



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 41

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

TO: File

Issue 41 (Expression of Limits)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 41 stated the following:

Wis. Admin. Code NR § 106.88(4) provides that effluent limitations based on acute criteria shall be expressed as daily maxima and limitations based on chronic criteria shall be expressed as weekly averages. For continuous dischargers, 40 C.F.R. § 122.45(d) provides that effluent limitations shall be expressed as seven-day average and average monthly limits for POTWs; and maximum daily and average monthly limits for other dischargers. Under what authority can Wisconsin supplement limits that are expressed in accordance with Wis. Admin. Code NR § 106.88(4) such that permits comply with the requirement of 40 C.F.R. § 122.45(d)? If such authority does not exist, the response to this letter must include the State's plan, with a schedule and milestones, to bring its regulation into conformity with the federal rule.

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To address Issue 41, concerning the expression of effluent limitations, Wisconsin repealed Wis. Admin. Code NR § 106.88(4) and amended Wis. Admin. Code NR § 106.07. Wis. Admin. Code NR § 106.07(3) now addresses the expression of concentration limitations in permits for continuous discharges from POTWs subject to ch. NR 210 while Wis. Admin. Code NR § 106.07(4) addresses the expression of concentration limitations in permits for continuous discharges from non-POTWs (not subject to ch. NR 210). The Wisconsin rules in question and their federal counterparts are compared in Table 1, below.

Table 1: Comparison between Federal and Wisconsin Rules regarding Expression of Limits

Federal Rules	Wisconsin's Rules
<p>40 C.F.R. § 122.45 provides:</p> <p>...</p> <p>(d) Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:</p> <p>(1) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and</p> <p>(2) Average weekly and average monthly discharge limitations for POTWs.</p>	<p>Wis. Admin. Code NR § 106.07 provides:</p> <p>...</p> <p>(3) EXPRESSION OF CONCENTRATION LIMITATIONS IN PERMITS FOR CONTINUOUS DISCHARGES SUBJECT TO CH. NR 210.</p> <p>(a) <i>Applicability.</i> The procedures for expressing limitations in permits in this subsection apply to continuous discharges subject to ch. NR 210 when there is reasonable potential under s. NR 106.05 to exceed a water quality-based effluent limitation based on fish and aquatic life protection, human health, or wildlife protection that is calculated under s. NR 106.06. This subsection does not apply if another provision in this chapter or another Wisconsin administrative code chapter requires a different time period for expressing limits for a specific pollutant, type of discharge, or parameter, or if the department determines that expression of limitations in accordance with this subsection is impracticable under sub. (10). Note: An example of a different time period for expressing limits for a specific pollutant or parameter is WET limitations as specified in s. NR 106.09.</p> <p>(b) <i>Expression of water quality-based effluent limitations based on acute criterion.</i> If there is reasonable potential under s. NR 106.05 to exceed a water quality-based effluent limitation calculated under s. NR 106.06 for a pollutant that is based on an acute criterion or secondary value, that limitation shall be expressed as a daily maximum and included in the permit.</p> <p>(c) <i>Expression of water quality-based effluent limitations based on chronic criterion.</i> If there is reasonable potential under s. NR 106.05 to exceed a water quality-based effluent limitation calculated under s. NR 106.06 for a pollutant that is based on a chronic criterion or secondary value that limitation shall be expressed as a weekly average and included in the permit.</p> <p>(d) <i>Expression of water quality-based effluent limitations based on human health or wildlife criterion.</i> If there is reasonable potential under s. NR 106.05 to exceed a water quality-based effluent limitation calculated under s. NR 106.06 for a pollutant that is based on a human health or wildlife criterion or secondary value that limitation shall be expressed as a monthly average and included in the permit.</p>

(e) *Additional permit limitations.* Both a weekly average and monthly average permit limitation shall be included in a permit for a pollutant whenever any water quality-based effluent limitation for that pollutant is determined necessary under pars. (b) to (d). A daily maximum limitation shall be included in a permit in addition to the weekly average and monthly average limitation if the daily maximum limitation is determined necessary under par. (b). The department shall use all of the following procedures to include weekly average and monthly average limitations in permits:

1. If a daily maximum limitation is the only limitation determined necessary for a pollutant under s. NR 106.05, a weekly average and monthly average limitation shall still be included in the permit and shall be set equal to the daily maximum limitation or the calculated weekly average and monthly average water quality-based effluent limitations, whichever is more restrictive.
2. If a weekly average limitation is determined necessary for a pollutant under s. NR 106.05, but a monthly average limitation is not determined necessary for that pollutant in the permit under s. NR 106.05, a monthly average limitation shall still be included in the permit and shall be set equal to the weekly average limitation or the monthly average water quality-based effluent limitation calculated under s. NR 106.06, whichever is more restrictive. A daily maximum limitation shall be included if deemed necessary under s. NR 106.05.
3. If a daily maximum and monthly average limitation are determined necessary in a permit for a pollutant under s. NR 106.05, but a weekly average limit is not necessary for that pollutant under s. NR 106.05, a weekly average limitation shall still be included in the permit for the pollutant and shall be set equal to the daily maximum limitation or the weekly average water quality-based effluent limitation calculated under s. NR 106.06, whichever is more restrictive.
4. If a monthly average limitation is the only limitation determined to be necessary for a pollutant under s. NR 106.05, a weekly average limitation shall still be included in the permit and shall be set equal to the weekly average water quality-based effluent limitation calculated under s. NR 106.06, or a weekly average limitation. . . .

(4) EXPRESSION OF CONCENTRATION LIMITATIONS IN PERMITS FOR CONTINUOUS DISCHARGES NOT SUBJECT TO CH. NR 210.

(a) *Applicability.* The procedures for expressing limitations in this subsection apply to continuous discharges that are not subject to ch. NR 210 and when there is reasonable potential under s. NR 106.05 to exceed a water quality-based effluent limitation based on fish and aquatic life protection, human health, or wildlife protection that is calculated under s. NR 106.06. This subsection does not apply if another provision in this chapter or another Wisconsin administrative code chapter requires a different time period for expressing limits that is specific to a pollutant, type of discharge, or other parameter, or if the department determines that expression of limitations in accordance with this subsection is impracticable under sub. (10).

Note: An example of a different time period for expressing limits for a specific pollutant or parameter is WET limitations as specified in s. NR 106.09.

(b) *Expression of water quality-based effluent limitations based on acute criterion.* If there is reasonable potential under s. NR 106.05 to exceed a water quality-based effluent limitation calculated under s. NR 106.06 for a pollutant that is based on an acute criterion or secondary value that limitation shall be expressed as a daily maximum and included in the permit.

(c) *Expression of water quality-based effluent limitations based on chronic criterion.* If there is reasonable potential under s. NR 106.05 to exceed a water quality-based effluent limitation calculated under s. NR 106.06 for a pollutant that is based on a chronic criterion or secondary value that limitation shall be expressed as a weekly average and included in the permit.

(d) *Expression of water quality-based effluent limitations based on human health or wildlife criterion.* If there is reasonable potential under s. NR 106.05 to exceed a water quality-based effluent limitation calculated under s. NR 106.06 for a pollutant that is based on a human health or wildlife criterion or secondary value that limitation shall be expressed as a monthly average and included in the permit.

(e) *Additional permit limitations.* Both a daily maximum and monthly average permit limitation shall be included in a permit for a pollutant whenever any water quality-based effluent limitation for that pollutant is determined

	<p>necessary under pars. (b) to (d). A weekly average limitation shall be included in a permit in addition to daily maximum and monthly average limitation if the weekly average limit is determined necessary under par. (c). The department shall use all of the following procedures to include daily maximum and monthly average limitations in permits:</p> <ol style="list-style-type: none"> 1. If a daily maximum limitation is the only limitation determined necessary for a pollutant under s. NR 106.05, a monthly average limitation shall still be included in the permit and set equal to the daily maximum limitation or the monthly average water quality-based effluent limitation calculated under s. NR 106.06, whichever is more restrictive. 2. If a weekly average limitation is the only limitation determined necessary for a pollutant under s. NR 106.05 a monthly average limitation shall still be included in the permit and shall be set equal to the weekly average limitation or the monthly average water quality-based effluent limitation calculated under s. NR 106.06, whichever is more restrictive. A daily maximum limitation shall also be included in the permit and set equal to the daily maximum water quality-based effluent limitation calculated under s. NR 106.06 or a daily maximum limitation. . . .
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As shown above, Wis. Admin. Code NR § 106.07 as amended provides Wisconsin the authority to express effluent limitations for continuous discharges from POTWs as weekly average and monthly average permit limitation, and for continuous discharges from non-POTWs as maximum daily and average monthly limits. Although Wis. Admin. Code NR § 106.88(1)(a) states that chloride limits should be expressed as daily max for acute criterion and weekly average for chronic criterion, Wis. Admin. Code NR § 106.88(1)(b) states that effluent limits shall be expressed consistent with Wis. Admin. Code NR §§ 106.07(3) – (5). Taken as a whole, WDNR’s modification of its rules concerning effluent limitation expression aligns them with their federal counterparts at 40 C.F.R. § 122.45(d).

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 41 is resolved.