



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

NOV 09 2017

WN-15J

MEMORANDUM

SUBJECT: Wisconsin Legal Authority Review - Review and Recommendation of Resolution for Issue 37

FROM: Candice Bauer, Chief *Candice Bauer*
NPDES Permits Branch Section 2

TO: File

Issue 37 (Ammonia, Compliance Schedule)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 37 stated the following:

Wis. Admin. Code NR § 106.37(1) allows compliance schedules greater than five years when an ammonia variance has been granted. 40 C.F.R. § 122.47 provides that a permit may include a compliance schedule when appropriate. It is not appropriate to provide a compliance schedule to meet an effluent limitation based on a variance from water quality standards. Therefore, the State provision needs to be modified to remove the possibility that a compliance schedule can be used to meet an effluent limitation that is based on a variance from water quality standards.

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

The federal regulations provide that, "The permit may, when appropriate, specify a schedule of compliance leading to compliance with CWA and regulations." 40 C.F.R. § 122.47(a). Further, 40 C.F.R. § 122.47(a)(1) provides that, "Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA [5 years]." Importantly, under the federal rules, compliance schedules cannot be used to meet effluent limitations based on a variance. However, originally Wis. Admin. Code NR § 106.37(1) allowed for compliance schedules based on a variance for greater than five years. To address Issue 37, WDNR amended Wis. Admin. Code § 106.37(1) as follows:¹

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

NR 106.37 (1) Schedules of compliance. The department shall determine and specify a reasonable compliance schedule in the WPDES permit if the permittee is unable to meet the ammonia effluent limits determined according to this subchapter at the time of permit reissuance. The department shall establish the term of the compliance schedule on a case-by-case basis ~~and shall consider~~ consistent with the requirements in s. NR 106.117.² When establishing a compliance schedule, the department shall consider factors such as necessary planning, complexity of wastewater treatment issues, scope of construction, equipment delivery time, and construction seasons in establishing a schedule. In no circumstance may the date of compliance with the limits extend more than 5 years after the date of permit reissuance, ~~unless a variance has been granted pursuant to s. NR 106.38.~~

As can be seen above, Wisconsin amended Wis. Admin. Code NR § 106.37(1) to remove the possibility of having a compliance schedule in a permit for a term greater than five years. The amended rule also removes the allowance of a compliance schedule in a permit to meet an effluent limitation based on a variance from water quality standards. Thus, by amending Wis. Admin. Code NR § 106.37(1), WDNR aligned this Wisconsin regulation with its federal counterpart 40 C.F.R. § 122.47.

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 37 is resolved.

² Any inconsistencies between Wis. Admin. Code NR § 106.117 and 40 C.F.R. § 122.47—counterpart regulations that address compliance schedules—are the subject of Wisconsin Legal Authority Review Issue 15.