



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
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CHICAGO, IL 60604-3590

NOV 09 2017

REPLY TO THE ATTENTION OF:

WN-15J

MEMORANDUM

SUBJECT: Wisconsin Legal Authority Review - Review and Recommendation of Resolution for Issue 32

FROM: Candice Bauer, Chief 
NPDES Permits Branch Section 2

TO: File

Issue 32 (Tier II Value Compliance)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 32 stated the following:

Wis. Admin. Code NR § 106.07(8) provides that a permittee may ask for time to be added to compliance schedule to complete work with the intent of modifying limitations based on "secondary" (e.g., Tier II) values. While 40 C.F.R. Part 132, Appx. F, procedure 9, allows time to be added to a compliance schedule for this purpose within the Great Lakes basin, 40 C.F.R. § 122.47 does not allow time to be added outside the basin. The State provision must be modified to clarify that this exception applies only to dischargers within the Great Lakes basin.

Letter from Susan Hedman, Regional Administrator, U.S. EPA, to Cathy Stepp, Secretary, WDNR (July 11, 2011) (on file with U.S. EPA).

Comparison between the Federal and State Provisions

To address Issue 32, Wisconsin amended Wis. Admin. Code NR § 106.07(8), as seen in Table 1 below.

Table 1: Comparison between Federal and Wisconsin Rules on Compliance Schedules for Tier II Value Compliance¹

Federal Rules	Wisconsin's Rules
<p>40 C.F.R. § 132, Appx. F, procedure 9 provides:</p> <p>The Great Lakes States and Tribes shall adopt provisions consistent with (as protective as) procedure 9 of appendix F of part 132.</p> <p>...</p> <p><i>C. Delayed Effectiveness of Tier II Limitations for Existing Great Lakes Discharges.</i></p> <p>1. Whenever a limit (calculated in accordance with Procedure 3) based upon a Tier II value is included in a reissued or modified permit for an existing Great Lakes discharger, the permit may provide a reasonable period of time, up to two years, in which to provide additional studies necessary to develop a Tier I criterion or to modify the Tier II value. In such cases, the permit shall require compliance with the Tier II limitation within a reasonable period of time, no later than five years after permit issuance or modification, and contain a reopener clause.</p> <p>2. The reopener clause shall authorize permit modifications if specified studies have been completed by the permittee or provided by a third-party during the time allowed to conduct the specified studies, and the permittee or a third-party demonstrates, through such studies, that a revised limit is appropriate. Such a revised limit shall be incorporated through a permit modification and a reasonable time period, up to five years, shall be allowed for compliance. If incorporated prior to the compliance date of the original Tier II limitation, any such revised limit shall not be considered less-stringent for purposes of the anti-backsliding provisions of section 402(o) of the Clean Water Act.</p> <p>3. If the specified studies have been completed and do not demonstrate that a revised limit is</p>	<p>Wis. Admin. Code NR § 106.07(8) provides:</p> <p>If the effluent limitation based on a secondary value is established in a permit, the permittee a <u>permittee discharging to the Great Lakes as defined in s. NR 102.22(5)</u> may request that additional time be added to the compliance schedule, according to s. NR 106.117 (2), for the permittee to conduct studies, other than studies for site-specific criteria pursuant to <u>under</u> s. NR 105.02 (1), that are needed to propose a revision to the secondary value upon which the effluent limitation is based. During this time, the permittee may provide additional data necessary to either refine the secondary value or calculate a water quality criterion.</p> <p>Wis. Admin. Code NR § 106.117(2) provides:</p> <p>A reissued or modified permit may include a schedule for compliance with new or more stringent effluent limitations that are established by this chapter. The schedule for compliance shall meet the following conditions:</p> <p>(a) Be as short as reasonably possible;</p> <p>(b) May not extend beyond 5 years from the date that the permit is reissued or modified to include the new or more stringent effluent limitation, except as provided in par. (c);</p> <p>(c) If the effluent limitation is based on a secondary value, the compliance schedule may allow the permittee additional time to conduct studies, other than those for site-specific criteria developed under s. NR 105.02 (1), that are needed to propose a revision to the secondary value upon which the effluent limitation is based. In no case may the compliance schedule for an</p>

¹ Language added to the original regulation is underlined while language removed is ~~struck out~~.

<p>appropriate, the permitting authority may provide a reasonable additional period of time, not to exceed five years with which to achieve compliance with the original effluent limitation.</p> <p>4. Where a permit is modified to include new or more stringent limitations, on a date within five years of the permit expiration date, such compliance schedules may extend beyond the term of a permit consistent with section B.2 of this procedure.</p>	<p>effluent limitation that is based on a secondary value extend beyond 7 years from the date that the permit is reissued or modified to include the effluent limitation;</p> <p>(d) May not allow more than one year between interim compliance dates;</p> <p>(e) May require the permittee to evaluate pollution and waste minimization measures as a means for complying with the effluent limitation; and</p> <p>(f) May extend beyond the expiration date of the permit if an interim permit limit which is effective upon the permit's expiration date is included in the permit.</p>
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As can be seen in Wis. Admin. Code NR § 106.117(2) from the table above, only permittees discharging to the Great Lakes basin may ask for additional time to be added to a compliance schedule for modifying limitations based on Tier II values. This is consistent with the time frames provided in 40 C.F.R. § 132, Appx. F, procedure 9, Part C., thus ensuring that the amended Wis. Admin. Code NR § 106.07(8) is no less stringent than its counterpart federal regulations.

Rule Package 4, Public Notice, Hearing, and Comment

WDNR published a public hearing notice on proposed revisions to Wis. Admin. Code chapters NR 106, 205, and 212 on November 16, 2015 in the Wisconsin Administrative Register. 719A3 Wis. Admin. Register CR15-85 (November 16, 2015). The public comment period was open from November 17 through December 18, 2015, and a public hearing was held in Madison, Wisconsin on December 7, 2015. Wis. Nat. Res. Bd., Agenda Item No. 3.A.3 at 5, Jan. 4 2016, Correspondence/Memorandum, Attachment to Order WT-11-12. At the December 7, 2015 public hearing, two members of the public attended, one providing verbal testimony. *Id.* Additionally, during the comment period, written comments were received from the Wisconsin Legislative Council Rules Clearing House, EPA, Marshfield Wastewater Utility, Municipal Environmental Group – Wastewater Division, and Wisconsin Manufacturers and Commerce. Wis. Nat. Res. Bd., Agenda Item No. 3.A.3 at 1, Jan. 4 2016, Response to Comments on Rule Package WT-11-12 [Rule Package 4], Attachment to Order WT-14-12. WDNR responded to the written comments in a written response summary, which adequately explained the reasons why certain rule changes were made in response to comments received and why other comments did not warrant changes. *Id.*

Conclusion

Based on EPA's review of Wisconsin's provisions above, EPA concludes that Issue 32 is resolved.