



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 70

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

TO: File

Issue 70 (Alternative Limits)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 70 stated the following:

Wis. Admin. Code NR §106.05(8) provides that a permittee may request "alternative limits" when an analytical test method is not sufficiently sensitive, despite a determination by the State that the discharge may cause or contribute to an excursion beyond the applicable water quality standards. Any permit that included such limits would not conform to § 301(b)(1)(C) of the Clean Water Act and 40 C.F.R. § 122.44(d). In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the State's Attorney General.

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To address Issue 70, Wisconsin repealed and recreated Wis. Admin. Code NR § 106.05(8) to conform with the Clean Water Act Section 301(b)(1)(C) and to be in line with 40 C.F.R. § 122.44(d), as shown in Table 1 below.

Table 1: Comparison between Previous and Current Wisconsin Rules regarding Alternative Limits

Previous	Current
<p>Wis. Admin. Code NR § 106.05(8) provided:</p> <p>When the provisions of this section cannot be invoked because representative discharge data are not available for a substance, water quality based effluent limitations may be established if, in the judgment of the department, water quality standards will be exceeded if the discharge from the point source is not limited. If, in the judgment of the department, the discharge from a point source may exceed the water quality standards, but the collection of representative discharge data is not possible due to the inability of the most sensitive approved method to quantify discharge levels and, in the judgment of the department the application numeric effluent limitations in a permit is infeasible or impractical, then the permittee may request an alternative to a numerical effluent limitation. The alternative shall consist of a permit requirement to conduct a cost-effective pollutant minimization program as specified in s. NR 106.04(5). Approved methods are those specified in ch. NR 219 or 40 CFR part 136.</p> <p>Note: A department guidance document finalized in May 1996, entitled "Wisconsin Strategy for Regulating Mercury in Wastewater", describes how the department evaluates whether an effluent limitation or a pollutant minimization program for mercury is appropriate.</p>	<p>Wis. Admin. Code NR § 106.05(8) provides:</p> <p>If representative discharge data are not available for a substance, the department may include water quality-based effluent limitations in a permit if, in the judgment of the department, water quality standards will be exceeded if the discharge of the substance is not limited.</p>

As can be seen in Table 1 above, recreated Wis. Admin. Code NR § 106.05(8) no longer allows permittees to request "alternative limits." Moreover, WDNR may now include water quality based effluent limitations in a permit when the current water quality standards would be exceeded if the discharge is not limited, even though representative discharge data are not available for this substance. Given WDNR's modification of Wis Admin. Code § 106.05(8), it is now consistent with both the Clean Water Act and 40 C.F.R. § 122.44(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 70 is resolved.