



May 11, 2016

Kris Sivertson, President
Courte Oreilles Lake Association
3690 South Elco Rd.
Fall Creek, WI 54742

Subject: Petition to Promulgate Site Specific Criteria for Lac Courte Oreilles and Musky Bay

Dear Mr. Sivertson,

The Department received your petition filed pursuant to Wis. Stat. § 227.12(3), requesting emergency rules and permanent rules to develop a phosphorus site specific criterion for the Lac Courte Oreilles and Musky Bay. The petition was filed on behalf of the Courte Oreilles Lakes Association (“COLA”) and the Lac Courte Oreilles Band of Lake Superior Chippewa Indians (the “Tribe”). For the reasons listed below, the Department is denying your request for emergency and permanent rule making.

We are denying your request for emergency rulemaking because the statutory threshold for an “emergency” has not been met. The rulemaking changes you are seeking will not address your water quality concerns. Nonpoint sources are the primary source of phosphorus loads to the lake. Development of a site specific criterion will not address the nonpoint source pollution impacts to the lake because water quality criteria are not regulatory mechanisms that require nonpoint source phosphorus reductions. Since an emergency rule establishing a revised phosphorus criterion will not achieve immediate phosphorus load reductions, the emergency rulemaking requirement in Wis. Stat. § 227.24, that expedited rulemaking is necessary to preserve public peace, health, safety, or welfare, has not been satisfied.

Given that Musky Bay is impaired due to nonpoint pollution, developing a Nine Key Element compliant Watershed Plan (<http://dnr.wi.gov/topic/nonpoint/9keyelementplans.html>) is a more efficient path forward to improve water quality in the lake. Nine Key Element plans can help identify all nonpoint sources of pollution to the lake and then select appropriate practices to reduce nonpoint pollutant loads to restore or protect designated uses. Such plans not only help to meet eligibility requirements for DNR grants to reduce nonpoint sources of pollution, but also can incorporate site specific criterion as plan restoration goals. Department staff discussed this opportunity with you last year in a meeting at the Eau Claire DNR service center when you requested that a Total Maximum Daily Load (TMDL) be established for the lake. You may recall that staff outlined requirements for developing a Nine Key Element Plan.

As for permanent rules, the Department is already engaged in a permanent rule making effort that we expect will result in a streamlined process for developing site specific phosphorus criteria (Rule Package WT-17-12). Numerous stakeholders have already expressed interest in developing phosphorus site specific criteria for various waterbodies in the state. In some cases, stakeholders believe the existing criteria are overprotective and in other cases, as with COLA and the Tribe, the stakeholders believe the criteria are not protective enough. Revising individual criteria prior to finalizing the Administrative Rule would be impractical and could lead to inconsistency in the development of site specific criteria. Accordingly, the Department has decided the best approach is to focus its efforts on creating a rule that will establish a consistent methodology and a streamlined process for developing site specific criteria. Therefore, the department will not be reviewing or making approval decisions on individual

Site Specific Criteria (SSC) requests until the process for Rule package WT-17-12 is completed. This will likely take two more years. Here is the link to the scope statement for this rule package.

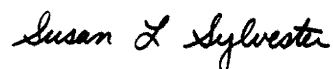
<https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=13683>

The Department remains interested in working the lake association and the Tribe to develop the Nine Key Element Watershed Plan. This plan can become a foundation for restoration of the lake. We also recommend that you and Andrew Craig continue to communicate with Kevin Kirsch on this topic, so he can ensure that the plan satisfies the necessary requirements to be considered in lieu of a TMDL. Kevin's contact information is kevin.kirsch@wisconsin.gov, (608) 266-7019. Andrew's contact information is andrew.craig@wisconsin.gov, (608) 267-7695.

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review must name the Department of Natural Resources as the respondent.

Thank you and please feel free to contact me with any questions at 608-266-1099 or email at susan.sylvester@wisconsin.gov

Sincerely,



Susan L. Sylvester, Director
Water Quality Bureau

cc:

Brian Weigel, Chief, Water Evaluation Section
Mary Anne Lowndes, Chief, Runoff Management Section
Kristi Minahan
Kevin Kirsch
Shelly Allness
Robin Nyffeler
Andrew Craig
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