

**To: Division of Intergovernmental Relations, Wisconsin Department of Administration**  
**From: Nick George, Midwest Food Processors Association**  
**Date: May 12, 2015**  
**Re: Economic Impact Analysis for Wisconsin Phosphorus Standards**

Thank you for this opportunity to comment on the economic impact analysis for phosphorus standards and the preliminary determination from the Wisconsin Department of Administration and Wisconsin Department of Natural Resources.

The Midwest Food processors Association (MWFPA) represents the vast majority of the fruit and vegetable processing industry in Illinois, Minnesota and Wisconsin as well as a number of non-vegetable food processors. Wisconsin leads the nation in the production and processing of fruits and vegetables and is a leader in dairy, meat, and poultry processing.

MWFPA supports the work of DNR and DOA on the multi-discharge variance concept detailed in these reports. We urge US-EPA to approve the reports and allow point source dischargers to move forward on their attempts to comply with the rule. Approval of these reports will give some certainty to the industry.

Wisconsin's phosphorus rule is a financial and regulatory burden that food processors in other states do not have to shoulder. This puts Wisconsin food processors at an economic disadvantage. The goal of reducing phosphorus in surface water is admirable if not misguided, since it focuses on point sources only; is technologically impossible to attain in some cases; and too expensive for some companies to implement.

When Wisconsin's phosphorus rules were being drafted, the regulated industries and the DNR realized that the P levels were impossible to meet for some industries for various technological and financial reasons and therefore adaptive management was rolled into the rule. Adaptive management was created to give those facilities an alternative way to meet the requirements.

It soon became apparent however, that adaptive management wasn't working and the interested parties began to work on another alternative which resulted in the passage of WI Act 378. The act required WI DNR and DOA to find other ways for point source dischargers to comply with the P rule without going out of business thus creating the multi-discharge variance (MDV) and the reason we are here today.

Simply put, the multi-discharger variance is designed to ensure that some point source dischargers are given P limits with which they can actually comply. Our members tell us that the MDV could give them "breathing room" while they work to lower P levels and technology catches up with the regulations.

WI Act 378 was motivated by the fact that many companies are already utilizing robust treatment technologies and are consistently discharging P at concentrations levels well below 1.0 mg/L. Unfortunately, the P standard is so restrictive – especially if discharging to impaired waters – that dischargers would have to consistently be below .1 mg/L (on rivers) or 0.075 mg/L (on streams) in order to comply with the permit limit. These levels are very costly to attain.

It is important to note that the MDV is not a pass or “get out of jail card” to the rule requirement. It simply gives the facility time to try to comply. It will be costly and challenging for most companies. Under the variance, dischargers are required to meet levels established by the variance itself over the next 3 permit cycles. These higher levels provide the ability to comply with discharge limits, and avoid enforcement, fines, and citizen suits while technology catches up to the rule...or come up with an alternative.

But that comes at a cost –there is a fee-in-lieu component that requires companies to either pay the counties \$50 per pound or work with a third party or non-point source to lower P output elsewhere. Either way the point discharger is paying.

The food industry is highly competitive and in some cases mobile. The vegetable industry however, is not very mobile and tends to be located near the raw product. Even so most of our members have operations in other states and there is constant competition within companies for the capital to expand plants and purchase new equipment.

These types of decisions are very real and we have seen more than once where additions have been canceled and production decreased due to the cost of regulatory compliance. As the report states, “Businesses signaled that they are more likely to decrease investment (47%) and/or postpone expansion (37%) at their Wisconsin facility due to the higher costs of water quality compliance. A significant percentage of companies (42%) also indicated that they would be more likely to shift production to another state. Almost a third of all companies expected to pass higher costs onto their customers.”

The Wisconsin food processing industry needs the MDV recommended in these reports in order to comply with the P rule. The MDV will be costly and time consuming to implement but it will give them a tool and the time to meet Wisconsin’s phosphorus limits.

Thank you for this opportunity to comments on this report.