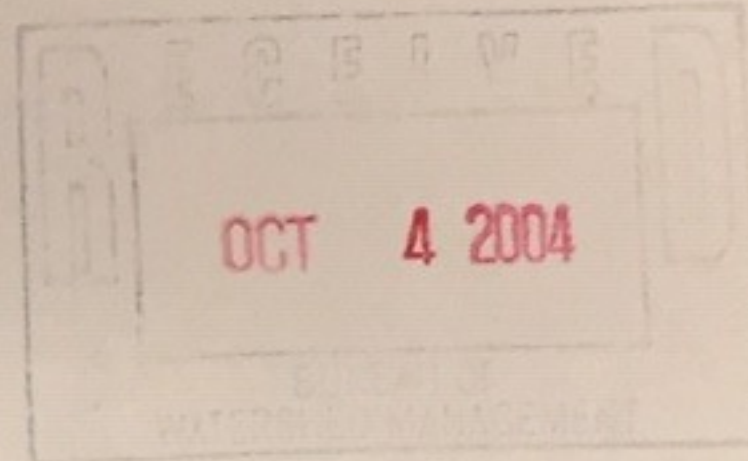




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September 30, 2004

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RE: Municipal Storm Water Permit Legal Opinion

1. I am an Assistant Corporation Counsel for **Dane County** primarily responsible for land use and water resource issues.
2. I reviewed Dane County's ordinances duly adopted under Wisconsin law and compared them with the requirements of pars. (a) through (g) of Condition I B.(7) of WPDES Permit No. WI-S058416-2 to determine whether Dane County has legal authority to:
 - (a) Control the contribution of pollutants to and discharge of pollutants from the Municipal Separate Storm Sewer System (MS4).
 - (b) Prohibit illicit discharges to the MS4.
 - (c) Control the discharge of spills, dumping and disposal of materials other than storm water into the MS4.
 - (d) Require compliance with conditions in ordinances, permits, contracts, orders or administrative rules.
 - (e) Require compliance with the standards of ss. NR 151.11 and 151.23, Wis. Admin. Code, or equivalent local standards.
 - (f) Require compliance with the standards of ss. NR 151.12 and 151.24, Wis. Admin. Code, or equivalent local standards.
 - (g) Carry out all inspections, surveillance and monitoring procedures necessary to determine compliance with permit conditions including the prohibition of illicit discharges to the MS4.
3. Citation of specific Dane County ordinances that provide legal authority required by pars. (a) through (g) of Condition I.B.(7) of WPDES Permit No. WI-S058416-2:
 - a. Dane County Code of Ordinances Chapter 14, Subchapter II, Erosion Control and Stormwater Management

- b. Dane County Code of Ordinances s. 54.04(3), (9) and (12) applying exclusively to the Alliant Energy Center. (Copies attached)
- c. It should be noted that all storm water facilities under county jurisdiction are on county-owned property. Therefore, in addition to the provisions of applicable ordinances the county has authority as owner of the real property to require compliance with the conditions.

4. Legal Opinion:

Based on the foregoing, it is my legal opinion that Dane County has not adequately exercised its legal authority in the manner required by Condition I.B.(7) of WPDES No. WI-S058416-

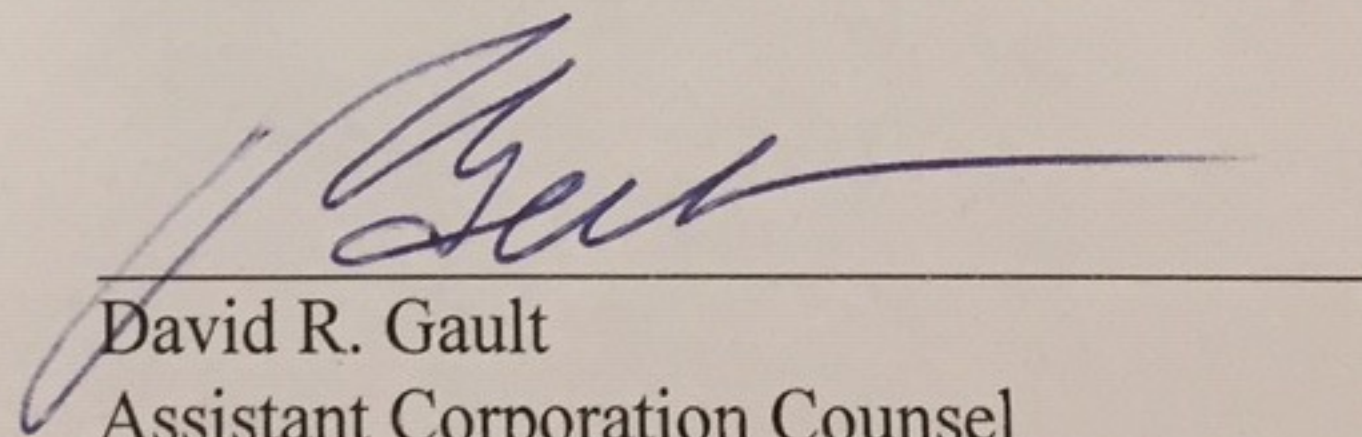
2. In particular, Dane County's ordinances are insufficient as to the following requirements:

(b & c) There currently is no county ordinance that prohibits illicit discharges or controls spills, dumping and disposal of materials other than storm water into MS4 on county owned property, other than the above-referenced ordinances applicable at the Alliant Energy Center.

(e & f) Dane County's Chapter 14, subchapter II substantially complies with the standards of NR 151. However, as set forth in correspondence from Kevin Connors and Susan Jones, dated September 29, 2004 (copy attached), amendments to Chapter 14 have been identified to address concerns raised by DNR staff.

5. I so certify.

Dated this 30th day of September 2004.



David R. Gault
Assistant Corporation Counsel
State Bar No. 1016374