



Kent County Department of Aeronautics

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GERALD R. FORD INTERNATIONAL AIRPORT

Sarah LeSage
Michigan Department of Environmental Quality
Water Bureau
525 West Allegan Street
P.O. Box 30273
Lansing, MI 48909-7773

January 15, 2010

Dear Ms. LeSage:

The Kent County Department of Aeronautics (KCDA), operator of the Gerald R. Ford International Airport (GFIA), respectfully submits the following comments on the draft Water Quality and Pollution Control in Michigan, 2010 Sections 303(d), 305(b), and 314 Integrated Report (IR).

Comment 1: With respect to the Unnamed Tributary to the Thornapple River on the north side of GFIA, KCDA believes that the National Hydrography Dataset (NHD) information used as part of the listing process is not completely accurate. The two attached figures have been prepared to illustrate the inaccuracies. Figure A shows the stream lines for the Unnamed Tributary as shown in high resolution NHD data obtained from the U.S. Geological Survey. Figure B more accurately depicts the current configuration of the unnamed tributary. The IR Appendix B "Water Size" of 3.561078 and 1.503718 miles for AUs 040500070408-02 and 040500070408-03, respectively, appear to be based on the inaccurate NHD information shown in Figure A.

Comment 2: With respect to the Other Indigenous Aquatic Life and Wildlife Designated Use impairment for AU 040500070408-02, KCDA is not aware of any reports related to "Bacterial Slimes" in the west/middle branch of the unnamed tributary. Therefore, the assessment should be modified to reflect the lack of reported bacterial slimes and to "delist" or correct the assessment for the west/middle branch of the unnamed tributary. With regard to the east branch of the unnamed tributary, KCDA currently is working with the State to assess the origin and, hopefully, the amelioration of bacterial slimes in that tributary. However, the assessment should be revised to remove conclusory statements or implications that "deicing discharges" from the airport are the cause or sole contributing factor to the bacterial growth. Cause and effect have not been fully determined, so there is no need to limit the State's assessment (and possible resolution) by prematurely reaching such conclusions. Again, KCDA is working with the State to help find a solution or at the very least control any airport contribution to the problem. In fact, we are meeting with MDNRE staff on January 21, 2010 to discuss possible next steps towards the goal of solving the bacterial growth issue.

KCDA believes that the PCB-related fish consumption designated use impairment for AU 040500070408-02 and AU 040500070408-03 resulted from state-wide (not tributary-specific) sampling that indicates state-wide exceedance of the water quality standard for PCB. We understand that there has been no testing conducted in the Unnamed Tributary segments associated with GFIA.

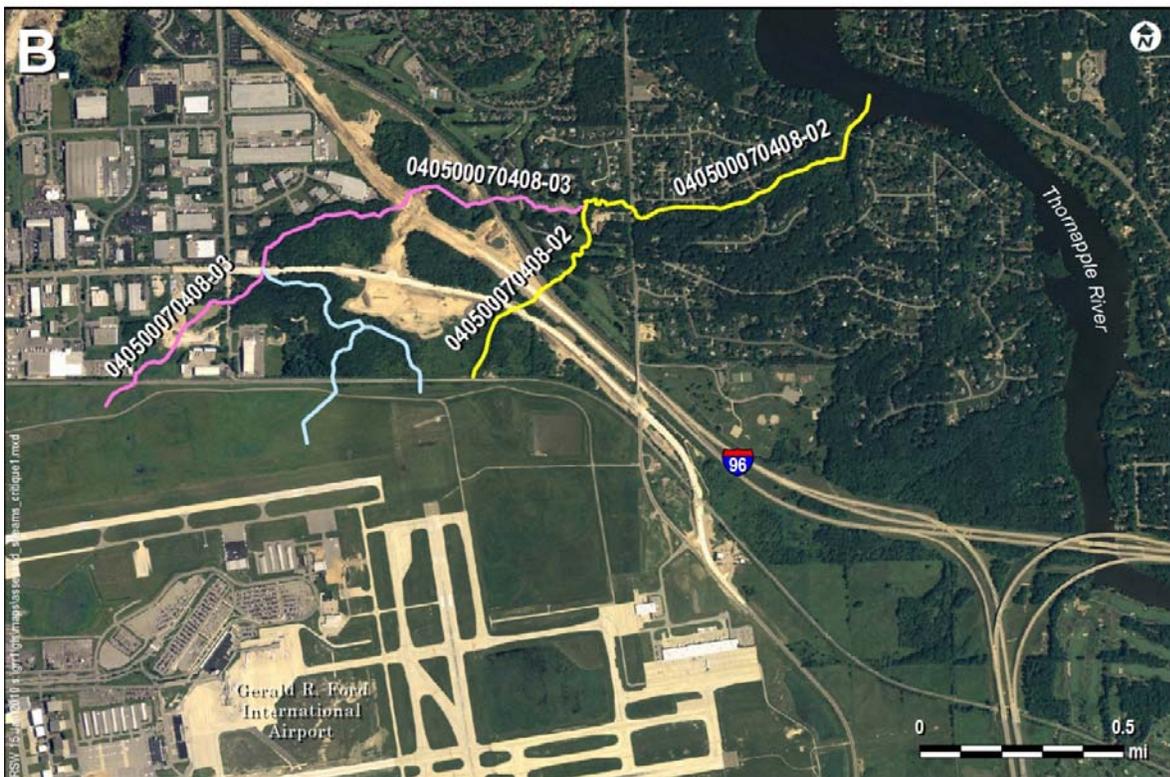
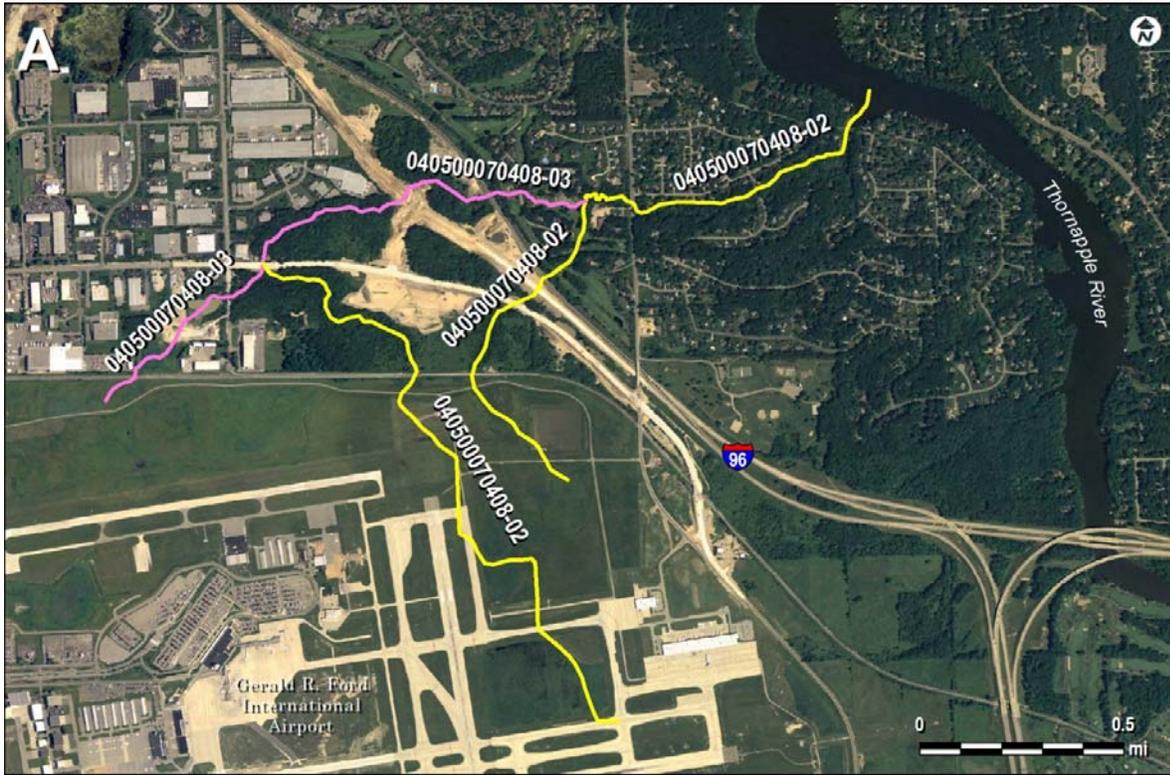
In sum, we request that AU 040500070408-02 and 040500070408-03 be modified as shown in Figure B, that the “Water Size” for AU 040500070408-02 be changed to 1.47 miles and the “Water Size” for AU 040500070408-03 be changed to 1.51 miles; and that AU 040500070408-02 be edited with regard to cause and effect conclusions relating to the bacterial slimes so as not to imply that the airport is the sole or predominant cause (a conclusion that has not been made to date).

If you have any questions or would like additional data/information related to these comments, please contact me at (616) 233-6041 or TEcklund@grr.org. Thank you.

Sincerely,

Thomas R. Ecklund, P.E.
Facilities Mgt. Director
Gerald R. Ford Int'l Airport

cc. James A. Koslosky, A.A.E., Executive Director
Phillip E. Johnson, A.A.E., Deputy Executive Director
Chris Cieciek, LimnoTech



Blue = stream course without any impairment designation

Pink = stream course with alleged fish consumption designated use impairment (PCB)

Yellow = stream course with alleged fish consumption designated use impairment (PCB) other indigenous aquatic life and wildlife use impairment (bacterial slime)



ALLIANCE FOR THE GREAT LAKES

ENSURING A LIVING RESOURCE FOR ALL GENERATIONS

January 14, 2010

VIA US MAIL AND ELECTRONIC MAIL

Sarah LeSage
Michigan Department of Environmental Quality
Water Bureau
PO Box 30273
Lansing, Michigan 48909-7773

Re: Public comments on Michigan's proposed 303(d) list for 2010

Dear Ms. LeSage:

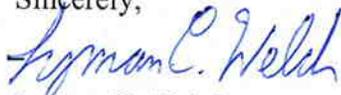
With 95 percent of America's fresh surface water, the Great Lakes are a national environmental and economic treasure. They provide drinking water, jobs, and recreation to tens of millions of people. An important component of ensuring the health of the Great Lakes into the future is the reduction in bacterial, algal, and chemical contamination of Great Lakes beaches. With this in mind, the Alliance for the Great Lakes urges Michigan to go further to protect Great Lakes beaches with the 2010 Impaired Waters List.

With these comments, the Alliance for the Great Lakes recommends that the Michigan Department of Environmental Quality:

- List near shore zones on the Great Lakes that have excessive algae contamination. Placing these water bodies on the Category 5 list would ensure that Total Maximum Daily Loads are developed to correct the impairments.
- Address certain beaches that were closed or unsafe for swimming for 14 days or more last year but are absent from the impaired waters list in 2010.
- Take measures to ensure that its 303(d) list is more easily accessible to the public.

These points are described in greater detail in the attached comment letter. Thank you for the opportunity to submit these comments. Should you have any questions about our comments, please do not hesitate to contact me at 312-939-0838 x230 or lwelch@greatlakes.org.

Sincerely,



Lyman C. Welch
Manager, Water Quality Programs



ALLIANCE FOR THE GREAT LAKES

ENSURING A LIVING RESOURCE FOR ALL GENERATIONS

Eliminating Water Pollution from Michigan's Lakes

Comments
to the
Michigan Department of Environmental Quality
on
Michigan's Proposed 303(d) List of Impaired Waters for 2010

January 14, 2010

Alliance for the Great Lakes
17 N. State St, Suite 1390
Chicago, IL 60602
(312) 939-0838

These comments are submitted by the Alliance for the Great Lakes (Alliance), a nonprofit organization that has advocated on behalf of the Great Lakes and the people who enjoy them for decades. The Alliance's mission is to conserve and restore the world's largest freshwater resource using policy, education, and local efforts, ensuring a healthy Great Lakes and clean water for generations of people and wildlife.

BACKGROUND

The Clean Water Act requires states to assess their waters for compliance with the state's water quality standards. Under Section 303(d) of the Act, each state must make a publicly available list of waters that do not meet the standards. This "303(d) list" identifies the portion of the water body that is impaired, the pollutant(s) causing the impairment, and a schedule for the development of Total Maximum Daily Loads (TMDLs) to restore the impaired waters to health. As such, the 303(d) list is an important part of ensuring that states comply with their water quality standards and work towards the Clean Water Act's goal of fishable and swimmable waters. To improve water quality and human health, it is essential that the list accurately reflect the impairment status of the state's waters.

An important part of working towards water that is swimmable is to address bacterial and nutrient contamination in recreational waters, namely, Michigan's Saginaw Bay and other Great Lakes near shore areas. The Alliance appreciates the efforts that have been made by Michigan with the 2010 report and urges the Michigan Department of Environmental Quality (MDEQ) to go further to recognize *Escherichia coli* (*E. coli*) bacteria contamination and phosphorus and nutrient loading that leads to algae contamination in the Great Lakes region.

With these comments, the Alliance encourages MDEQ to:

1. More specifically address the problem of algae contamination in near shore areas
2. List all beaches that experience high counts of beach action days
3. Improve public accessibility to the impaired waters list

ISSUES OF CONCERN IN MICHIGAN'S PROPOSED 2010 IMPAIRED WATERS LIST

I. Michigan must continue to address the algae and nutrient loading problems at Great Lakes near shore areas

The Alliance submitted comments to MDEQ's 2008 draft impaired waters list and appreciates the improvements that have been made in the most current report. According to page 82 of the 2010 report:

Deposits of dead and decaying organic matter are reportedly fouling beaches along Michigan's Great Lakes shoreline including, but not limited to, Grand Traverse Bay, Saginaw Bay, and western Lake Erie... Research is ongoing to identify the causes and sources for these shoreline deposits with the hope that effective solutions can be found... The MDEQ has been and will continue to work with the research community, other

governmental agencies, and the public toward an understanding of the causes/sources responsible and a solution to the shoreline deposit problem, and to obtain the necessary information to determine whether or not WQS are attained. In October 2008 and April 2009, staff members from the National Oceanic and Atmospheric Administration, MDEQ, MDNR, and various Michigan universities met to review information and evaluate work plans for Saginaw Bay during the 2009 field season. In addition, the MDEQ contacted researchers from the University of Wisconsin-Milwaukee who are conducting intensive monitoring in Lake Michigan and modeling to understand *Cladophora* growth and its relationship to environmental factors.

The Alliance values these efforts and encourages their continuation. However, the Alliance urges MDEQ to do more to address the problem of nuisance algae.

In particular, the Alliance asks MDEQ to improve public awareness by making the listings more specific, such as by listing specific beaches impaired by nuisance algae. According to page 64 or the 2010 report, "site-specific visual observation of [algae] may be used to make a support determination for the other indigenous aquatic life and wildlife designated use. A determination of not supporting may be made if excessive/nuisance growths of algae... are present." According to this criterion, MDEQ should list these beaches as impaired by nuisance algae.

Nuisance algae present a pervasive problem for many beaches and shorelines in Michigan. According to information provided by Michigan DEQ, most health departments in Michigan are using EPA's beach sanitary survey form in one form or another at their beaches. This sanitary survey form allows beach managers to record the amount of algae present both on the beach and in near shore areas in the water. These beach sanitary survey forms recorded by beach managers are a readily available data source that must be used by DEQ in developing its impaired waters list. We understand that the health departments are currently keeping track of their own sanitary survey data and DEQ has asked the health departments to keep their beach sanitary survey data on hand. We believe that some health departments have sent this data to DEQ in hardcopy or electronically and DEQ stores the data in files or saves it electronically.

Like beach managers, Alliance Adopt-a-Beach™ volunteers perform a beach assessment during their beach visits and have documented high levels of algae on the beach and in the water at Tunnel Park in Ottawa County during a 6/25/09 visit and high levels in the water at Platte River Point- Sleeping Bear on 5/29/08. High levels of algae were also found in the water at Lakeshore Dr./Sappi Paper (Private Beach) on 9/20/08, Gulliver Public Beach on 9/20/08, Muskegon State Park - Snug Harbor on 9/18/08, Esch Road - North beach in Benize county during a 5/17/09 visit and at Good Harbor Beach in Leelanau on 8/4/08.

Medium levels of algae were recorded on the beach and in the water by Alliance Adopt-a-Beach™ volunteers at Oval Beach in Allegan county on 6/29/09, at Peterson Road Beach- Sleeping Bear on 5/25/08, at Pier Cove on 6/2/08 and 7/30/08, Esch Rd. South- Sleeping Bear on 6/22/08, 651- Sleeping Bear Dunes on 7/21/08, 651(Good Harbor Beach) in Leelanau on 8/6/08 and on the beach at Mill Point Park on 5/11/08 and 6/19/08, at South Manitou Island, West end in Leelanau on 8/13/08, Platte Point north in Benize County on 8/25/08, Castle Park Beach - private in Allegan County on 9/20/08, Beaver Island in Charlevoix County on 9/20/08.

II. Michigan must address non-listed beaches that experience more than 14 beach action days in one season

Several Michigan beaches experienced a high number of beach action days in 2008, as required by federal law when levels of *E. coli* exceed a daily maximum of 235 CFU/100 mL. DEQ must address each beach and include the beach on the list or justify why they are absent from the impaired waters list. The following table lists each beach not included on Michigan's proposed list that had 14 or more action days, their 303(d) status, and how many beach action days each beach was issued in 2008. The Alliance acknowledges that Michigan's procedure for listing impaired waters is based on geometric means of *E. coli* values collected from monitoring data. However, the Alliance asks DEQ to reconsider the health of each of these beaches, despite the fact that the geometric mean did not exceed the threshold value for listing.

County	ID	Local Name	2010 303(d) Status	EPA Beach Action Days in 2008
Huron	MI000455	Caseville County Park	Not Listed	17
Huron	MI000456	Harbor Beach City Park	Not Listed	15
Huron	MI001496	Lighthouse County Park	Not Listed	27
Huron	MI000460	Oak Beach County Park	Not Listed	15
Macomb	MI000560	New Baltimore Park Beach	Not Listed	16

For example, New Baltimore Park Beach in Macomb County is now listed as fully supporting partial body contact recreation and total body contact recreation. However, we understand that New Baltimore Park Beach monitoring data for 2008 exceeded the daily mean Water Quality Standard for both total body contact and for partial body contact recreation at least four times. Given that water quality standards are still repeatedly exceeded at New Baltimore Park Beach and that there were a high number of days the beach was closed or unsafe for swimming in 2008, MDEQ should consider listing New Baltimore Park Beach as impaired for *E. coli*.

Additionally, due to elevated *E. coli* levels detected by Alliance Adopt-a-Beach™ volunteers, the Alliance also requests that MDEQ consider listing several additional beaches. Elevated *E. coli* levels were found at Pere Marquette Park in Muskegon County in water samples taken by Alliance Adopt-a-Beach™ volunteers during visits on 5/9/09 and 8/15/09, at Duck Lake State Park in Muskegon County on 7/10/09 and at Tunnel Park in Ottawa County on 8/13/09 and 7/28/09.

In 2008, elevated *E. coli* was recorded by Alliance Adopt-a-Beach™ volunteers at Grand Haven City Beach on 5/12/08 and 6/26/08, Holland State Park on 6/6/08, Pere Marquette Park on 6/21/08, Esch Rd. South on 6/22/08 and Muskegon State Park - Snug Harbor on 9/18/08, North Beach Park on 4/18/08, and Kirk Park on 7/26/08.

Alliance Adopt-a-Beach™ volunteers also recorded potential pollution sources with high levels of *E. coli* during visits to Pier Cove in Allegan County on 8/8/09, Lake Street Beach in Leelanau County on 7/13/09, South Haven North Beach in Van Buren County on 6/4/09, and Pere

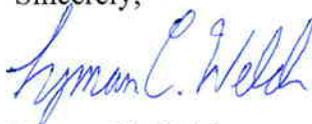
Marquette Park in Muskegon County on 5/9/09. Based on the E coli results detected by these volunteers, the Alliance asks DEQ to re-evaluate these beaches and consider them for listing.

III. Improve accessibility of the list to the public

Michigan should make the 303(d) list available in format this is more easily accessible and easily comprehensible to the public. For example, Wisconsin publishes their 303(d) list in Excel spreadsheet format with an online search capability on their website, making it easy to look up a listing by local name, county, watershed, or impairment. MDEQ currently has no one document that contains a complete account of every water body on the impaired waters list, making it difficult to track down a water body of interest. The public should be able to easily reach information on healthy or unsafe waters.

Thank you for the opportunity to submit these comments. Should you have any questions about these comments, please do not hesitate to contact me at 312-939-0838 x 230 or lwelch@greatlakes.org.

Sincerely,



Lyman C. Welch
Manager, Water Quality Program
Alliance for the Great Lakes

Angie Ziech
Water Quality Intern
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January 13, 2010

via electronic and overnight mail

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Michigan Department of Environmental Quality, Water Bureau
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lesages@michigan.gov

RE: Comments on *Water Quality and Pollution Control in Michigan, 2010 Sections 303(d), 305(b), and 314 Integrated Report*

Dear Ms. LeSage:

Cliffs Natural Resources (CNR) hereby submits the following comments on the draft *Water Quality and Pollution Control in Michigan, 2010 Sections 303(d), 305(b), and 314 Integrated Report*, ("Draft 2010 IR"). These comments are focused on the proposed inclusion for the first time of a segment of Warner Creek and a segment of the Goose Lake Inlet on the draft Section 303(d) list as impaired water bodies due to the presence of selenium.

As the MDEQ's Water Bureau is aware, CNR is actively seeking to address selenium levels in these water bodies, and is taking steps cooperatively with MDEQ to put into place pollution controls intended to reduce selenium loading to local waters. CNR believes that the steps it is taking will lead to the desired reductions in selenium in the water bodies, and that it is therefore premature to add these water bodies to the Section 303(d) list.

CNR's comments below focus on why selenium in the water column is a particularly complex issue to address, and why use of one of the available alternatives to Section 303(d) listing makes the most regulatory sense for the two surface water bodies in question. CNR believes that making use of one of these alternative approaches is not only in harmony with federal and state regulations, but will also provide CNR and the state with much-needed flexibility in addressing elevated selenium levels in these water bodies.

Listing is Premature

Part 303(d)(1)(A) of the Clean Water Act ("CWA") requires the state to do the following:

identify those waters within its boundaries for which the effluent limitations required by [the CWA] are not stringent enough to implement any water quality standard applicable to such waters. The state shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

33 U.S.C. § 1313(d)(1)(A) (emphasis added). These requirements are set forth in more detail in the U.S. EPA's regulations, where it states that:

(1) Each State shall identify those water quality-limited segments still requiring TMDLs within its boundaries for which:

(i) Technology-based effluent limitations required by sections 301(b), 306, 307, or other sections of the Act;

(ii) More stringent effluent limitations (including prohibitions) required by either State or local authority preserved by section 510 of the Act, or federal authority (law, regulation, or treaty); and

(iii) Other pollution control requirements (e.g., best management practices) required by local, State, or Federal authority are not stringent enough to implement any water quality standards (WQS) applicable to such waters.

40 CFR § 130.7(b)(1) (emphasis added). The federal criteria to be met before it is appropriate for a "water quality-limited segment" to be listed on the Section 303(d) list is therefore that all of the following fail to enable the water to achieve a WQS: 1) technology-based limitations, 2) more stringent effluent limitations, and 3) other pollution control requirements (such as best management practices).

The Federal rules define "water quality-limited segment" as:

any segment where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-base[d] effluent limitations required by sections 301(b) and 306 of the Act.

40 CFR § 131.3(h) (emphasis added). This definition makes clear that the federal rules do not require Michigan to list a water body any time WQS are not met, but only when they are not met and there is an expectation that they cannot be met after the effluent limits have been applied. This accords with the federal criteria in section 130.7(b)(1), which essentially require that all control efforts be tried and prove to have failed before a state identifies the water quality-limited segments on the Section 303(d) list. In the cases of Goose Lake Inlet and Warner Creek, the control mechanisms have not yet been put into place.

No technology-based effluent limit has been implemented for either of the two water bodies proposed for listing (*i.e.*, Goose Lake Inlet, and Warner Creek). It is therefore not yet possible or reasonable to state that such limitations "are not stringent enough" to attain the selenium water quality standard. Similarly, any more stringent state or federal effluent limitations have not been applied and proven unsuccessful in attaining the selenium water quality standard. Finally, best management practices and other pollution control measures are only now being developed and have not yet been applied. Again, it is therefore premature for the state to conclude that appropriate and potentially feasible measures have failed to attain the water quality standards when such measures are only now being developed and implemented.

MDEQ Has Discretion to Apply Category 3 or Category 4b Alternatives to 303(d) Listing

Section 4.6.1.1 of the *2010 Draft IR* sets forth the process MDEQ follows to make a determination whether the "other indigenous aquatic life and wildlife" use is supported with respect to toxic substances in the water column. However, applying the decision tree outlined in Section 4.6.1.1 is not the end of the process, nor is MDEQ without discretion in its ability to determine which water bodies require a TMDL (and so must be added to the Section 303(d) list). Following Federal and State regulations and guidelines, the MDEQ can recognize that a water body exceeds a current WQS and still determine that it should not at this time be placed on the Section 303(d) list. The alternatives that accomplish this are discussed below.

The U.S. EPA suggests that the states follow a 5-category assignment system for water quality limited segments. *See Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act*, U.S. EPA, July 29, 2005 ("*U.S. EPA 2006 Guidance*"). The MDEQ has affirmed its adoption of the U.S. EPA categories. *See* Section 4.11 of *Draft 2010 IR*. Under this classification system, Category 5 waters comprise the Section 303(d) list. However, those categorized as 1, 2, 3, or 4 are not necessarily added to the Section 303(d) list. CNR believes that a categorization of the two water bodies at issue here would be appropriate under either Category 3, or Category 4, rather than the Category 5 listing proposed by MDEQ.

Category 3 is used when: "[t]here is insufficient available data and/or information to make a designated use support determination." *Draft 2010 IR*, p. 73. Category 4 is used when "[a]vailable data and/or information indicate that at least one designated use is not being supported or is threatened, but a TMDL is not needed," and contains three sub-categories. *Id.*, p. 73. Of those subcategories, Category 4b appears to be an appropriate category for Warner Creek and Goose Lake Inlet, and is applicable when "[o]ther approved pollution control mechanisms are in place and are reasonably expected to result in attainment of the use within a practical time frame." *Id.* The state thus has two reasonable alternatives to a Category 5 impaired listing: either Category 3 or Category 4b. It is CNR's view that these classifications better reflect the current state of knowledge about the two water bodies at issue. These classification alternatives are discussed in greater detail below.

Category 3

In a 2009 Memorandum, U.S. EPA offered "suggestions for the appropriate use of Category 3." See *Memorandum: Information Concerning 2010 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions*, May 5, 2009, pp. 4-5. The EPA gave the following three (non-exclusive) examples of the appropriate use of Category 3:

- The existing and readily available data and information were collected using unacceptable quality assurance/quality control.
- The quantity of the existing and readily available data and information, irrespective of quantity thresholds, is inadequate to provide an accurate assessment.
- The existing and readily available data and information is not representative of current conditions of the water body. This rationale might include a determination that: significant land use changes have occurred in the watershed changing the hydrology and nonpoint source loadings, point source discharges were removed, new discharges are now operating, or the locations of sampling stations did not reflect the character of the segment (e.g., limited to locations near discharge outfalls).

Id., page 4 (emphasis added). Because questions exist about the representativeness of the selenium data, and because these data are limited and additional data are still being collected, CNR believes that some or all of these examples apply to Warner Creek and Goose Lake Inlet, making them good candidates for a Category 3 listing. As discussed below, how selenium levels in the water column translate into actual impairments of a water body's uses is a highly complex issue that is the subject of current study by U.S. EPA and others. In fact, U.S. EPA's own recommendations about measuring selenium impacts are in the process of being re-evaluated and potentially changed.

Because of the limited sampling results from Warner Creek and Goose Lake Inlet, and the unsettled state of scientific understanding regarding environmental impacts resulting from the presence of selenium in the water column, the second bullet above would appear to be particularly applicable in this case. While MDEQ may ordinarily rely simply on four or more samples collected over a one-year period (see chart in Section 4.6.1.1 of *Draft 2010 IR*) to establish that an impairment of use has occurred and as a sufficient basis to place a water body on the Section 303(d) list, the complexities of selenium-impacted waters currently make them a special case. The as-yet incomplete state of knowledge regarding selenium impacts and the corresponding need for additional sampling results from the particular water bodies at issue, together lead to the conclusion that "irrespective of [MDEQ's customary] quantity thresholds," the information in hand "is inadequate to provide an accurate assessment." For this reason, Category 3 appears to be a better and reasonable fit for expressing the nature of the selenium impacts on Warner Creek and Goose Lake Inlet at this time.

Category 4b

If, for some reason, MDEQ believes that a Category 3 listing of Warner Creek and Goose Lake Inlet is not appropriate, then Category 4b is another viable alternative to a Category 5, Section 303(d) listing. Category 4b applies where "[o]ther approved pollution control mechanisms are in place and are reasonably expected to result in attainment of the designated use within a practical time frame." As the Water Bureau is aware, CNR has voluntarily undertaken to develop and implement additional pollution control mechanisms to address selenium in these water bodies. CNR is committed to successfully reducing selenium loadings to these water bodies. However, because the process of developing and implementing controls is in its early stages, it is necessary that control mechanisms first be put into place and given a fair test before MDEQ determines that they "are not stringent enough" to attain the WQS.

U.S. EPA guidance recognizes the appropriateness of states using Category 4b rather than an impaired listing under Category 5 when it is anticipated that non-TMDL controls will achieve the WQS:

EPA regulations recognize that alternative pollution control requirements may obviate the need for a TMDL. Segments are not required to be included on the section 303(d) list if technology-based effluent limitations required by the Act, more stringent effluent limitations required by state, local, or federal authority, or "[o]ther pollution control requirements (e.g., best management practices) required by local, State or Federal authority" are stringent enough to implement applicable water quality standards (see 40 CFR 130.7(b)(1)) within a reasonable period of time. This guidance acknowledges that the most effective method for achieving water quality standards for some water quality impaired segments may be through controls developed and implemented without TMDLs (referred to as a "4b alternative").

Guidance for 2006 Assessment, Listing and Reporting Requirements Pursuant to Sections 303(d), 305(b) and 314 of the Clean Water Act, U.S. EPA, July 29, 2005, p. 54 ("*U.S. EPA 2006 Guidance*") (emphasis added; brackets in original). Because BMPs and "other pollution control requirements" are only now being developed and implemented, as discussed above, a Category 4b listing is appropriate. This would provide additional time for these controls to be implemented and their effectiveness reviewed before another listing decision must be made.

To support a Category 4b designation, U.S. EPA has indicated that it expects a state to provide its rationale in support of the conclusion that there are other pollution control requirements sufficiently stringent to achieve WQS within a reasonable period of time. Specifically, U.S. EPA wants to see the following:

- 1) a statement of the problem causing the impairment
- 2) a description of the proposed implementation strategy and supporting pollution controls, including identification of point and nonpoint source loadings that assure attainment of WQS

- 3) a projection of the time when WQS will be met
- 4) a reasonable schedule for implementing the pollution controls
- 5) a description and schedule for monitoring milestones for progress reports to U.S. EPA, and
- 6) a commitment to revise as necessary the implementation strategy and pollution controls if progress toward meeting WQS is not shown.

See 303(d) Guidance at p. 54. The U.S. EPA's rules require that the state provide documentation in support of its determination to list, or not list, waters on the Section 303(d) list. *See 40 CFR 130.7(b)(6)*. The administrator may ask a state to demonstrate good cause for not including a water on the list, and good cause can include, but is not limited to, the following:

- more recent or accurate data
- more sophisticated water quality modeling
- flaws in the original analysis that led to the water being listed under Section 303(d)
- changes in conditions, such as new control equipment or elimination of discharges.

See 40 CFR 130.7(b)(6)(iv). What these U.S. EPA guidance documents and regulations demonstrate is that in deciding whether or not to place a water body on the Section 303(d) list the state is not necessarily limited to making a simple, mechanistic decision, but rather has available the opportunity and tools to make a determination that involves weighing and balancing a manageable set of factors. CNR respectfully suggests that in this case these factors weigh in favor of an alternative classification that would not lead to Warner Creek and the Goose Lake Inlet being listed as impaired at this time.

Selenium Impacts are Complex and Federal Standard are in Flux

Currently, the State of Michigan uses a chronic selenium water quality standard (WQS) of 5 micrograms per liter (parts per billion – ppb) in water. However, because most of the selenium exposure responsible for effects on fish and wildlife occurs through consumption of food, the concentration of selenium in water correlates poorly with toxicity. In recognition of this, U.S. EPA and others recently have indicated that water quality standards should be based on site-specific consideration of selenium concentrations in wildlife tissues as a more accurate measure of actual impacts.

In an October 2009 presentation to the Ohio River Valley Water Sanitation Commission (ORANSCO) the U.S. EPA Office of Science and Technology indicated that new selenium regulations are being developed that will establish criteria for egg/ovary concentrations for fish and birds. In its presentation, the U.S. EPA indicated that it will use site-specific translators to calculate a water concentration that corresponds with the egg/ovary criterion. The translator will be based on site-specific Trophic Transfer Factors, and a flesh-to-egg Conversion Factor.

What recent selenium studies have shown is that the site-specific factors should be taken into account when setting a selenium WQS protective of wildlife. A water body status determination based solely on a very limited number of samples of water concentrations, and on the 5 ppb chronic WQS without taking into account the site-specific factors now under study, would be premature.

Not Listing Under Section 303(d) Preserves the Full Range of Regulatory Options

CNR is actively taking steps to gather data about selenium levels, potential selenium sources, and alternatives for processing or discharge that may decrease selenium loading to the water bodies. In cooperation with the MDEQ Water Bureau, CNR is in the process of collecting and analyzing data, identifying sources of selenium both on and off CNR mining property, evaluating the feasibility of reducing, reusing, redirecting and treating waste streams containing selenium, and analyzing regulatory options for complying with state and federal selenium discharge limits. CNR has also established timelines for conducting this work and evaluating the results on parallel tracks. This multi-faceted approach is expected to effectively address the issue of selenium discharges.

One approach that is being considered, and which appears to be in line with U.S. EPA's developing approach to addressing selenium discharges, is to gather site-specific information about water quality and selenium impacts on wildlife to enable development of a local standard reflecting the unique characteristics of the local water bodies and their uses. Unfortunately, MDEQ's decision to either include or not include segments of Goose Lake Inlet and Warner Creek on the Section 303(d) list in its *2010 Draft IR* may have unintended consequences, such as complicating the application of a variance or a site-specific standard to these water bodies. The development of such standards will require a detailed review of local selenium impacts on water and on wildlife, the data for which are only now beginning to be collected. Listing the waters as "impaired," in advance of the collection and analysis of data showing actual wildlife impacts, would pre-judge the question of whether or not the 5 ppb criterion accurately reflects a chronic water quality concentration that is protective of wildlife or whether another, site-specific standard might better reflect the actual wildlife impacts for selenium in these water bodies.

The CWA requires the MDEQ to identify the waters to include on its Section 303(d) list and to submit that list to U.S. EPA biennially. Because of its permitting timeline, CNR is working to complete its analysis of options for managing selenium in its discharges and begin implementing selected selenium control program measures prior to December 2011. Moreover, CNR is analyzing options for implementing Best Management Practices (BMPs) for stormwater that reaches surface water segments on the CNR mining property from both point sources and non-point sources. Selections of these BMPs will be made and implementation initiated in advance of the next biennial report for Michigan's Section 303(d) list (April 1, 2012). At that point, a much fuller picture of the nature and sources of selenium in the water bodies, and analyses of both selenium impacts and the effects of certain control mechanisms, will be available. This information will be important for providing the MDEQ with necessary data on which to base a determination about the effects of selenium on uses of the water bodies. These

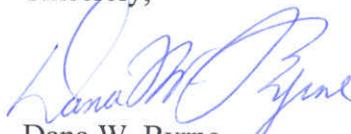
data are not currently available, and given the complexity of selenium's interactions in the environment, CNR believes that MDEQ lacks the information it needs to make an accurate assessment of whether uses of local water bodies have been impaired by the presence of selenium at concentrations in water at or above 5 ppb.

Conclusion

In conclusion, CNR believes that it is premature for MDEQ to place the Warner Creek and the Goose Lake Inlet water body segments on the Section 303(d) list of impaired waters. Because the relevant control mechanisms for selenium are only now being developed and implemented, appropriate time is needed to demonstrate whether or not they will be effective in controlling the levels of selenium in these water bodies. Therefore, federal requirements for listing, which call for control mechanisms to have been fully implemented and demonstrated to be ineffective, have not been satisfied. Furthermore, to list these water bodies may limit site-specific regulatory options otherwise available to CNR and to the state for dealing successfully with elevated selenium levels. Other regulatory alternatives to Section 303(d) listing are available under federal and state rules, including Category 3 and Category 4b listing. CNR therefore respectfully requests that the MDEQ Water Bureau reconsider its proposed listing of Warner Creek and Goose Lake Inlet on the Section 303(d) impaired waters list and instead classify them as Category 3 or Category 4b.

CNR appreciates the opportunity to provide these comments. If you have any questions regarding these comments, please contact Mr. John Flegel of my staff.

Sincerely,



Dana W. Byrne

Vice President, Public & Environmental Affairs

cc: Mr. William Creal, MDEQ
Mr. Dan Dell, MDEQ
Mr. Steve Casey, MDEQ



Protecting the river since 1965

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January 13, 2010

Sarah Wolf LeSage
Senior Aquatic Biologist
Surface Water Assessment Section
Michigan DEQ Water Bureau

Dear Sarah,

Thank you for the opportunity to comment on the 2010 Integrated Report by the MDEQ. The Huron River Watershed Council (HRWC) is a coalition of Huron Valley residents, businesses, and local governments established in 1965 under Michigan's Local River Management Act. The mission of the Council is to inspire attitudes, behaviors, and economies that protect, rehabilitate, and sustain the Huron River system. Services of the Council include hands-on citizen education, technical assistance in policy development, and direct river protection projects.

In summary our comments are as follows:

1. In Appendix B, Oakland and Livingston County: the P TMDLS in Kent, Brighton, S. Ore, and Strawberry Lakes are missing. These Lakes have TMDLS developed but should be on this list.
2. Wagner-Pink Drain: has there been any follow up or monitoring to see if problem is fixed. It was a discharge violation from a few years back.
3. Could we get a copy of the Horseshoe Lake Drain delisting report?
4. For a few non-mercury and PCB listings, the TMDL dates are years away (i.e. E.Coli Dearborn Beach-2019, DO at Yerkes drain-2023, E. coli Belleville Lake beach-2018). Can we get the data source and reports for HRWC use in Watershed management planning and implementation?
5. Can we get the GIS layer for the AUID? Attributes with the names MDEQ uses?
6. In the text: The Portage Creek watershed covers 89 square miles of the 908 square mile Huron River watershed.

Minor comments:

7. Page X1 (public not public)
8. P. 22 paragraph on estimated wetland loss: says project was going to be completed in 2008 (please update)

Please feel free to contact me with any questions.

Sincerely,

Laura Rubin
Executive Director