



## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor  
Matthew J. Frank, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TTY Access via relay - 711

November 23, 2009

Carl A. Sinderbrand  
Axley Brynerson, LLP  
P.O. Box 1767  
Madison, WI 53703

Subject: Village of Mazomanie Request Regarding Amendment to Dane County Water Quality Plan

Dear Mr. Sinderbrand:

Your letter to Thomas Gilbert, Bureau of Watershed Management, dated August 21, 2009, has been referred to me. That letter, submitted on behalf of the Village of Mazomanie (Village), requests the Department of Natural Resources (Department) to review the June 11, 2009, decision of the Capital Area Regional Planning Commission (CARPC) to not approve an amendment to the Dane County areawide water quality management plan (plan). The Department declines to reconsider that decision.

There is no statutory or administrative rule procedure that directs the Department to review regional planning agency decisions to deny amendments to areawide water quality management plans. Section NR 121.07, Wis. Admin. Code, establishes the procedures for approval of plans and plan amendments for designated areas of the state (such as Dane County). Section NR 121.07(1) (a), Wis. Admin. Code, provides that the Department shall review and approve or disapprove each plan for designated areas. Section NR 121.07(3), Wis. Admin. Code, provides that the Department may approve a planning agency's amendments to a plan for a designated area. There is no provision in s. NR 121.07, however, that directs the Department to review and approve or disapprove a planning agency's decision to deny a proposed amendment to a plan for a designated area.

In addition to this lack of procedural direction, there is a significant practical reason for the Department not to reconsider denials of amendments in designated areas. Dane County is a designated area for areawide water quality management planning, under s. NR 121.06, Wis. Admin. Code. The Department contracts with CARPC to conduct water quality management planning work in Dane County. In my March 18, 2009 letter to Jeffrey Miller, chair of CARPC, I made it clear that,

“We strongly believe that CARPC plays a necessary and critical role in shaping the future of Dane County. We are relying on CARPC to provide land use and water quality resource information and analysis, and a strong direction for local planning efforts.”

Further, I went on to state that,

“In reconsidering the Mazomanie amendment request, the Commission should focus on water quality impacts as the primary basis for a decision, and should consider the guidance and direction in this letter.”

CARPC has taken the focus suggested in our letter and the Department defers to their judgement in this case. As stated, the Department has procedures to review plans and approved amendments to plans and does review those decisions by planning agencies for designated areas. By approving or disapproving plans and plan amendments previously approved by regional planning agencies, and by re-evaluating the approval status of plans at least every 5 years, the Department fulfills its responsibility to protect, maintain and improve the quality and management of the waters of the state in designated areas. Since denials of amendments to plans in designated areas do nothing to change plans previously approved by the Department, they would result in no change to water quality, such that the Department has little or no reason to reconsider them. In fact, to do so would take resources away from other priority work of the Department at a time when those resources are in very short supply.

The Department has not historically been involved in reviewing denials of amendments to plans, unless the planning agency has failed to provide a water quality basis for the denial. If CARPC or another regional planning agency denies an amendment without stating a clear water quality basis for its denial, the Department has requested that the regional planning agency reconsider its decision. The Department did so in this case, by letter to CARPC, dated March 18, 2009. Specifically, I noted,

“Pursuant to state statutes and administrative codes (chapter NR 121), decisions regarding amendments must be based on water quality impacts and the cost-effectiveness of sewerage systems.”

However, once the regional planning agency states a water quality basis for not approving an amendment to a plan (as CARPC has done in this case), as long as the decision is consistent with the approved plan and was done in accordance with approved planning procedures, including a sufficient public participation process, the Department will not reconsider that decision, for the reasons stated in this letter.

The Department encourages the Village to work with CARPC to address the water quality concerns raised by CARPC when it decided not to accept the proposed amendment to the plan.

Sincerely,

Todd Ambs, Administrator  
Division of Water

cc:

Jeffrey Miller, Chair, CARPC  
Kamran Mesbah, Deputy Director, CARPC  
Scott Stokes, President; Village of Mazomanie  
Sue Dietzen, Clerk; Village of Mazomanie  
Ron Adler, Chair; Town of Mazomanie  
Maria Van Cleve, Clerk; Town of Mazomanie  
John St. Peter, Edgerton, St. Peter, Petak & Rosenfeldt  
Timothy Fenner, Axley Brynelson  
Andy Morton – WDNR - SCR  
Tom Gilbert – WDNR - WT/3  
Robin Nyffeler- LS/8  
Judy Ohm-LS/8