

August 20, 2010

William Creal, Chief
Water Bureau
Michigan Department of Natural Resources and Environment
525 West Allegan Street
P.O. Box 30273
Lansing, MI 48909-7773



RE: Objection and Concerns with Ford and Belleville Lakes TMDL

Dear Mr. Creal:

On behalf of representatives of the Middle Huron Partnership, I am writing to express our concerns regarding your department's decision to not revise the Ford and Belleville Lakes TMDL related to total phosphorus. We received your letter dated May 7, 2010 regarding this decision, and have scheduled to meet with you and your staff on August 23. This letter serves as a summary of our objections and concerns.

First, let me reiterate the intent of the Middle Huron Partnership. The Partnership is a voluntary organization that was originally formed in 1996 to plan and implement practices to reduce point and non-point source phosphorus loading throughout the middle Huron watershed and monitor progress. This partnership was formalized in 1999 and again in 2004 through the cooperative agreement. The partnership includes signatory representation from your department (formerly the Department of Environmental Quality), as well as local and county governments, NPDES permitted facilities, and the Huron River Watershed Council, which coordinates the Partnership.

Members of the Partnership have several concerns and comments regarding the current version of the TMDL that we believe warrant reconsideration of your decision not to revise it:

1) The current TMDL is expressed as a *concentration target* rather than a *stricter load capacity*. The TMDL states that "...the loading capacity is expressed as a phosphorus concentration of 50 µg/L at the Michigan Avenue bridge on the Huron River...."¹ No specific loading capacity is established for Ford or Belleville Lakes. We feel that this is highly problematic for several reasons. First, this does not seem to be consistent with the federal law and other TMDLs developed for phosphorus impairments across the state and nationally. The Clean Water Act section that establishes TMDLs clearly indicates that there needs to be a total load capacity established, so the Ford/Belleville TMDL is inconsistent with the law. Other phosphorus TMDLs across the state and country clearly establish loading capacities for the impaired waterbodies.

Second, the lack of a loading capacity establishes an ineffective regulation. Without a strict limit on phosphorus loading to the middle Huron River watershed, new point sources can be added and permitted on the basis that they are not increasing the phosphorus concentration in the system. This was the line of reasoning accepted by the DEQ when the Thornton Farms Waste Water Treatment Plant (WWTP) was permitted. That point source continues to add to phosphorus loads and has not consistently met its permit limits.

¹ "Total Maximum Daily Load for Phosphorus in Ford and Belleville Lakes." Michigan Department of Environmental Quality, Water Division. September 2004.

Third, the lack of a strict limit on new sources makes it very difficult to justify expenditures of local tax revenues on phosphorus reduction projects. Progress that is made through such point and non-point source projects can be simply erased by the allowance of new sources. A strict load limit is needed to provide assurance to those investing in water quality improvement projects that the load reduction progress from such projects will be protected.

2) Lack of TMDL revision is inconsistent with assurances stipulated in NPDES permits.

Four NPDES permits regulating WWTPs in the system are being contested over total phosphorus requirements. The facilities are currently voluntarily meeting TMDL limits based on the agreement that the department would revise the TMDL and reconsider waste load allocations. Permit language states, “The Department will re-evaluate the nutrient levels in Ford and Belleville Lakes and will propose revisions to the TMDL for approval by the U.S. EPA.”² The Department’s decision runs counter to this statement and others made throughout the negotiation process. The likely result will be litigation that will unnecessarily cost state and local taxpayers.

3) The TMDL does not sufficiently include all point sources.

The TMDL includes a waste load allocation for “other point sources” that is defined to include 12 “minor” point sources detailed in a 1996 paper. This list is currently incomplete and needs to be updated to account for loads contributed by point sources not listed in that 14 year-old paper. These additional point sources and the 12 minor point sources should be specifically identified in the TMDL.

4) The TMDL does not take into account data collected since original development.

The original TMDL was developed based on two loading analyses from 1996 and 1997. The analysis was based mostly on modeled loads rather than a broad set of measured loads. Since that time, extensive monitoring and assessment has been undertaken by a number of organizations, including the DNRE. Significant data sets include those compiled by Dr. John Lehman with the University of Michigan and by the HRWC Tributary Monitoring Program. Based on your decision letter, it does not seem that these datasets have been sufficiently evaluated by the Department. Both data sets are publicly available and a number of papers have been published based on their analysis. Several relevant conclusions from these studies include:

- Total Phosphorus concentrations have declined by 20 to 30% in the Huron River and several major tributaries, which would significantly change loading estimates previously made;
- Ford and Belleville impoundments (as well as other middle Huron River impoundments) serve as sinks of phosphorus, and sediments in these impoundments contribute a major portion of the overall impoundments’ measured phosphorus load.

Neither of these important conclusions has been sufficiently considered in the Department’s decision. These findings warrant evaluation of the loading capacity of the target impoundments as well as the watershed contributions versus in-lake loading. This has been done in other TMDLs and need to be considered for Ford and Belleville Lakes.

Further, by declining to revise the TMDL, the Department fails to appropriately account for widely-known findings on the impacts from climate change. The models and analysis used to develop the current TMDL did not account for climate change impacts such as changes in magnitude and timing of runoff, increasing pollutant loads from overwhelmed waste management systems, altered flow regimes and altered water levels. Some acknowledgement and accounting for these changes should be included in the loading capacity, load and wasteload allocations and margin of safety.

² National Pollutant Discharge Elimination System Permits. Numbers MI0020737, MI0022217, MI0022829, and MI0024066. Michigan Department of Environmental Quality.

5) A Margin of Safety is not included in the TMDL.

The Clean Water Act requires that TMDLs include a margin of safety to account for uncertainty in the load estimation process. This allowance is meant to assure that minor exceedences of permitted discharges will not result in impairment of designated uses of the waterbodies in question. No such margin of safety is indentified in the TMDL. There is a “remaining” portion in the load allocation table, but this amount is never justified as a margin of safety. Further, there is no remainder for the months of August and September, and thus, no margin of safety at all. This oversight needs to be corrected.

6) The Department’s review process is unclear and has not been inclusive.

Your letter does not specify what data were evaluated or procedure undertaken to reach the conclusion that the TMDL does not need to be revised. The Partnership requests to see any analysis that was conducted and to be provided with more evidence that proper consideration of available evidence was given in the Department’s evaluation process. Perhaps this information will be provided to the Partnership at the August 23 meeting, but it is not yet evident. Whatever the process, the Department has not been inclusive of those who have invested significant amounts of time and resources to understand and address the phosphorus processing in the middle Huron River system. This lack of inclusion of Partnership members is inconsistent with the Department’s role as a signatory to the Partnership’s Cooperative Agreement as well as accepted practices of public participation in decision making processes. The Department should reconsider its decision and begin an open and inclusive evaluation process.

Overall, the Partnership requests that the Department reconsider its decision not to revise the TMDL and begin a new, open process to fully consider all aspects of this regulation. The Partnership members are interested in assisting the Department in this process and will make themselves available to collect and assess information, discuss findings and help draft supporting documents. The Partnership requests that the Department consider the impact that this regulation has on the affected communities and its desire to develop effective controls to improve the conditions in Ford and Belleville Lakes.

Thank you for giving us the opportunity to comment on this important issue.

Sincerely,



Ric Lawson, Watershed Planner
Huron River Watershed Council

on behalf of the Middle Huron Partnership