

1. FORMAL OBJECTION LETTER

[HOVMSD Letterhead]

Date:

To: Wisconsin Department of Natural Resources

Re: Objection to Recalculated TSS TMDL Mass Limits in Draft WPDES Permit

Dear Wisconsin Department of Natural Resources,

The Heart of the Valley Metropolitan Sewerage District (HOVMSD) respectfully submits this formal objection to the recalculated Total Suspended Solids (TSS) mass limits included in the draft reissued WPDES permit. The District strongly disagrees with the Department's unilateral modification of its TMDL-based WLA expression and the resulting reduction in weekly and monthly mass limits.

The District's concerns are threefold:

1. 1. Unilateral Revision Based on a Department Error

The Department's response acknowledges that the TSS limits in the prior permit were based on an "incorrect calculation method." This error was not attributable to the District. The District relied on the Department's approved WLA expression during planning, design, and financing of a major capital improvement project that now commits the District to more than 20 years of bond repayment. Retroactively correcting a Department error by imposing more restrictive limits in the successor permit is procedurally unfair and undermines regulatory certainty.

2. 2. Lack of Transparency and Inconsistent Application Across the Lower Fox Basin

The District specifically requested identification of other Lower Fox municipal permittees whose TMDL allocations were recalculated or reduced due to similar "incorrect calculation methods." The Department's response did not answer this question. Without evidence that this recalculation has been applied consistently across all Lower Fox TMDL permit holders, the District must assume it is being subjected to disparate treatment.

3. 3. No Demonstrated Basis for Revising the TMDL Allocation

The Lower Fox TMDL establishes fixed WLAs. Revisions to WLAs require a formal TMDL amendment process, not a permit-by-permit recalculation. The

Department's response does not identify any TMDL amendment, public process, or basin-wide recalculation effort. Instead, the District is being asked to accept a unilateral reinterpretation of its allocation outside the established regulatory framework.

For these reasons, the District rejects the recalculated TSS mass limits and requests the following:

- Documentation of the "incorrect calculation method" referenced in the Department's response.
- A list of all Lower Fox municipal dischargers whose WLAs or WLA expressions have been recalculated in the past five years.
- Confirmation that the District's original WLA remains unchanged and that any recalculation pertains only to expression, not allocation.
- Reinstatement of the prior WLA expression until a basin-wide, transparent, and consistently applied recalculation process is completed.

The District remains committed to meeting its TMDL obligations and maintaining high-quality effluent. However, it cannot accept a permit modification that is procedurally irregular, inconsistently applied, and based on a Department error.

Sincerely,

Bruce M. Siebers

President, Heart of the Valley Metropolitan Sewerage District

2. COMMISSION BRIEFING MEMO

To: HOVMSD Commission

From: Bruce M. Siebers, District President

Subject: DNR Recalculation of TSS TMDL Limits — Summary and Recommended Response

Date:

Purpose

To brief the Commission on the Wisconsin DNR's recalculation of the District's TSS TMDL mass limits and to outline the District's recommended response.

Background

- The District's newly issued draft WPDES permit includes significantly reduced TSS mass limits.
- These reductions stem from the DNR's assertion that the prior permit used an "incorrect calculation method."
- The District recently completed a major capital project based on the prior WLA expression, with long-term financial commitments.
- The District requested clarification on whether other Lower Fox municipal dischargers had their WLAs recalculated. The DNR did not answer.

Key Issues

1. Procedural fairness: The recalculation is based on a DNR error, not a change in the TMDL or District performance.
2. Consistency: No evidence has been provided that other Lower Fox permittees received similar recalculations.
3. Regulatory certainty: Retroactive corrections undermine long-term planning and financing.
4. TMDL integrity: WLAs are fixed unless the TMDL is formally amended.

District Position

- The District should formally object to the recalculated limits.

- The District should request documentation, basin-wide consistency information, and reinstatement of the prior WLA expression pending further review.
- The District should preserve its rights for administrative or legal review if necessary.

Recommendation

Approve submission of the formal objection letter and direct staff to continue pursuing clarification and equitable treatment from the DNR.

3. LEGAL ARGUMENT FOR POTENTIAL REVIEW

I. Introduction

This argument outlines the legal and procedural basis for challenging the DNR's recalculation of HOVMSD's TSS WLA expression in the draft WPDES permit.

II. Reliance Interests and Regulatory Certainty

Administrative agencies must consider regulated entities' reliance on prior agency decisions. HOVMSD relied on the Department's previously approved WLA expression when planning and financing a major capital project. A retroactive correction of a Department error without due process violates principles of fair notice and reliance.

III. Equal Protection and Consistent Application of TMDL Policy

The District requested identification of other Lower Fox municipal dischargers whose WLAs were recalculated. The Department did not provide this information. Selective recalculation constitutes disparate treatment and violates the requirement that similarly situated permittees be treated consistently.

IV. TMDL Integrity and Administrative Procedure

A TMDL establishes fixed WLAs. Changes to WLAs require a formal TMDL amendment, including public notice and EPA approval. The Department's recalculation appears to modify the District's effective allocation without following required procedures.

V. Failure to Respond to Material Comments

Under administrative law, agencies must respond to significant comments. The Department did not answer the District's direct question regarding other permittees' recalculations. This omission constitutes a procedural deficiency.

VI. Conclusion

The District has strong grounds to challenge the recalculated limits based on reliance, fairness, consistency, and procedural integrity. The District should preserve all administrative and legal remedies.

4. SIDE BY SIDE COMPARISON

Issue	HOVMSD	Other Lower Fox Municipal Permittees
TMDL WLA Recalculated?	Yes — twice in one year	Unknown — DNR did not provide requested list
Basis for Change	DNR states prior method was “incorrect”	No evidence of basin-wide recalculation
Impact	Weekly and monthly TSS mass limits reduced	Unknown
Consultation Prior to Change	None	Unknown
TMDL Amendment Conducted?	No	No basin-wide amendment identified
District Meeting Limits?	Yes	Varies by facility
Financial Reliance	Major capital project completed based on prior WLA	Unknown