Public Comments on Wisconsin's Draft 2026 Water Condition Lists

A public comment period for Wisconsin's Draft 2026 Water Condition Lists was held from February 16th to March 18th, 2026. Comments are reproduced here in their entirety. Wisconsin DNR responded to all comments received on March 25th, 2026; those responses can be found here.

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1. PFAS: WDNR's website shows that Fourth Lake also has a fish consumption advisory for PFAS. Why isn't Fourth Lake listed as impaired for the fish consumption designated use like the other lakes in the Moen Chain of Lakes with advisories?

ATTAINS Database corrections

2. EPA also provided several lists of waterbodies whose details in the ATTAINS database do not match 2026 the Draft Impaired Waters Lists, listed below.

Waterbody Name	EPA Assessment Unit ID
Allen Creek	WI10010031
Center Br Hefty Creek	WI10002815
Center Br Hefty Creek	WI10045882
Center Br Hefty Creek	WI10045883
Clear Lake	WI10001485
Fish Creek	WI10027788
Honey Creek	WI10008002
Honey Creek	WI10045886
Kewaunee River	WI10025677
Long Trade Lake	WI10005131
Loveless Lake	WI10006711
Mississippi River (Reach 1)	WI10008954
Mississippi River (Reach 4)	WI10008952
Neenah Slough	WI10000842
North Spirit Lake	WI10008722
Otter Creek	WI10045862
Otter Creek	WI10045863
Pike Lake	WI10003621
Platte River	WI10279449
Platte River	WI10045860
Platte River	WI10045861
Poskin Lake	WI10004479
Rice Lake	WI10004576
Round Lake	WI10005130
Shannahan Valley Creek	WI10026085
Sheboygan River	WI10008190
South Branch Pike River	WI10008073
Spring Lake	WI10009334
Unnamed	WI10045169
Wood Lake	WI10005159

Green Lake Association

Justin Chenevert
DNR Waterbody Assessment Coordinator
Wisconsin Department of Natural Resources
PO Box 7921
Madison, Wisconsin 53707

February 27, 2026

Re: Public Comment on Updated Water Condition Lists and TMDLs

Dear Mr. Chenevert,

The Green Lake Association (GLA) appreciates the opportunity to comment on the draft 2026 Water Condition Lists and related TMDL additions announced by the Wisconsin Department of Natural Resources.

The GLA is a member of the Green Lake Management Planning Team (LMPT) and works closely with the Department and other local, state, and federal partners to advance science-based restoration of Green Lake. Our comments are offered in the spirit of partnership and with the goal of strengthening Wisconsin's water quality framework as it continues to evolve.

Impairment Status & TMDL Misalignment

Green Lake remains an impaired waterbody due to low dissolved oxygen conditions at its thermocline associated with elevated phosphorus concentrations. Phosphorus levels exceed the 15 µg/L criterion for two-story fishery lakes, contributing to metalimnetic dissolved oxygen concentrations that periodically fall below the 6 mg/L threshold used for impairment and delisting determinations.[1]

The lake lies within the Upper Fox–Wolf Basin and is therefore addressed under the Upper Fox–Wolf Basin Total Maximum Daily Load (TMDL). While basin TMDLs serve an important planning function, **inclusion within a TMDL does not necessarily ensure that implementation of the TMDL will result in attainment of water quality standards or removal of a waterbody from the impaired waters list**.

For example, modeling conducted as part of development of the Upper Fox–Wolf Basin TMDL estimated 9,319 pounds per year of phosphorus reduction associated with Green Lake under the basin TMDL framework.[2] However, subsequent analysis indicates that approximately 9,770 pounds per year of reduction are required to meet dissolved oxygen criteria necessary for delisting the lake.[3,4]

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[1] Wisconsin Department of Natural Resources. (2025, January 8). Green Lake Water Quality Assessment memorandum (WBIC 146100). Available at: *WDNR Green Lake Water Quality Assessments Memorandum (Jan. 8, 2025)*.

[2] Wisconsin Department of Natural Resources. *Upper Fox and Wolf River Basins Total Maximum Daily Load (TMDL): Lake Response Modeling Using the Wisconsin Lake Modeling Suite (WiLMS).* Madison, WI: WDNR.

[3] Green Lake Association. *Diagnostic and Feasibility Study Findings: Water-Quality Improvements for Green Lake, Wisconsin*. (WDNR Grant LTP50516), June 30, 2021. Available at: *GLA Diagnostic & Feasibility Study (2021)*.

[4] Robertson, D.M., Siebers, B.J., Ladwig, R., Hamilton, D.P., Reneau, P.C., McDonald, C.P., Prellwitz, S., & Lathrop, R.C. (2022). *Response of Green Lake, Wisconsin, to Changes in Phosphorus Loading, with Special Emphasis on Near-Surface Total Phosphorus Concentrations and Metalimnetic Dissolved Oxygen Minima.* U.S. Geological Survey Scientific Investigation. Available at: *USGS Green Lake Phosphorus Response Study (2022)*.

Therefore, **the reductions contemplated within the Upper Fox–Wolf Basin TMDL appear insufficient to achieve Green Lake's delisting under current scientific understanding**. As a result, Green Lake continues to meet the definition of an impaired water requiring restoration actions beyond those envisioned in the existing TMDL framework.

As the LMPT advances the updated Watershed & Lake Management Plan—integrating an Aquatic Plant Management Plan, Lake Management Plan, and Nine Key Elements Plan—this discrepancy raises a central implementation question for partners working toward restoration: ***how should restoration status be interpreted when an existing TMDL framework does not fully align with current scientific understanding of the reductions required to delist an individual lake?***

"Waters in Restoration" Framing

The GLA supports the Department's effort to recognize progress across Wisconsin waters. Because Green Lake is addressed under the Upper Fox–Wolf Basin TMDL, it is currently categorized as a "Water in Restoration."

However, **inclusion within a basin TMDL or the existence of a written restoration plan does not necessarily indicate that restoration actions capable of achieving water quality standards are actively underway or that a realistic pathway to delisting has been established**. In complex systems such as Green Lake, the designation may unintentionally convey a level of restoration progress that exceeds what current implementation conditions support.

Strengthening distinctions between (1) planning, (2) implementation, and (3) measurable water quality improvement would help ensure that restoration classifications accurately reflect both progress achieved and the magnitude of work that remains. Clear alignment between classification language and implementation reality is particularly important for informing partners, policymakers, and funding decisions.

Realistic Restoration Pathways & Nonpoint Source Limitations

Green Lake illustrates a broader challenge facing many Wisconsin watersheds. A majority of phosphorus loading originates from nonpoint agricultural sources. While the Clean Water Act provides enforceable mechanisms for point-source reductions, no comparable regulatory structure ensures delivery of the nonpoint reductions assumed within TMDLs. The Department itself recognizes this reality, noting that *"implementing plans to achieve TMDL targets for nonpoint source pollution is a challenging process that requires the collaboration of diverse stakeholders and a substantial commitment of public and private dollars."*[5]

Wisconsin has developed important bridging tools, including Adaptive Management and Water Quality Trading programs, intended to link point-source permit compliance with watershed-based nonpoint reductions. These approaches represent meaningful innovation; however, their effectiveness depends on favorable watershed conditions, workable trading ratios, and the presence of regulated point sources capable of driving implementation.

Although the Upper Fox–Wolf Basin TMDL allows water quality trading throughout the basin, the effectiveness of trading ultimately depends on delivery factors and regulatory demand from permitted point sources. Trading ratios incorporate delivery considerations intended to reflect how phosphorus reductions translate to downstream compliance locations.

Because Green Lake retains a substantial portion of incoming phosphorus and exports comparatively low concentrations downstream, reductions achieved within its watershed provide limited compliance benefit to downstream permittees. As a result, **point sources seeking credits have limited regulatory incentive to pursue**

[5] Wisconsin Department of Natural Resources. *Nonpoint Source Total Maximum Daily Load (TMDL) Implementation* webpage.

trades within the Green Lake watershed, limiting the practical usefulness of water quality trading as a meaningful restoration pathway for Green Lake.

This challenge is further compounded by the division of statutory authority. While the Department administers Clean Water Act programs tied to water quality standards, primary authority over agricultural nonpoint source management rests with DATCP. Because DATCP authorities are not directly linked to standards attainment or impairment removal, **implementation of agricultural practices is not structurally connected to achieving delisting outcomes**.

Since completion of the Upper Fox–Wolf Basin TMDL, subsequent watershed modeling, expanded monitoring in the Green Lake watershed, implementation experience, and emerging scientific literature have clarified an important implementation gap between modeled restoration pathways and outcomes achievable in practice.[6] While the TMDL establishes a technically sound framework for phosphorus reduction, experience on the ground indicates that the reductions identified have proven difficult — if not impossible — to achieve under realistic implementation conditions.[7,8,9]

Recent Green Lake–specific modeling further illustrates this challenge. A comprehensive agricultural BMP analysis conducted to support development of the Watershed & Lake Management Plan evaluated the maximum phosphorus reductions achievable under existing agricultural land use conditions.[10] Results indicated that **implementation scenarios — representing substantial levels of voluntary conservation adoption — did not achieve the phosphorus reductions necessary to meet water quality criteria**, while only a theoretical full-implementation scenario requiring 100% participation across essentially all eligible acres just exceeded the reduction threshold. The analysis concluded that **agricultural BMP implementation alone is unlikely to achieve required reduction targets through incremental adoption and that additional phosphorus reduction strategies will be necessary to meet water quality goals**.

This finding is consistent with broader watershed research. For example, SWAT modeling conducted within the Lower Fox watershed similarly demonstrated that although increased implementation of agricultural best management practices reduced nutrient loading, ***none of the modeled scenarios achieved the phosphorus reduction targets established under the TMDL***.[11]

Together, these analyses suggest that restoration pathways that function effectively in planning models do not always translate into outcomes sufficient to achieve water quality standards or support delisting in complex agricultural lake systems.

Green Lake as a Case Study

Green Lake represents an opportunity to advance restoration practice at a statewide level. Scientific understanding, partner coordination, and restoration planning are converging through the ongoing Watershed &

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[6] Merriman, K.R., Daggupati, P., Srinivasan, R., & Hayhurst, B. (2019). *Assessment of site-specific agricultural best management practices in the Upper East River watershed, Wisconsin, using a field-scale SWAT model*. Journal of Great Lakes Research.

[7] Osgood, R. A. (2017). *Inadequacy of best management practices for restoring eutrophic lakes in the United States: Guidance for policy and practice.* Inland Waters, 7(4), 401–407. https://doi.org/10.1080/20442041.2017.1368881

[8] Scientific and Technical Advisory Committee (STAC). (2023). Achieving Water Quality Goals in the Chesapeake Bay: *A Comprehensive Evaluation of System Response* — Executive Summary. Chesapeake Bay Program, Annapolis, MD.

[9] Iowa Environmental Council. (2022). *The Iowa Nutrient Reduction Strategy: Ten Years and No Progress — Report and Recommendations.* Des Moines, Iowa.

[10] Stantec Consulting Services Inc. (2026). *Green Lake Watershed Agricultural Best Management Practice Analysis (PTMApp Modeling).*

[11] Merriman, K.R., Daggupati, P., Srinivasan, R., & Hayhurst, B. (2019). *Assessment of site-specific agricultural best management practices in the Upper East River watershed, Wisconsin, using a field-scale SWAT model*. Journal of Great Lakes Research.

Lake Management Plan update, supported by substantial local investment, active interagency collaboration, an abundance of research, robust monitoring, and an unusually strong base of community resources.

Our experience suggests that certain complex lake and watershed systems may reach a point where traditional basin-scale TMDL implementation alone does not provide a realistic pathway to standards attainment. In these situations, **restoration success depends not only on continued watershed implementation, but also on evaluating how planning frameworks, regulatory tools, and emerging management strategies can evolve together to produce measurable outcomes**.

Because of its scale, scientific attention, and committed partnership network, Green Lake provides a unique setting in which the Department and local partners can collaboratively evaluate how Wisconsin's restoration framework performs under real-world conditions and refine approaches that may ultimately benefit other lakes facing similar challenges. Leveraging this opportunity can strengthen statewide restoration planning, improve alignment between science and policy, and help define credible pathways to water quality recovery for complex agricultural lake systems across Wisconsin.

Synthesis: Implementation Reality

Taken together, these realities illustrate that, while the Upper Fox–Wolf Basin TMDL provides an important planning framework, it does not currently establish a practical pathway for Green Lake to attain water quality standards or delisting under existing implementation conditions:

- **Modeled reductions are insufficient for delisting.** Phosphorus reductions identified under the basin TMDL fall short of those now understood to be necessary to resolve dissolved oxygen impairment in Green Lake.
- **Planning designations may overstate restoration progress.** Classification as a "Water in Restoration" reflects inclusion within a basin TMDL rather than demonstrated implementation outcomes or measurable water quality improvement.
- **Implementation tools have limited practical leverage under current conditions.** Adaptive Management and Water Quality Trading rely on regulatory drivers, delivery efficiencies, and market demand that are constrained within the Green Lake watershed, limiting their effectiveness as pathways to delisting.
- **Nonpoint source reductions remain structurally difficult to achieve at required scales.** The majority of watershed loading originates from agricultural nonpoint sources where implementation authority, incentives, and accountability mechanisms are not directly tied to water quality standards attainment or impairment removal.
- **Local modeling confirms an implementation gap.** Green Lake–specific agricultural BMP modeling conducted in support of the Watershed & Lake Management Plan indicates that even substantial voluntary conservation adoption is unlikely to achieve required phosphorus reductions absent near-universal participation or complementary management strategies.[10]
- **Regional research reinforces this conclusion.** Basin-wide modeling studies similarly demonstrate that while best management practices reduce nutrient loading, modeled implementation scenarios do not consistently achieve TMDL reduction targets, highlighting a broader gap between planning assumptions and outcomes achievable in practice.[11]

These challenges are not unique to Green Lake and highlight broader questions about how restoration pathways should evolve when traditional watershed implementation tools alone are insufficient.

The Path Forward

In situations where watershed-based tools alone cannot reasonably achieve standards attainment, **restoration planning would benefit from an expanded suite of complementary approaches capable of producing measurable water quality improvement**. These may include strengthened support for agricultural transitions that reduce nutrient losses at scale, enhanced technical and financial assistance to accelerate implementation of effective conservation practices, and, where supported by sound science, carefully evaluated in-lake or near-lake management strategies implemented within an adaptive management framework. In some systems, meaningful progress toward standards attainment may depend on combining watershed implementation with complementary management approaches tailored to lake-specific conditions.

Providing regulatory clarity, programmatic flexibility, and sustained investment across these approaches would help local partners pursue restoration actions aligned with both scientific understanding and Wisconsin's water quality goals. Expanding the range of practical implementation tools available to complex lake systems such as Green Lake will be critical to translating restoration planning into demonstrable water quality outcomes.

The GLA offers these comments in the spirit of partnership and shared responsibility for ensuring that Wisconsin's restoration framework continues to evolve in ways that translate planning into measurable water quality improvement.

Sincerely,

Stephanie Prellwitz
Chief Executive Officer
Green Lake Association

cc:

Connie Antonuk – WDNR
Ashley Dooley – WDNR
Ted Johnson – WDNR
Andrew Hudak – WDNR
Andrew Craig – WDNR
Keith Marquardt – WDNR
Kevin Kirsch – WDNR
Aaron Fisch – WDNR

Leo A. Kucek

From: Leo Kucek <lakucek@ati-ae.com>
Sent: Wednesday, March 18, 2026 8:50 PM
To: DNR WY Waterbody Assessments <DNRWYWaterbodyAssessments@wisconsin.gov>
Cc: Chenevert, Justin M - DNR <Justin.Chenevert@wisconsin.gov>
Subject: Public Comments: Wisconsin's Draft 2026 Water Condition Lists

Good evening,

Regarding Wisconsin's Draft 2026 Water Condition Lists I have two sets of comments and questions during the public comment period:

Most sections of the Fox River in Waukesha, Racine, and Kenosha Counties are not listed as being impaired in the CWA 303(d) list. However, we do not see these sections being delisted. What is the impairment status each section of the Fox (Illinois) River?

For the forthcoming FoxIL TMDL, will the TMDL allocations be protective of waters included in the 303(d) list, waters delisted, *and* all other waterways and water bodies within the FoxIL TMDL watershed? Will the Department view waters not listed as impaired as being sufficiently protected by the FoxIL TMDL allocations, and in which ways will these protections (of waters not listed as being impaired) be different as compared to prior TMDLs (e.g., Rock River TMDL)?
Thank you for your time and consideration,
Leo A. Kucek, P.E.
Applied Technologies, Inc.

Linda Szramiak, Turtle Lake Improvement and Protective Association

From: Linda <lszramturtle@gmail.com>
Sent: Friday, March 13, 2026 6:09 PM
To: Chenevert, Justin M - DNR <Justin.Chenevert@wisconsin.gov>
Subject: Turtle Lake, Walworth County impairment list re-consideration

To: Justin Chenevert, Waterbody Assessment Coordinator

I respectfully request reconsideration of the decision to designate Turtle Lake in Walworth County as an impaired waterbody.

After discussion with both Justin Poinsatte of the Southeastern Wisconsin Regional Planning Commission and Heidi Bunk of the Wisconsin Department of Natural Resources, I strongly believe that Turtle Lake was inappropriately placed on the impaired waters list.

When I first saw our lake listed, my immediate reaction was that it must have been an error. I was both shocked and disappointed to learn that Turtle Lake had been added to the list. Over many years serving as President of the Turtle Lake Association and overseeing aquatic plant management, all reports consistently indicated that our aquatic plant community was healthy.

Since 2009, Turtle Lake's aquatic plant community has been surveyed by the WDNR thirteen times. Our most recent aquatic management plan was completed in 2025. These surveys and planning efforts have consistently demonstrated that we are managing the lake responsibly and effectively.

Our association has worked closely with the WDNR for years to manage aquatic plants. Since 2019, our membership made the intentional decision not to use chemical treatments for aquatic invasive species. Instead, we have prioritized environmentally responsible management strategies, particularly Diver Assisted Suction Harvesting (DASH), which has proven successful in controlling invasives while maintaining ecological balance.

Additionally, our association actively educates lake residents about responsible stewardship. We encourage practices such as avoiding fertilizer use near the shoreline, maintaining healthy septic systems, and taking precautions to prevent the spread of invasive species. These efforts reflect our long-standing commitment to protecting and maintaining a healthy lake ecosystem.

Turtle Lake will continue to monitor its aquatic plant community and work collaboratively with the WDNR. Our long-term goal remains the preservation of a balanced and healthy lake environment.

Given this history of responsible management and positive monitoring results, I respectfully request that the department reconsider and remove Turtle Lake, Walworth County, from the impaired waters list.

Thank you for your time and consideration. Please feel free to contact me for any additional information.
Linda Szramiak
Turtle Lake, Walworth County
Turtle Lake Improvement and Protective Association
Wisconsin Extension, UWSP, Crew 10

Pat Malcolm

From: Pat Malcolm <pmalcpoet@gmail.com>
Sent: Monday, February 16, 2026 10:13 AM
To: DNR WY Waterbody Assessments <DNRWYWaterbodyAssessments@wisconsin.gov>
Subject: Water body biennial reporting

DNR itself has lists of water bodies affected by PFAS/PFOS, including those safe for swimming and fishing. This information must be rolled into standards and reporting. While remediation of these forever chemicals is now not possible, their presence must be accounted for. If that means Wisconsin is holding water quality to a higher standard than EPA, so be it. Our people deserve no less. I also suggest that the DNR undertake more vigorous posting of waters affected by PFAS/PFOS, including no swimming for people or pets, washing hands after coming in contact with waters, no fishing and/or fish consumption guidelines, personal flotation device wearing required in polluted waters and other protective rules. Postings should be at every entry point or, for personal piers, at street and shore at reasonably close intervals.

Thank you for requesting public comment.

Pat Malcolm (she/her)

Southeastern Wisconsin Regional Planning Commission

Comments Regarding Impairment Listing of Turtle Lake in Walworth County (WBIC 795100)

In 2024, the Wisconsin Department of Natural Resources (WDNR) placed Turtle Lake in Walworth County on the 2024 303(d) impaired water list with an impairment of "degraded aquatic plant community (macrophytes)" with pollutant listed as "cause unknown." The reason for this listing is due to the application of an aquatic plant assessment model that was utilized as a standalone metric in 2024 for the first time. Southeastern Wisconsin Regional Planning Commission (Commission) staff disagree with this impairment listing due to how the model is being applied and its use as a standalone metric when other aquatic plant metrics indicate that Turtle Lake has a relatively healthy aquatic plant community. Commission staff hope that the WDNR will reconsider the designation of Turtle Lake as impaired in the 2026 listing cycle and will consider incorporating other widely-used aquatic plant metrics into its impairment listing decision-making.

Background

Turtle Lake's aquatic plant community has been evaluated 13 times since 2009 with the most recent survey in 2023. All aquatic plant surveys on Turtle Lake have been conducted by WDNR Central Office staff. Few lakes across southeastern Wisconsin have as many aquatic plant surveys as Turtle Lake, especially by WDNR staff who are highly trained in identifying aquatic plant species. Since 2019, no chemical treatments have been utilized on Turtle Lake and the only recent aquatic plant management on the lake is diver-assisted hand-pulling to help control a Eurasian watermilfoil (EWM) (*Myriophyllum spicatum*) population. The Commission is currently working with the Turtle Lake Association to prepare an aquatic plant management plan for the Lake.[1]

The WDNR began utilizing a macrophyte bioassessment model to evaluate lakes for impairment listing as a standalone metric for the first time in 2024.[2] The methodology used to assess lake aquatic plant communities for impairment is based on Mikulyuk et al., 2017, which describes how data generated from aquatic plant point-intercept surveys were used to develop a macrophyte bioassessment model.[3] The general health (Mac-Gen) model evaluates whether a lake has been disturbed by human activity using aquatic plant species sensitivity to anthropogenic disturbance as well as the littoral frequency of occurrence of each species observed on the lake. In designing the model, fifty-nine aquatic plant species were evaluated to determine their tolerance to anthropogenic disturbance variables, with each species being designated as "tolerant", "moderately tolerant", or "sensitive" to these variables.[4]

Of the thirteen species labeled as "tolerant," only three species are considered invasive by the WDNR: EWM, curly-leaf pondweed (*Potamogeton crispus*), and spiny naiad (*Najas marina*). The other species are all native and some are observed in both pristine as well as disturbed lakes, with some "tolerant" species (e.g., white-stem pondweed,

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[1] *SEWRPC Memorandum Report No 274,* Aquatic Plant Management Plan for Turtle Lake, Walworth County, Wisconsin, *in preparation*.

[2] *Wisconsin Department of Natural Resources,* Wisconsin Consolidated Assessment and Listing Methodology (WisCALM) for CWA Section 303(d) and 305(b) Integrated Reporting: Assessment Guidance for 2023 – 2024, *Guidance # 3200-2023-04*, *April 2023*.

[3] *Mikulyuk, A.M., et al., "A Macrophyte Bioassessment Approach Linking Taxon-Specific Tolerance and Abundance in North Temperate Lakes,"* Journal of Environmental Management *199: 172-180, 2017*.

[4] *Disturbance variables in the model included the lake's nutrient status, specific conductance (a proxy measurement for salt concentrations), and the amount of developed land use (e.g., agriculture, roads, urban lands) within the lake's watershed. Other factors known to cause disturbance within lake ecosystems, such as the use of chemical treatments for aquatic plant management, frequent and intense recreational use, and high density of piers and other shoreline structures, were not included in the model.*

Potamogeton praelongus, and horned pondweed, *Zannichellia palustris*) commonly recognized as indicators of good water quality.[5,6]

Based on recent plant surveys conducted during the growing season, lakes are assessed based on their lake type (seepage vs. drainage), region within the state (north vs. south), and the proportions of species found that are tolerant, moderately tolerant, and tolerant of human disturbance. Under this model, lakes that receive a rating of "Not Attaining" have an aquatic plant community that indicates significant disturbance by human activity while "Attaining" lakes indicate a lower impact from human disturbance. Lakes that have recently undergone chemical treatment for aquatic plant management or other remediation work are not considered eligible for impairment assessments using this method.[7] Similarly, river impoundments and reservoirs are also not considered eligible for assessment with this method.

Turtle Lake was listed as impaired due to its recent scores of "Not Attained" in the Mac-Gen model. Of the thirteen aquatic plant surveys since 2009, Turtle Lake has scored "Attained" once in 2011 for the Mac-Gen model, "Not Attained" seven times, and could not be assessed for the remaining five times as the survey was outside the assessment window. During this same period, the lake has scored "Attained" five times for the phosphorus health macrophyte model, "Good" three times, and could not be assessed five times.

Considerations for De-Listing Turtle Lake

Several other metrics are commonly used to evaluate the health of aquatic plant communities, including lake-wide species richness, average number of native species per site, the floristic quality index, the mean coefficient of conservatism (C) values, and the percentage of littoral points with invasive species present. The most recent aquatic plant survey of Turtle Lake conducted in 2023 had a lake-wide species richness of 23 species, an average of 1.39 native species per site shallower than maximum depth, a floristic quality index of 21.57, a mean C value of 4.95, and had 28 percent of its littoral points with an invasive species present. The 23 species observed exceeds 14 species, which is the median number of species for a lake in the North Central Hardwoods and Southeastern Wisconsin Till Plains.[8] The WDNR Aquatic Plant Explorer tool describes a FQI of 21.57 as indicative of "high-quality" while a mean C of 4.95 is within the range described as "Specific needs, moderate tolerance."[9] The five most common species observed in 2023 were native species that are widespread in many southeastern Wisconsin lakes: common stonewort (*Chara contraria*), coontail (*Ceratophyllum demersum*), sago pondweed (*Stuckenia pectinata*), Fries pondweed (*Potamogeton friesii*), and slender nitella (*Nitella flexilis*). These metrics all suggest that Turtle Lake has a fairly healthy aquatic plant community. In addition to these metrics, the WDNR recognized Turtle Lake as a "high-quality water" in 2022 as part of its Healthy Watersheds, High-Quality Waters initiative.[10]

Several nearby lakes in Walworth County have aquatic plant communities that are arguably in poorer health than Turtle Lake based on these aquatic plant metrics. However, these lakes are not listed as impaired based on the macrophyte conditions due to their ineligibility for assessment based on recent aquatic herbicide applications, the lakes being impoundments, or both. While Commission staff understand why use of herbicide applications renders a lake ineligible for assessment, we are concerned that this ineligibility results in an unfair application of the Mac-Gen model as lakes that do not utilize herbicides can be considered impaired while lakes with arguably

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[5] *White-stem pondweed is intolerant of water turbidity and has a C value of 8, indicating a preference for undisturbed habitat. S.A. Nichols, "Floristic Quality Assessment of Wisconsin Lake Plant Communities with Example Applications,"* Lake and Reservoir Management 15(2): 133-141, *1999*

[6] *Horned pondweed has a C value of 7, indicating a preference for less disturbed habitat, and in southern Wisconsin is frequently observed in areas with significant groundwater contributions.*

[7] *WDNR WisCALM, 2023,* op. cit.

[8] *S.A. Nichols, "Floristic Quality Assessment of Wisconsin Lake Plant Communities with Example Applications,"* Lake and Reservoir Management 15(2): 133-141, *1999*

[9] *See following link for WDNR Aquatic Plant Explorer: https://dnr-wisconsin.shinyapps.io/AquaticPlantExplorer/.*

[10] *See https://dnr.wisconsin.gov/topic/SurfaceWater/HQW.html for more information.*

poorer aquatic plant communities that do utilize herbicides are not. Based on the other aquatic plant metrics and the Mac-Gen model application, Commission staff hope that the WDNR will reconsider the designation of Turtle Lake as impaired in the 2026 listing cycle.

Wisconsin Paper Council and Wisconsin Manufacturers & Commerce

March 18, 2026

Wisconsin Department of Natural Resources
Justin Chenevert, Water Quality WY/3
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101 South Webster Street
Madison, WI 53703

Delivered via email only:
DNRWYWaterbodyAssessments@Wisconsin.gov
Justin.Chenevert@Wisconsin.gov

Comments on the Draft Water Condition Lists for 2026

Dear Mr. Chenevert,

These comments are submitted jointly on behalf of the Wisconsin Paper Council (WPC) and Wisconsin Manufacturers & Commerce (WMC). Our organizations appreciate the opportunity to comment on the draft Water Condition Lists for 2026, proposed by the Department of Natural Resources ("DNR" or "the Department").

Introduction

WPC is the premier trade association that advocates for the papermaking industry before regulatory bodies, and state and federal legislatures to achieve positive policy outcomes. WPC also works to educate the public about the social, environmental, and economic importance of paper, pulp, and forestry production in Wisconsin and throughout the Midwest. The pulp and paper sector employs over 30,000 people in Wisconsin and has an annual payroll of $2.5 billion. Wisconsin is the number one paper-producing state in the United States, with the output of paper manufactured products estimated to be over $18 billion.

WMC is the largest general business association in Wisconsin, representing approximately 3,800

member companies of all sizes, and from every sector of the economy. Since 1911, WMC's mission has been to make Wisconsin the most competitive state in the nation to do business. This mission includes ensuring that environmental standards and agency actions are fair, predictable, and founded on the appropriate constitutional, statutory, and regulatory authorities.

WPC and WMC members are dedicated to complying with all applicable laws and regulations and maintaining clean water in Wisconsin. The members of our organizations, particularly businesses operating in the manufacturing and agriculture sectors, are potentially impacted by the state's water condition lists.

Under section 303(d) of the Clean Water Act, Wisconsin is required to create an Impaired Waters List. Per state and federal law, each listing requires a Total Maximum Daily Load (TMDL) analysis. A TMDL analysis may be used as the basis to impose discharge limitations on manufacturers and other qualifying Wisconsin Pollutant Discharge Elimination System (WPDES) permittees.

Our organizations provided comments on the 2022 and 2024 draft lists. The concerns we expressed in those comments remain relevant today.

Listings Based on "Unknown" Pollutants

Once again, DNR has proposed several new listings on the basis of an "unknown pollutant" (28 new listings in 2026). And once again, as in past comments, our organizations strongly object to this practice, which appears to be based on criteria outlined in the Department's "Wisconsin Consolidated Assessment and Listing Methodology

(WisCALM)," a guidance document.[1] The latest version of the WisCALM guidance states that an "aquatic life" (AL) impairment can be listed on the basis of an unknown pollutant:

If a water has at least one biological metric exhibiting impairment over two years, the water can be listed as having an impaired AL use based on biology, under Category 5A. ... However, if there is no pollutant exceeding its criterion then the "Pollutant" field associated with this impairment will be listed as "Unknown."[2]

In the WisCALM document, DNR claims that the Wisconsin Administrative Code authorizes this practice under "narrative standards:"

Chapter 102.04(1)d Wis. Adm. Code provides narrative standards for the protection of fish and other aquatic life in surface waters, stating: "Substances in concentrations or combinations which are toxic or harmful to humans shall not be present in amounts found to be of public health significance, nor shall substances be present in amounts which are acutely harmful to animal, plant or aquatic life."[3]

As our organizations have noted in previous comments, guidance documents do not have the force of law, and cannot be relied on by state agencies as the basis for regulatory action. This principle is established by state statute[4] and has been reinforced by the Wisconsin Supreme Court.[5]

Indeed, the very same code chapter that DNR cites in the WisCALM guidance clearly, directly, and unequivocally addresses this issue: "Only water quality standards that have been *promulgated via statute or rule* may be considered for the purposes of listing a waterbody on the section 303(d) list."[6]

The Department's reference to "narrative standards" begs the question: *what*, exactly, are the "Substances in concentrations or combinations which are toxic or harmful to humans" or "acutely harmful to animal, plant or aquatic life," and at what levels are those substances harmful? Seeing as DNR cannot identify the pollutant(s) at issue, how can the agency justify an impairment listing? And how can a solution to address these "unknown pollutants" possibly be implemented?

One wonders how any observer could consider it fair or reasonable for a regulator to make a determination, which could eventually require regulated entities to implement permit conditions or take other corrective actions, without having to identify a specific substance or activity to be controlled.

Unfortunately, the WisCALM document explicitly states that the Department believes it is exempt from rulemaking procedures: "Impairment thresholds are applied to determine whether waterbodies should be placed on the Impaired Waters List. ... In some cases, WisCALM lists impairment thresholds for parameters for which water quality criteria have not been promulgated, for example, macroinvertebrate and fish indices of biotic integrity."[7] This statement is in clear conflict with Chapter NR 102.51(2)(a), Wis. Admin. Code, specifically, and Chapter 227, Wis. Stats., generally.

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[1] Wisconsin Department of Natural Resources, "Wisconsin 2026 Consolidated Assessment and Listing Methodology (WisCALM) for CWA Section 303(d) and 305(b) Integrated Reporting," July 18, 2025.
[2] Ibid., p. 42. Note, this provision on listing an impaired AL use is the only section of the WisCALM document that refers to listing the pollutant(s) as "unknown." However, five of the proposed new listings for 2026 listing "unknown pollutant" are based on an impaired "recreational" (REC) use, which is not explicitly contemplated by the Department's own guidance.
[3] Ibid., p. iv and p. 42.
[4] *See* Wis. Stat. § 227.10(2m): "No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any license issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter."
[5] *See SEIU v. Vos*, 2020 WI 67, ¶102: "[Guidance documents] are not law, they do not have the force or effect of law, and they provide no authority for implementing or enforcing standards or conditions. ... They impose no obligations, set no standards, and bind no one."
[6] Chapter NR 102.51(2)(a), Wis. Admin. Code (emphasis added).
[7] DNR, "WisCALM," p. 10.

Listings Based on Fish Advisories

Once again, DNR has proposed several new listings on the basis of fish consumption advisories for PFOS-contaminated fish tissue (10 new listings in 2026). Our organizations have repeatedly objected to this practice.

The WisCALM guidance states that "Waterbodies may be designated as impaired on the 303(d) list based on the level of fish consumption advice."[8] In turn, that document cites a memorandum from the U.S. Environmental Protection Agency (EPA) which purports to allow the use of fish consumption advisories for section 303(d) water quality determinations.[9] This memorandum is another guidance document, and is *not* a statute or rule.

Again, the Department appears to be disregarding its own regulation, which provides that "Only water quality standards that have been promulgated via statute or rule may be considered for the purposes of listing a waterbody on the section 303(d) list."[10] Agency guidance, whether state or federal, cannot override a state law or rule that directly governs the Department's actions.

Fish advisories, like WisCALM or any other guidance document, are just that: advisory. They are *not* regulatory standards, which must be promulgated under the procedures and protections of the administrative rulemaking process. Neither the Wisconsin Statutes nor the Wisconsin Administrative

Code provide specific fish consumption standards or calculation methods, and neither authority provides for the use of a fish consumption advisory as a water quality standard for the purpose of making a section 303(d) determination.

Listings Based on Degraded Aquatic Vegetation

Once again, DNR has proposed several new listings on the basis of "degraded aquatic vegetation" (formerly, "macrophytes;" 22 new listings in 2026).[11] For the same reasons discussed above and in previous comments, our organizations do not believe that this listing practice, apparently introduced by the Department in 2024, has a legal basis.

Conclusion

Along with EPA, DNR, and the general public, our organizations share the goal of protecting our state's water resources. Yet, good intentions do not relieve the Department of its responsibility to comply with the law. Our members take seriously their obligation to comply with all applicable laws and regulations that govern their activities. Likewise, it is fundamentally important to a democratic society and the rule of law that state agencies comply with the laws and procedures that govern administrative rulemaking and other agency actions. Accordingly, our organizations urge DNR to remove the new waterbody listings discussed above from its final 2026 submission to the EPA. Further, we urge the Department to reconsider listings that were previously made on the same bases.

Thank you for your consideration of these comments. Please contact us with any questions.

Respectfully yours,

Scott Suder
President
Wisconsin Paper Council

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[8] Ibid., p. 60.
[9] U.S. Environmental Protection Agency, "Information Concerning 2026 *Clean Water Act* Sections 303(d), 305(b) and 314 Integrated Reporting and Listing Decisions," January 14, 2025.
[10] Chapter NR 102.51(2)(a), Wis. Admin. Code.
[11] One listing also refers to "excess algal growth" and "eutrophication;" 21 listings reference "degraded aquatic vegetation" exclusively. About half (12) of these listings are also listed as "pollutant unknown."

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