



April 25, 2018

ANN M. SPILLANE, CHIEF OF STAFF  
STATE OF IL - ATTORNEY GENERAL'S OFFICE  
100 WEST RANDOLPH ST, 12<sup>th</sup> FLOOR  
CHICAGO IL 60601

Subject: The City of Racine's Application for Water Diversion

Dear Ms. Spillane,

Thank you for your comments in your letter dated March 21, 2018 regarding the City of Racine's Diversion Application (application). The Wisconsin Department of Natural Resources (WDNR) has thoroughly reviewed the application and considered the Great Lakes-St. Lawrence River Basin Water Resources Compact (Compact) in its decision on the City of Racine's request to divert water.

The City of Racine will be required to return all water diverted, less an amount of consumptive use, back to Lake Michigan. The City of Racine has oversight over significant industrial users' wastewater (including the proposed Foxconn facility). Any industrial user is required to meet state and federal categorical standards. If an industrial user cannot meet the state and federal standards, the user must pretreat the wastewater before discharging it to the Racine Wastewater Treatment Plant. The City of Racine issues pretreatment permits, as needed. Pretreatment permits contain water quality discharge limits, and wastewater sampling and reporting requirements. These limits will include local limits established in Racine's Sewer Use Ordinance and technology-based categorical pretreatment standards developed by EPA for certain industrial categories of dischargers. Since the receipt of your letter, the WDNR has posted additional materials regarding the City of Racine's pretreatment program on our website ([www.dnr.wi.gov](http://www.dnr.wi.gov) Search "Racine Diversion"). Wis. Admin. Code ch. NR 211 contains Wisconsin's pretreatment regulations.

In addition, the WDNR must review and either approve, conditionally approve, or deny plans and specifications for the design of any wastewater pretreatment technology proposed for construction by an industrial customer, such as Foxconn (pursuant to Wis. Admin. Code ch. NR 108 and Wis. Stat. § 281.41). The wastewater returned to Lake Michigan from Racine's Wastewater Treatment Plant will be required to meet all applicable Wisconsin Pollutant Discharge Elimination System (WPDES) permit requirements.

As you have requested any WPDES or pretreatment materials the WDNR requests from the City of Racine for industrial users (Foxconn) in the diversion area will be posted to the WDNR's website upon receipt.

If you have additional questions regarding the Racine Diversion application and approval, do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Adam Freihoefer". The signature is written in black ink and is positioned above the typed name.

Adam Freihoefer  
Water Use Section Chief  
Bureau of Drinking Water and Groundwater

cc (via email):

Elizabeth Wallace, Chief, Environmental Bureau, Illinois Attorney General's Office

Rebecca Burlington, Supervising Attorney, Environmental Bureau, Illinois Attorney General's Office

Matthew Dunn, Chief, Environmental Enforcement Bureau, Illinois Attorney General's Office

Daniel Rottenburg, Assistant Attorney General, Environmental Bureau, Illinois Attorney General's Office

Daniel Injerd, Illinois Compact Council Alternate, Illinois Department of Natural Resources



**OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS**

**Lisa Madigan**  
ATTORNEY GENERAL

March 21, 2018

**VIA ELECTRONIC MAIL**

DNR Drinking Water and Groundwater Program DG/5  
Attn: Adam Freihoefer  
P.O. Box 7921  
Madison WI 53707-7921  
*DNRRacineDiversionComments@wisconsin.gov*

**Re: Comments on the City of Racine's Application for Water Diversion**

Dear Mr. Freihoefer:

On behalf of the Office of the Illinois Attorney General, we are writing to provide our comments on the City of Racine's Application for Water Diversion. Wisconsin DNR received the application on January 26, 2018 and requested public comments by March 21, 2018.

The Attorney General is the chief legal officer of the State of Illinois, and has an obligation to represent the interests of the People so as to ensure a healthful environment for all the citizens of the State.<sup>1</sup> Lake Michigan is a valuable natural, cultural, economic, aesthetic, and recreational resource for Illinois citizens. According to the Illinois Environmental Protection Agency, ". . . the Illinois portion of the Lake Michigan watershed is home to half of the total population of Illinois and the lake itself is the largest public drinking water supply in the state, serving nearly 6.6 million people (of a total of over 10 million lake-wide)."<sup>2</sup> Consequently, the proposed diversion of an average of 7 million gallons of water per day from Lake Michigan, and the treatment of return flow, are of utmost concern to the People of Illinois.

Racine's application identifies that all wastewater, less an allowance for consumptive use, will be returned to the Lake Michigan basin via the Racine Wastewater Treatment Plant.<sup>3</sup> The application estimates that return flow at full build-out in 2050 would be 4.3 million gallons per day on average.<sup>4</sup> The

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<sup>1</sup> Ill. Const. 1970, art. V, § 15; *People v. NL Industries*, 152 Ill.2d 82, 103 (1992).

<sup>2</sup> Illinois Environmental Protection Agency, *Lake Michigan Monitoring Program*, <http://www.epa.illinois.gov/topics/water-quality/monitoring/lake-michigan/index>.

<sup>3</sup> The City of Racine Application for Water Diversion, p. 6.

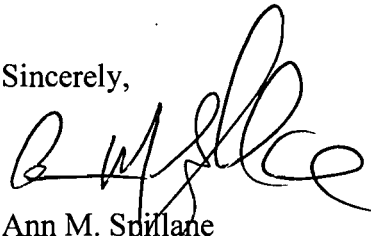
<sup>4</sup> *Id.*

application specifies that the Mount Pleasant Sewer Utility will collect wastewater from the diversion area before pumping the wastewater to Racine's wastewater treatment facility. Notably, the application does not specify what pretreatment will occur before the wastewater is collected by Mount Pleasant. It is critical that on-site pretreatment occur, and that Foxconn's system meet or exceed Wisconsin pretreatment standards. Foxconn has indicated that it will publicly address water treatment at a later date.<sup>5</sup> When Wisconsin DNR receives this information, it should be made readily available online. The public has a right to know the details of what pretreatment is planned at the facility and be assured that the pretreatment will effectively remove as many contaminants as possible. In addition, all filings related to wastewater should be accessible online, just as those related to air emissions are currently.<sup>6</sup>

The application states that the "Racine Wastewater Utility's treatment facility can accommodate the forecasted wastewater volume and quality without requiring a Wisconsin Pollutant Discharge Elimination System permit modification."<sup>7</sup> However, the proposed diversion represents a significant increase in Racine's water use, and it is axiomatic that the return flow must meet all applicable permit standards under Racine's WPDES permit, as well as all water quality standards under local, state, and federal law. Particularly in light of the fact that the potential loading of contaminants from Foxconn are unknown at this time, Wisconsin DNR must remain vigilant in ensuring that no exceedances of Racine's WPDES are allowed.

Thank you for your consideration of these comments. We can be reached at the telephone number and email address listed below should you have any questions or wish to discuss our comments.

Sincerely,



Ann M. Spillane  
Chief of Staff  
Illinois Attorney General's Office  
100 West Randolph Street, 12<sup>th</sup> Floor  
Chicago, IL 60601

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<sup>5</sup> Lee Bergquist, *Racine seeks state OK to tap up to 7 million gallons from Lake Michigan a day for Foxconn in Mount Pleasant*, MILWAUKEE JOURNAL SENTINEL, Jan. 29, 2018, <https://www.jsonline.com/story/news/2018/01/29/racine-seeks-state-ok-tap-up-7-million-gallons-lake-michigan-day-foxconn-mount-pleasant/1071211001/>.

<sup>6</sup> Wisconsin Department of Natural Resources, *Wisconsin Foxconn Technology Group development project*, <https://dnr.wi.gov/Business/Foxconn.html>.

<sup>7</sup> The City of Racine Application for Water Diversion, p. 6.

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cc: Matthew J. Dunn, Chief  
Environmental Enforcement/  
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