



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

DEC 21 2017

REPLY TO THE ATTENTION OF:  
WN-15J

MEMORANDUM

**SUBJECT:** Wisconsin Legal Authority Review - Review and Recommendation of Resolution for Issue 3

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

**TO:** File

### Issue 3 (Permit Modifications)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 3 stated the following:

The federal rule at 40 C.F.R. §§ 124.5 (a), (c) and (d) provides a process for the modification, revocation and reissuance, or termination of permits. § 124.5(a) allows "interested persons" to request these actions in writing; § 124.5(c) provides a process for issuance of a modified permit; and § 124.5(d) provides a process for permit termination. Wisconsin's provisions at Wis. Stat. §§ 283.53(2) and 283.63, and in Wis. Admin. Code NR § 203, do not allow an "interested person" to request modification, revocation and reissuance, or termination of permits, and therefore the State's rules appear to functionally restrict the class of individuals that may seek review of a permit. Additionally, Wisconsin's regulations do not appear to provide a mechanism for the termination of a permit (. . .). The State must modify its statute and/or rule to include a provision equivalent to 40 C.F.R. § 124.5, or document the specific basis on which the State has the necessary authority to implement the regulatory provision as described.

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

### Analysis

To address Issue 3, WDNR issued Wis. Admin. Code NR §§ 203.135 and 203.136 which set forth a process for the modification, revocation and reissuance, or termination of NPDES permits, and the State also revised Wis. Stat. § 283.53(2). (The State's rule revisions relating to permit termination are separately addressed in Issue 50.)

In EPA's December 29, 2016 letter to the WDNR Secretary, we stated that "EPA has determined that the modifications made to Wisconsin's regulations . . . related to Issues 3 (and others) conform to applicable federal NPDES program regulations." Letter from Robert Kaplan, Acting Regional Administrator, U.S. EPA, to Cathy Stepp, Secretary, WDNR (December 29, 2016) (on file with U.S. EPA). This letter further stated that "EPA has determined that to fully resolve Issues 3 and 50, which cover provisions for the modification, revocation and reissuance, and termination of permits, and which both rely on the review procedures specified in Wis. Stat. § 283.63, Wisconsin must amend Wis. Stat. § 283.63 to allow "any person" to seek review by the department for these actions." Id.

In response to this request for clarification, WDNR provided an extensive comparison of the Wisconsin regulations that are analogous to the provisions at 40 C.F.R. § 124.5(a), (c), and (d). Email from Robin Nyffeler, WDNR, to Barbara Wester, U.S. EPA (September 6, 2017) with attachment (on file with U.S. EPA) and further clarified that the judicial review provisions (that the State is separately seeking to address through legislative change (Issue 5)) are separate from the provisions underlying requests for seeking public hearings. The additional information considered by EPA is included in this memorandum. See Appendix 1. Table 1 compares the Federal and State regulations.

Table 1: Comparison between Federal and Wisconsin's Regulations

Federal Regulations	Wisconsin's Regulations
<p><b>40 C.F.R. § 124.5 - Modification, revocation and reissuance, or termination of permits.</b></p> <p>(a) <i>(Applicable to State programs, see §§123.25 (NPDES) . . . .)</i> Permits . . . may be modified, revoked and reissued, or terminated either at the request of any interested person (including the permittee) or upon the Director's initiative. However, permits may only be modified, revoked and reissued, or terminated for the reasons specified in §122.62 or §122.64 (NPDES) . . . . All requests shall be in writing and shall contain facts or reasons supporting the request.</p> <p>...</p>	<p><b>Wis. Admin. Code NR § 203.135 - Modification, revocation and reissuance, or termination of permits.</b></p> <p>(1) GENERAL. The department may modify, revoke and reissue, or terminate a permit upon request of any interested person, including the permittee, or upon the department's initiative. Permits may only be modified, revoked and reissued, or terminated for one of the causes listed in s. NR 203.136. If cause exists, the department may request an updated application if necessary.</p> <p>...</p> <p>(3) REQUESTS. Permits may be modified, revoked and reissued, or terminated at the request of any interested person, including the permittee. All requests for a modification, revocation and reissuance, or termination by a permittee or interested person shall be in writing and shall contain facts or reasons supporting the request.</p> <p>...</p>

(c) *(Applicable to State programs, see 40 CFR 123.25 (NPDES) . . .)* (1) If the Director tentatively decides to modify or revoke and reissue a permit under 40 CFR 122.62 (NPDES) . . . he or she shall prepare a draft permit under §124.6 incorporating the proposed changes. The Director may request additional information and, in the case of a modified permit, may require the submission of an updated application. In the case of revoked and reissued permits, . . . the Director shall require the submission of a new application. . . .

(2) In a permit modification under this section, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. When a permit is revoked and reissued under this section, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

...  
(d) *(Applicable to State programs, see §§123.25 (NPDES) of this chapter . . .)* (1) If the Director tentatively decides to terminate: A permit . . . under §§122.64(a) (NPDES) of this chapter . . . or a permit under §122.64(b) (NPDES) of this chapter where the permittee objects, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under §124.6 of this chapter.

(5) PERMIT ACTION PROCEDURES. (a) If the department tentatively decides to modify or revoke and reissue a permit the department shall prepare a draft permit under s. NR 200.11 incorporating the proposed changes. For a permit modification, the department may request additional information and may require the submission of an updated application. For revoked and reissued permits, the department shall require the submission of a new application. The department shall follow the public notice, comment and hearing procedures in ch. NR 203 with respect to its intention to modify, or revoke and reissue a permit, except as otherwise provided in this section.

(b) In a permit modification only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the existing permit. When a permit is revoked and reissued, the entire permit is reopened just as if the permit had expired and was being reissued for a new term. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(6) TERMINATION. (a) Except as provided in paragraph (b), if the department tentatively decides to terminate a permit, the department shall issue a notice of intent to terminate. A notice of intent to terminate is subject to the same procedures as a draft permit prepared under s. NR 200.11.

**40 C.F.R § 122.62 - Modification or revocation and reissuance of permits (applicable to State programs, see §123.25).**

When the Director receives any information (for example, inspects the facility, receives information submitted by the permittee as required in the permit (see §122.41), receives a request for modification or revocation and reissuance under §124.5, or conducts a review of the permit file) he or she may determine whether or not one or more of the causes listed in paragraphs (a) and (b) of this section for modification or revocation and reissuance or both exist. If cause exists, the Director may modify or revoke and reissue the permit accordingly, subject to the limitations of §124.5(c), and may request an updated application if necessary. When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term. See §124.5(c)(2). If cause does not exist under this section or §122.63, the Director shall not modify or revoke and reissue the permit. If a permit modification satisfies the criteria in §122.63 for "minor modifications" the permit may be modified without a draft permit or public review. Otherwise, a draft permit must be prepared and other procedures in part 124 (or procedures of an approved State program) followed.

(a) *Causes for modification.* The following are causes for modification but not revocation and reissuance of permits except when the permittee requests or agrees.

(1) *Alterations.* There are material and substantial alterations or additions to the permitted facility or activity (including a change or changes in the permittee's sludge use or disposal practice) which occurred after permit issuance which justify the application of permit

**Wis. Admin. Code NR § 203.136 - Causes for a modification, revocation and reissuance, or termination.**

(1) MODIFICATION. The department may modify a permit for any of the following causes:

(a) *Changes to facility or discharge.* There are material and substantial alterations or additions to the permitted facility or activity, including changes in sludge use or disposal which occurred after permit reissuance which would justify the application of different permit conditions or the addition of permit conditions.

conditions that are different or absent in the existing permit.

NOTE: Certain reconstruction activities may cause the new source provisions of §122.29 to be applicable.

(2) *Information.* The Director has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For NPDES general permits (§122.28) this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger NPDES permits (§§122.21, 122.29), this cause shall include any significant information derived from effluent testing required under §122.21(k)(5)(vi) or §122.21(h)(4)(iii) after issuance of the permit.

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(i) For promulgation of amended standards or regulations, when:

(A) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved or promulgated water quality standards, or the Secondary Treatment Regulations under part 133; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a State action with regard to a water quality standard on which the permit condition was based; and

(C) A permittee requests modification in accordance with §124.5 within ninety (90) days

(b) *New information.* The department has received new information, other than revised regulations, guidance or test methods, that was not available at the time of permit issuance or reissuance and that would have justified different permit terms or conditions.

(c) *New regulations or standards.* After permit issuance or reissuance, the standards or regulations have changed and a permittee has requested a change in a timely manner, or a judicial decision stays or remands an applicable standard or regulation that requires a change to the permit. For purposes of this paragraph, a changed standard or regulation means a change in an effluent limitation guideline, a change in secondary treatment regulations, or a change in a water quality standard that has been approved by EPA.

after FEDERAL REGISTER notice of the action on which the request is based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with §124.5 within ninety (90) days of judicial remand.

(iii) For changes based upon modified State certifications of NPDES permits, see §124.55(b).

(4) *Compliance schedules.* The Director determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may an NPDES compliance schedule be modified to extend beyond an applicable CWA statutory deadline. See also §122.63(c) (minor modifications) and paragraph (a)(14) of this section (NPDES innovative technology).

(5) When the permittee has filed a request for a variance under CWA section 301(c), 301(g), 301(h), 301(i), 301(k), or 316(a) or for "fundamentally different factors" within the time specified in §122.21 or §125.27(a).

(6) *307(a) toxics.* When required to incorporate an applicable 307(a) toxic effluent standard or prohibition (see §122.44(b)).

(7) *Reopener.* When required by the "reopener" conditions in a permit, which are established in the permit under §122.44(b) . . .

(d) *Judicial decision.* A decision from an administrative law judge or judicial court, or a signed stipulation to resolve a s. 283.63, Stats., contested case hearing, specifies a change to a permit term or condition that was the subject of the contested case hearing or judicial proceeding.

(e) *Compliance schedules.* The department determines good cause exists for modification of the compliance schedule such as events over which the permittee has little or no control and for which there is no reasonably available remedy. The department may also modify a compliance schedule to reflect time lost during construction of an innovative or alternative facility. The compliance schedule may not be modified to extend beyond the deadlines established under state and federal law.

(f) *Variances.* If a permittee has filed a variance request to an effluent limitation or thermal discharge, or a variance from a technology based effluent limit based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based.

(g) *Toxics.* When required to incorporate an applicable toxic effluent standard or prohibition.

(h) *Reopener.* When required by a provision in the permit that requires a modification or reopening of the permit.

<p>(8)(i) <i>Net limits.</i> Upon request of a permittee who qualifies for effluent limitations on a net basis under §122.45(g).</p> <p>(ii) When a discharger is no longer eligible for net limitations, as provided in §122.45(g)(1)(ii).</p> <p>(9) <i>Pretreatment.</i> As necessary under 40 CFR 403.8(e) (compliance schedule for development of pretreatment program).</p> <p>(10) <i>Failure to notify.</i> Upon failure of an approved State to notify, as required by section 402(b)(3), another State whose waters may be affected by a discharge from the approved State.</p> <p>(11) <i>Non-limited pollutants.</i> When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under §125.3(c).</p> <p>(12) <i>Notification levels.</i> To establish a "notification level" as provided in §122.44(f).</p> <p>[40 C.F.R. § 122.44(f) provides for a, "notification level" which exceeds the notification level of § 122.42(a)(1)(i), (ii) or (iii), upon a petition from the permittee or on the Director's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c)."]</p> <p>(13) <i>Compliance schedules.</i> To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility, in the case of a POTW which has received a grant under section 202(a)(3) of CWA for 100% of the costs to modify or replace facilities constructed with a grant for innovative and alternative wastewater technology under</p>	<p>(i) <i>Net limits.</i> Upon the request of a permittee for an adjustment to a technology based limitation based on pollutants in the intake water, provided the permittee qualifies for the limit adjustment, or the department may modify a technology based limitation based on an intake credit if the permittee no longer qualifies for the adjustment.</p> <p>(j) <i>Pretreatment.</i> When necessary to establish a compliance schedule for development of a pretreatment program.</p> <p>(k) <i>Failure to notify.</i> Upon failure of the department to notify another state whose waters may be affected by the discharge.</p> <p>(l) <i>Non-limited pollutants.</i> When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements applicable to the permittee.</p> <p>[See Wis. Admin. Code NR § 203.136(1)(l) above.]</p> <p>[See Wis. Admin. Code NR § 203.136(1)(e) above.]</p>
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section 202(a)(2). In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

(14) For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in §122.34(b) when:

- (i) The permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s); and
- (ii) The other entity fails to implement measure(s) that satisfy the requirement(s).

(15) To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

(16) When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under section 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

(17) *Nutrient Management Plans*. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit in accordance with §§122.23(h) and 122.28 is not a cause for modification pursuant to the requirements of this section.

[Outside the scope of this Issue.]

(m) *Errors*. To correct technical mistakes such as errors in calculations or mistakes in applying pertinent regulations to permit terms and conditions.

(n) *Unable to achieve effluent limitation*. Where the permittee has installed a treatment technology considered by the permit writer in setting effluent limitations, and where the permittee has properly operated and maintained its treatment facilities, but nevertheless has been unable to achieve compliance with those effluent limitations, the department may modify the limitations to reflect the level of pollutant control actually achieved, but in no case be less stringent than a subsequently promulgated effluent limitations guideline.

[Not within the scope of the Legal Authority Review.]

<p>(18) <i>Land application plans.</i> When required by a permit condition to incorporate a land application plan for beneficial reuse of sewage sludge, to revise an existing land application plan, or to add a land application plan.</p> <p>(b) <i>Causes for modification or revocation and reissuance.</i> The following are causes to modify or, alternatively, revoke and reissue a permit:</p> <p>(1) Cause exists for termination under §122.64, and the Director determines that modification or revocation and reissuance is appropriate.</p> <p>(2) The Director has received notification (as required in the permit, see §122.41(l)(3)) of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer (§122.61(b)) but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.</p>	<p>(o) <i>Land application plans.</i> When required by a permit condition to incorporate a land application plan for beneficial reuse for sewage sludge or other biosolids, to revise an existing land application plan or to add a land application.</p> <p>(p) <i>Transfer of permit.</i> To reflect a change in ownership or operator of a permitted facility. A transfer of a permit to a new owner or operator is subject to all of the following procedures: To reflect a change in ownership or operator of a permitted facility . . . .</p> <p>(q) <i>Other.</i> One of the causes for termination in sub. (3) exists and the department determines that a modification is more appropriate than termination.</p> <p>(2) <b>REVOCATION AND REISSUANCE.</b> The department may revoke and reissue a permit for any of the following causes:</p> <p>(a) For any of the causes for a modification listed in sub. (1) provided the permittee agrees to the revocation and reissuance.</p> <p>(b) Based on one of the causes for termination in sub. (3) if the department determines that a revocation and reissuance is the appropriate action to take.</p>
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As outlined above, WDNR addressed Issue 3 by creating analogues in its rules comparable to the federal requirements. Wisconsin's regulations now allow "interested persons" to request in writing the modification, revocation and reissuance, or termination of an NPDES permit; provide a process for issuance of a modified NPDES permit as well as the termination of such permit; and list the causes that may result in a permit modification, revocation and reissuance, or termination. Wis. Admin. Code NR §§ 203.135 and 203.136 are now consistent with the requirements set forth in 40 C.F.R. §§ 124.5 (a), (c), and (d).

The State also amended Wis. Stat. § 283.53(2h) to provide for the termination of an NPDES by WDNR with the consent of the permittee without having to follow the procedures in Wis. Stat. §§ 283.53(2)(b) to (f) and 283.63.

## Rule Package 6, Public Notice, Hearing, and Comment

WDNR published a public hearing notice on proposed revisions to Wis. Admin. Code chapters NR 200, 201, 203, and 205 on March 31, 2014 in the Wisconsin Administrative Register. 699 Wis. Admin. Reg. 37 (March 31, 2014). The public comment period was open from April 1 through May 12, 2014, and a public hearing was held in Madison, Wisconsin on May 1, 2014. Wis. Nat. Res. Bd., Agenda Item No. 3.A.1 at 2, Jan. 8, 2015, Correspondence/Memorandum Attachment to Order WT-13-12. At the May 1, 2014 public hearing, no one appeared in person. Id. Two entities, other than the Wisconsin Legislative Council Rules Clearing House, provided written comments: Stafford Rosenbaum Attorneys and Wisconsin Electric Power Company. Wis. Nat. Res. Bd., Agenda Item No. 3.A.1 at 2, Jan. 8, 2015, Response to Comments on Rule Package 6, Attachment to Order WT-13-12. WDNR responded to the written comments in a written response summary, which adequately explained the reasons for accepting all changes suggested by the written comments. Id.

### Conclusion

Based on the above review of the Wisconsin's provisions, EPA concludes that Issue 3 is resolved.

### Additional Note

EPA recommends that the State add "termination" to the heading for Wis. Stat. § 283.53.

## Appendix 1

Email from Robin Nyffeler, WDNR, to Barbara Wester, U.S. EPA (September 6, 2017) attachment:

EPA has stated that Issues 3 and 50 and Issue 5 are interrelated and therefore Issues 3 and 50 cannot be resolved until statutory changes are made for Issue 5. WDNR believes that Issues 3 and 50 are separate from Issue 5 and can be resolved independently. Issues 3 and 50 are based on the requirements in 40 CFR 124.5(a), (c), and (d). These federal requirements establish permitting procedures and requirements BEFORE a final decision is made regarding a permit modification, termination or revocation and reissuance. Issue 5, however, applies to the requirements in 40 CFR 123.30 which involve appeal rights/judicial review AFTER a permitting agency has made a final decision on a permit modification, termination, revocation and reissuance, or denial. Put another way, Issue 3 (40 CFR 124.5(a)(c) and (d)) covers the right of an interested person to request a permit modification, termination or revocation and reissuance, but it does not involve the right a person to seek "review of the permit" once a final decision is made. The federal requirements for review of the permit are found in 40 CFR 123.30 (Issue 5). For Issues 3 and 50, the WDNR believes the following rules and statutes satisfy the requirements in 40 CFR 124.5(a), (c) and (d):

- **40 CFR 124.5 (a):** Permits MAY be modified, revoked and reissued, or terminated either at the request of any interested person or upon the Director's initiative. However, permits may only be modified, revoked and reissued or terminated for the reasons specified in 40 CFR 122.62, 122.64. All requests shall be in writing and shall contain facts or reasons for supporting the request.
  - **DNR Statute and Rule:** Wis. Stat. s. 283.53(2) and Wis. Adm. Code ss. NR 203.135 and NR 203.136
- **40 CFR 124.5 (b):** If the Director decides the request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice comment or hearings. Denial by regional administrator may be informally appealed to the Environmental Appeals Board by letter. If appeal board takes no action, then petitioner may seek judicial review. As discussed below, this federal requirement does not apply to state programs.
  - **DNR Statute and Rule:** 40 CFR 124.5(b) does involve the appeal of a permit decision – denial of a request for a permit modification, revocation and reissuance or termination of a permit, but this requirement does not apply to state programs pursuant to 40 CFR s. 123.25, and therefore this specific paragraph was not cited in Issue 3 and 50. Although this requirement does not apply to Wisconsin, the WDNR provides the following information to EPA: If WNDNR's **denied** a request for a modification, revocation and reissuance, or termination of a permit, an interested person could appeal that decision pursuant to Wis. Stat. s. 227.42 or seek judicial review under Wis. Stat. s. 227.52. These appeal procedures do NOT require a petition of five or more persons under Wis. Stat. s. 283.63 (NOTE: See Wis. Adm. Code s. NR 203.135(4) and the specific scope of contested case hearings under Wis. Stat. 283.63). Alternatively, if the WDNR **granted** a request to

modify, terminate, or revoke and reissue a permit (or denied a permit to a permit applicant), then the right to appeal the decision to modify, terminate or revoke and reissue a permit would be subject to the petition requirements in Wis. Stat. 283.63.

Note: 40 CFR 122.5(b) does not cover appeal rights of decisions to grant individual requests for modification, termination or revocation and reissuance.

- **40 CFR 124.5 (c)** If the Director decides to modify or revoke and reissue a permit under 40 CFR 122.62, the Director shall prepare a draft permit under 40 CFR s 124.6 incorporating the proposed changes. For decisions to modify a permit, the Director may request additional information in an updated application, or for a revocation and reissuance, the Director shall require submittal of a new application. In a permit modification, only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit. For a revocation and reissuance, the entire permit is reopened just as if the permit had expired and was being reissued. During any revocation and reissuance, the existing permit is in effect and the permittee shall comply with the existing permit conditions until a new permit is reissued.
  - **DNR Statute and Rule:** Wis. Adm. Code NR 203.135(5)
  
- **40 CFR 124.5(d)** If the Director tentatively decides to terminate a permit under 40 CFR 122.64(a), or a permit under 40 CFR 122.64(b) where the permittee objects, a notice of intent to terminate shall be issued, and the agency shall follow the same procedures it follows as any draft permit prepared under 124.6.
  - **DNR Statute and Rule:** Wis. Adm. Code NR 203. 135 and Wis. Stat. s. 283.53(2)

Regarding statutory changes, EPA specifically mentioned statutory changes may be needed for Wis. Stat. ss. 283.53(2) and 283.63 to address the requirements in 40 CFR 124.5(a), (c) and (d). As stated above, WDNR does not believe that statutory changes are needed to these sections.

WDNR agrees that Wis. Stat. s. 283.53(2) is relevant, but this subsection provides broad authority for the WDNR to consider a request by an interested person to modify, terminate, or revoke and reissue a permit. The "hearings" mentioned in Wis. Stat. s. 283.53 are informational hearings (see Wis. Stat. 283.53(2)(f)). Wis. Stat. 283.53(2) appears consistent with the federal regulations in 40 CFR 124.5(a), (c) and (d) (Issues 3 and 50), so EPA must provide a more detailed explanation regarding concerns with Wis. Stat. s. 283.53(2).

Furthermore, WDNR does not believe that Wis. Stat. s. 283.63 is relevant to the requirements in 40 CFR 124.5(a), (c) and (d) because this state statute outlines appeal rights for specific permit actions, but the federal regulations cited in Issues 3 and 50 do not contain requirements for appeal rights. EPA must provide a more detailed explanation as to how Wis. Stat. s. 283.63 is related to, and conflicts with, the requirements in 40 CFR 124.5(a), (c) and (d).

In conclusion, the WDNR believes it has made all necessary rule changes to resolve Issues 3 and 50 and no statutory changes are needed.