

WISCONSIN LEGAL AUTHORITY REVIEW STATUS 12.29.2016

Issue	Description	Status	Next Steps
RESOLVED ISSUES			
1	SSOs and Bypassing	Approved in EPA Adm. Hedman's 12.2014 letter	None
6	Thermal Limit Exclusion	Approved in EPA Act. Adm. Kaplan's 12.2016 letter	None
9	Analytical Methods	Approved in EPA Act. Adm. Kaplan's 12.2016 letter	None
16	Pretreatment	Approved in EPA Act. Adm. Kaplan's 12.2016 letter	None
18	Permit Application Signatures	Approved in EPA Act. Adm. Kaplan's 12.2016 letter	None
21	Fact Sheets, Specific Conditions	Approved in EPA Act. Adm. Kaplan's 12.2016 letter	None
22	Draft Permits/Other Agencies	Approved in EPA Act. Adm. Kaplan's 12.2016 letter	None
27	New Source Definition	Approved in EPA Act. Adm. Kaplan's 12.2016 letter	None
33	Real Time	Approved in EPA Dir. Hyde's 12.2012 letter	None
45	Permits not Property Interest	Approved in EPA Act. Adm. Kaplan's 12.2016 letter	None
47	Signatory to Permit	Approved in EPA Act. Adm. Kaplan's 12.2016 letter	None
48	Permit Termination, for Violations	Approved in EPA Act. Adm. Kaplan's 12.2016 letter	None
49	Permit Change Notification	Approved in EPA Act. Adm. Kaplan's 12.2016 letter	None
51	Public Hearing Procedures	Approved in EPA Act. Adm. Kaplan's 12.2016 letter	None
54	Storm W. – Def. Plan of Development	Approved in EPA Dir. Hyde's 12.2012 letter	None
62	Permit Suspension	Approved in EPA Act. Adm. Kaplan's 12.2016 letter	None
65	Draft Permit Preparation	Approved in EPA Act. Adm. Kaplan's 12.2016 letter	None
66	Fact Sheets	Approved in EPA Act. Adm. Kaplan's 12.2016 letter	None
68	Compliance Statutory Language	Approved in EPA Dir. Hyde's 12.2012 letter	None
72	Mixing Zone Language	Approved in EPA Dir. Hyde's 12.2012 letter	None
73	Submittal of Mixing Demo	Approved in EPA Dir. Hyde's 12.2012 letter	None
ISSUES IN-HOUSE EPA, UNDER REVIEW			
2	Expression of Limits, 40 CFR 122.45	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4
8	Hg Reasonable Potential	RP 3 submitted by WNDR for review, 10.11.2016	EPA review of RP 3
10	Pollutants in Intake Water	RP 3 submitted by WNDR for review, 10.11.2016	EPA review of RP 3
17	Noncontact Cooling Exempt	RP 3 submitted by WNDR for review, 10.11.2016	EPA review of RP 3
28	Acute Limits	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4
30	Expression of Limits, Ammonia	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4
31	Ammonia, Data/Demonstrations	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4
32	Tier II Value Compliance	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4
34	Expression of Limits, Acute/Chronic	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4
35	Ammonia, WQBEL	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4
36	Ammonia, Antidegradation	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4
37	Ammonia, Compliance Schedule	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4
38	Ammonia, Variance	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4
39	Chlorides, Variance	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4
40	Chlorides, WQBEL	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4
41	Expression of Limits	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4
42	Chlorides, WET	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4
43	Chlorides, Public Water System	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4
70	Alternative Limits	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4

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Issue	Description	Status	Next Steps
71	BCC Mixing Zone Phase Out	RP 3 submitted by WNDR for review, 10.11.2016	EPA review of RP 3
74	WET Testing	RP 4 submitted by WNDR for review, 10.11.2016	EPA review of RP 4

ISSUES IN THE OPENING STAGES OF THE WI RULEMAKING PROCESS

4	Cooling Water Intake	(WY-19-14) language developed	WDNR advances rules to its Nat. Res. Bd. for approval
7	New Source Performance Standards	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
11	Generic Reasonable Potential	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
13	BMP Authority	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
14	Antibacksliding	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
15	General Compliance Schedule	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
20	Adjustment to Tech. Limits	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
29	Solid Waste Leachate	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
44	Point Source Definition	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
46	Expedited Variance	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
61	Application Requirements	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval

ISSUES PROVISIONALLY ADDRESSED BY WDNR, TO BE RESOLVED BY FUTURE RULE CHANGES, STATUTORY CHANGES, OR OTHER ACTIONS

3	Permit Modifications	EPA review concludes that further action is required	Statutory language development ⁶
23	WisDot Storm W. Permitting	EPA review concludes that further action is required	WDNR issues general permit ⁴
26	MS4, MOU Compliance	EPA review concludes that further action is required	WDNR issues general permit ⁵
50	Permit Termination, Notice of Intent	EPA review concludes that further action is required	Statutory language development ⁶
52	Storm W.- Access Roads & Rail Lines	Roads and rails included in Tier 2 General Permit	Rule language development
53	Storm W.- Latitude and Longitude	WDNR modified form 3400-188	Rule language development
55	Storm W.- Illicit Discharge Definition	WDNR submittal, 06.23.2016	Rule language development
57	MS4, Management Program Changes	WDNR modified form 3400-195	Rule language development
67	MS4, Evaluation/Public Records	WDNR modified form 3400-195, and Wis. Stat. §19.35(1) submitted to EPA	Rule language development

ISSUES TO BE RESOLVED BY FUTURE RULE CHANGES, STATUTORY CHANGES, OR OTHER ACTIONS

5	Judicial Review	Issue 5's AGS resolution invalidated by Wis. Ct. App.	Statutory language development
12 ²	Downstream Water Impacts	EPA review concludes that further action is required	Rule or statutory language development
19 ²	Aquatic Production Facility	EPA review concludes that further action is required	Rule or statutory language development
24 ³	Storm W.- Com. /Fam./ Env.	2013 Wis. Act 20 submitted to EPA	Rule language development
25 ³	Storm W.- Authorized Local Program	EPA review concludes that rulemaking is required	Rule language development
56	MS4, Other Government Reliance	WDNR submitted form 3400-195	Further form changes & rule language development
58 ²	Waters of State Definition	EPA review concludes that further action is required	Rule or statutory language development
59 ²	Landfill Exclusion	EPA review concludes that further action is required	Rule or statutory language development
60 ²	Private Fuel Alcohol Production	EPA review concludes that further action is required	Rule or statutory language development
63 ²	False Statements	EPA review concludes that further action is required	Rule or statutory language development
64 ²	Public Participation Enforcement Cases	EPA review concludes that further action is required	Rule or statutory language development
69	Exempt Emergency Wis. Stat. § 283	WDNR and EPA discussions	Statutory language development or other action
75 ²	Adequate Enforcement Authority	EPA review concludes that further action is required	Rule or statutory language development

Notes:

¹Abbreviations: Adm.—Administrator, AGS – Attorney General Statement, BCC – bioaccumulative chemicals of concern, BMP – best management practices, CFR – Code of Federal Regulations, Com.— commercial, Def. – definition, Dir.—Director, Env.— environmental, EPA – Environmental Protection Agency, Fam. – family, Hg—Mercury, MOU – Memorandum of Understanding, MS4 – municipal separate storm sewer system, Nat. Res. Bd. – Natural Resources Board, RP – rule package, SSO – sanitary sewer overflow, Storm W. – storm water, WDNR – Wisconsin Department of Natural Resources, WET – Whole Effluent Toxicity, WI – Wisconsin, WisDot – Wisconsin Department of Transportation, Wis. Ct. App. – Wisconsin Court of Appeals, WQBEL – Water Quality Based Effluent Limits.

² EPA Director Hyde’s December 12, 2012 letter approved this issue’s resolution based on a statement by the Wisconsin Attorney General that cited Wisconsin’s existing, specific authority addressing the issue. However, subsequently the Wisconsin Court of Appeals invalidated the Attorney General Statement’s resolution of Issue 5 (Judicial Review), raising concern about the statement’s efficacy to resolve WI LAR issues generally (2014 WI App 61). Given the Wisconsin Court of Appeals’ ruling, EPA again reviewed this issue and determined that further action is now necessary to ensure that the issue is resolved.

³ EPA is reviewing Midwest Environmental Defense Center (MEDC) v. WDNR, Dane County Case No. 15-CV-2409. In the case, WDNR stipulated that it would not approve any “other environmental programs” under Wis. Admin. Code NR § 216.42(6) and “authorized local programs” under Wis. Admin. Code NR § 216.415(4). If warranted by the review, EPA will change the status of Issues 24 and/or 25 to provisionally addressed, requiring future rulemaking.

⁴ To resolve Issue 23, a general stormwater permit for selected Wisconsin Department of Transportation construction sites must be issued.

⁵ To resolve Issue 26, a general stormwater permit for municipal separate storm sewer system discharges associated with transportation activities must be issued.

⁶ To resolve Issues 3 and 50, Wisconsin must amend Wis. Stat. § 283.63 to allow "any person" to seek review by the department for permit modifications, revocations, reissuances, and terminations.