading must conform to a trade ratio involving uncertainty factor (which ranges from 1.2 to 4); delivery factor; and in some cases, a downstream factor; which results in a trade ratio higher than the MDV watershed management plan. Please require the MDV watershed management plan to meet the same requirements of water quality trading to achieve maximum water quality improvement.

DNR Response: Thank you for your comments. DNR appreciates the Clearinghouse’s efforts to further water quality trading in Wisconsin. Responses to items 1 through 4 are as follows:

1. DNR has, and will continue to, expect permittees to evaluate water quality trading as a compliance option. When a WPDES permittee is given a compliance schedule for low-level phosphorus effluent limits, an evaluation of the feasibility of water quality trading is typically required for preliminary and final compliance alternatives plans in the 3rd and 4th year of the

schedule. The MDV application, in both historic and proposed future versions, request information regarding the feasibility of water quality trading. In this sense, DNR has required that WPDES permittees evaluate the availability and cost effectiveness of water quality trading.

Understanding that water quality trading is gaining acceptance statewide and a number of brokers are more readily able to supply credit-generating projects, DNR has updated the standard MDV permit language to facilitate a mid-term evaluation of water quality trading. See revised permit language on page 67 of the draft [Program.Policy.for.Implementing.Wisconsin's.Multi_discharger.Phosphorus.Variance](#).

2. The MDV outreach and evaluation process did account for those permittees who currently have water quality trades. See section 2.2 of the Updated Economic Determination. Note the document states: “For those facilities that have implemented trading and AM, a major facility upgrade is no longer necessary. Therefore, compliance costs incurred by permittees who have implemented trades and AM programs are not considered to be within the scope of the updated MDV economic evaluation.”

3. DNR cannot fulfill the Clearinghouse’s request to broadly limit the duration of MDV availability, as the duration limit is set in state statute at s. [283.16\(6\)\(a\)4.](#), Wis. Stats. The potential for water quality trading solutions, through a clearinghouse or otherwise, does not mean that every discharger will have affordable and viable water quality trading options available when needed. Therefore, DNR will continue to make site specific evaluations regarding the feasibility of water quality trading relative to a discharger’s need for a major facility upgrade and associated economic circumstances.

4. DNR notes the Clearinghouse’s request to impart trade ratios to MDV self-directed or third-party watershed offsets. There are many legal framework differences between the MDV and water quality trading. Chiefly, the MDV is a water quality standards variance rather than final compliance with an effluent limit. Therefore, the uncertainty and locational aspects of watershed offsets are addressed in context of the highest attainable condition requirements in federal code and state statute. See s. [283.16\(3m\)](#), Wis. Stats. and the document [Highest.Attainable.Condition.Review.of.Wisconsin's.Multi_discharger.Phosphorus.Variance.\(February 2022\)](#).

Melissa Schlupp, Deputy Director, Sauk County Land Resources & Environment

Reporting based on the year funds were received is not conducive to how counties implement cost share programs. Below is an example of what reporting looks like when it is based on when the funds were received:

Year funds received: 2024

Funds received: \$20,000

Projects funded using 2024 funds: Cover Crop contract (\$10,000) & Prescribed grazing contract (\$25,000)

The 2024 MDV Annual report would include the full cover crop contract at \$10,000 and only \$10,000 of the prescribed grazing contract. The remaining \$15,000 of the prescribed grazing contract would

be reported on the 2025 report. It is very difficult to track funds based on the year they were allocated and to split projects over multiple years of funding. It becomes even more complicated when you have to think about what year to report the phosphorus/soil loss reductions in – do you report it in the year it was installed or do you report it in both annual reports and then adjust the % reduced based on the % of funds used in that year? In my opinion, there are two ways to address this issue: 1) Make the annual report budget table much more robust so that it only allows you to allocate funds to projects based on the allocation associated with that report, or 2) Make the budget table a complimentary part of BITS (not connected to any specific annual report) that continually adds funds when funds are received and removes funds when projects are installed. It seems that with the amount of data added to BITS, DNR should be able to generate any kind of specialized report they want.

DNR Response: Thank you for expressing your concerns. The need to streamline project tracking and reporting for county conservation departments is recognized, as limited staffing resources must be used as efficiently as possible. The program is bound by the timeframes specified in state statute (see ss. 283.16(8)(b)2m. and 283.16(8)(b)3., Wis. Stats.) which specify reporting milestones relative to the year in which MDV payments were received. DNR would be receptive to more flexible reporting, so long as statutory requirements are met. To that end, the department looks forward to further discussions about how BITS can be improved, including more integration with annual funding received and/or a more cumulative accounting approach.

EPA Comments

Timothy Elkins, Acting Manager, Region 5 Watersheds and Wetlands Branch

Additional information and analyses may better support Wisconsin's evaluation of nonpoint source phosphorus reductions and strengthen the conclusion that nonpoint reduction measures under the MDV will result in greater phosphorus loading reductions than if each point source discharger covered under the MDV installs and operates treatment.

WDNR projects in its "Evaluation of Nonpoint Source Phosphorus Reductions" document (provided on its website) that, for 2027-2037, nonpoint source (NPS) reduction measures under the MDV will reduce an annual average of 20,307 pounds of phosphorus (Table 12, p. 31). WDNR also demonstrates that, if every facility covered by the MDV met its unvaried water quality based effluent limit (WQBEL) between 2021-2023, point source phosphorus loadings would be reduced by an average of 26,952 pounds per year (Table 10, p. 25). The difference between the average point source load reductions if all 159 facilities covered by the MDV met their WQBELs and the projected average nonpoint source load reductions under the MDV is 6,645 pounds per year.

Using the WQBEL approach as a basis for analyzing of the effectiveness of the MDV is conservative as most facilities covered by the MDV cannot feasibly install and operate treatment necessary to meet the unvaried WQBELs. Acknowledging the WQBEL scenario results in a greater load reduction than the MDV alone, providing further explanation of how using the WQBEL scenario is a conservative approach, and providing analysis of the loading reductions that reflect the limits of

feasibility would improve WDNR's supporting documents for the MDV. A recommended analysis approach is outlined below:

- Consider a small subset of the facilities covered by the MDV and determine for each facility the level of treatment that could be feasibly installed and the resultant phosphorus load reduction that could be feasibly achieved.
- Compare the above results to those facilities' unvaried WQBEL loads to determine the difference between feasibly installed treatment and the WQBEL.
- Once the sum of the above load differences for each facility is greater than the current difference between average point source load reductions and projected nonpoint source reductions (6,645 pounds of phosphorus), this sum can be subtracted from the average annual total phosphorus load reduction value if every facility met their WQBELs (26,952 pounds of phosphorus).

The above example analysis provides a new load reduction estimate associated with feasible treatment installation at facilities. While this method still assumes that most of the facilities can achieve the WQBEL with treatment installation, it illustrates that average nonpoint source load reductions can be greater than point source load reductions. This further provides support for nonpoint source reduction measures and thus the underlying premise of the MDV overall.

DNR Response: The importance of nonpoint phosphorus offsets to the environmental outcomes of the MDV cannot be overstated. DNR's and EPA's efforts to compare variance scenarios to full compliance with unvaried water quality standards are intended to provide readers with context for what is being done on the landscape and at wastewater facilities. These comparisons are not made to demonstrate compliance with variance provisions found in federal code. To that end, DNR has improved the nonpoint source evaluation document with further acknowledgement that the WQBEL scenario results in a greater load reduction than the MDV alone and provides further explanation of how using the WQBEL scenario is a conservative approach. DNR has also revised discussion around Figure 9 and Table 11 to clarify that this analysis is intended to reflect the limits of feasibility with regards to overall phosphorus reductions.