



CITY OF STOUGHTON  
DEPARTMENT OF  
PLANNING & DEVELOPMENT  
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RODNEY J. SCHEEL  
DIRECTOR

October 29, 2009

Wisconsin Department of Natural Resources  
South Central Region  
Mr. Robert J. Liska  
3911 Fish Hatchery Road  
Fitchburg, WI 53711-5397

RE: Recap of Meeting on October 16, 2009  
WPDES Permit Application - Paradise Pond

Dear Mr. Liska,

Thank you for coordinating the October 16th meeting with WDNR representatives (Robert Liska, Susan Josheff, and Eric Rortvedt), Patrick Sutter of Dane County and us. In an effort to confirm our understanding of discussions I have summarized our (including Travis Schreiber and Darrin Pope of Vierbicher) understanding of issues discussed.

### **Quick Summary of Paradise Pond**

Currently, Paradise Pond can drain naturally to Yahara River when water levels are at or near the mapped 100 year flood elevation. However, the City is concerned that the current conditions will not adequately protect adjacent homes and property. Over the past two years, the City has collected extensive amounts of field data from Paradise Pond including groundwater and pond water levels to see how the pond responds to rainfall. The analysis of this data indicated that the pond rises approximately 1 foot for every inch of rainfall. Adjacent groundwater elevations have been shown to be higher than the base of the pond and allow negligible infiltration. Therefore, once the pond reaches full capacity it will not recede in any appreciable manner. Since infiltration is not occurring, the pond will remain at or near 100 year flood stage at all times.

The City desires to install a permanent pump system that will allow the City to manage the level of the pond. The City intends to maintain the level of the pond to allow a safety cushion to protect homes and property by providing retention capacity in the pond. The pumps will operate only to regain the retention capacity when it is not raining.

### **"New" Discharge to Impaired Waters**

We understand that the DNR has established that any pumped flow from Paradise Pond will be considered a "new" discharge to impaired waters (Yahara River). The City questioned this determination for two reasons. First, as previously discussed, this basin will naturally flow to the

Yahara River by gravity at or near the 100 year flood elevation. However, this would not adequately protect adjacent homes and properties.

Second, we explained that approximately 7,800 feet of storm sewer could be installed at great expense to expedite gravity flow from the pond directly to the Yahara River. At our meeting it was confirmed that this activity would not require an individual permit and would not be considered a "new" discharge to Impaired Waters.

### **Pumps Invoke Requirement for WPDES Permit**

Instead of constructing millions of dollars of storm sewer that would lead directly to the Yahara River, the City is proposing to install a pumping system to manage the level of Paradise Pond. We have been informed by DNR that the introduction of pumps to this system has required the City to pursue an Individual WPDES Permit. This issue is the most challenging for our community to understand. The mere introduction of pumps to a system that can be designed to flow by gravity (at tremendous expense) imposes significant additional conditions on the City.

The City has acted at the direction of DNR staff to proceed with the permit application in an effort to move forward with our planned construction project. However, we request any policy, statute, administrative code, etc., to support this determination.

### **City's General WPDES Permit (WI-S050075-1) Standards Do Not Cover Pumped Discharge from Paradise Pond**

Stoughton currently operates under a General WPDES Permit for our city that encompasses Paradise Pond. We continue to make system improvements to meet the conditions of that permit for our entire system. Since Paradise Pond discharge (gravity overflow, new gravity sewer, or pumped) reaches the Yahara River, why is a pumped discharge from Paradise Pond not covered under our General Permit?

### **Additional Materials Necessary and Revised Timeline for Discharge Permit for Paradise Pond**

The City and our consultants have been working diligently to supply information necessary to accommodate the anticipated issuance of a permit on November 1, 2009. Based on this anticipated date of issuance, the City had outlined a construction timeline that would have started construction in November and accommodated pump installation in March 2010 to accommodate Spring thaw and rains. On October 12th we received the Draft Paradise Pond Discharge Permit and notice that the permit would not be issued until December 1, 2009. The Draft included items previously not discussed such as phosphorus removal and the requirement for an Environmental Analysis. Subsequent communication indicated the need to have the EA submitted by October 21, 2009 to maintain the December 1, 2009 issuance date. (The EA was delivered on October 21, 2009.) The Draft Permit raised questions that we feel need to be fully understood before proceeding with construction.

### **Watershed-Based Trading from Yahara River Watershed Sources Upstream from the City**

The draft permit outlines a requirement that the City enter into a DNR-approved water pollution trading agreement in accordance with 283.84, Wis., Statutes. Currently, there is no established program being used that could be identified for the City to use as a model. This cutting edge requirement will take time and expense to implement. During our meeting we questioned whether we could enter into such an agreement with the City's wastewater treatment plant operation. While the City's treatment plant is slightly downstream from our storm water discharge point it is located within our municipality. Has a determination been made on this issue?

After the meeting, we referred to the cited statute. Upon initial review several observations were made. First, the statute describes a pilot program to be administered by the Department. Has the DNR established or used this approach for any other location? Second, the statute does not indicate a requirement for trading with upstream sources. Can you please provide any policy, statute, administrative code, etc., to support this condition?

Lastly, the Statute, 283.84 (1)(c) states: "Reaches an agreement with the department or a local governmental unit, as defined in s. 16.97 (7), under which the person pays money to the department or local governmental unit and the department or local governmental unit uses the money to reduce water pollution in the project area." In essence the City is doing this under our General Discharge Permit. We are utilizing City funding to improve our storm water system to meet the requirements of the permit which includes discharges from Paradise Pond.

### **Modeling of Pollutants from Pumped Discharge from Paradise Pond**

The draft permit was based on one sample taken in less than normal conditions (water temp 98.9 degrees. We discussed various modeling scenarios since any discharge leaving Paradise Pond (gravity overflow or pumped) would proceed through a series of management systems such as a detention pond and grass lined swales before reaching Impaired Water (Yahara River). DNR has determined that all sampling will be done at the point of discharge from any pump system instead of the point at which it reaches the Impaired Water. The City believes we should be granted credit for water quality improvements before it reaches the Impaired Water. Another sample has been ordered to compare against the previous sample.

### **Measuring Pollutant Loading**

The Paradise Pond pump system will operate only as necessary. Therefore, predicting the pollutant discharge for a coming year will be challenging. The City requested consideration in the draft permit for a method to allow the City to purchase pollution credit based on what was discharged or to receive a credit for then next year if we purchase more than discharged. We renew this request.

### **Temporary Pumping is Covered under our General Permit**

As outlined in your email dated October 7, 2009, the City can proceed with temporary pumping under our General Permit. We anticipate temporary pumping to begin soon to prepare for construction and to provide a factor of safety for Spring thaw and rainfall.

The City respectfully requests your thoughtful consideration of these issues as we work with you to allow construction of our pumping system to prevent damage to buildings and properties. Thank you in advance for your response.

Sincerely,  
CITY OF STOUGHTON

Rodney J. Scheel  
Director of Planning & Development

cc. Mayor Jim Griffin  
Travis Schreiber, Vierbicher