



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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


AUG 29 2018

REPLY TO THE ATTENTION OF

WN-15J

MEMORANDUM

**SUBJECT:** Wisconsin Legal Authority Review - Review and Recommendation of Resolution for Issue 29

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

**TO:** File

**Issue 29 (Solid Waste Leachate)**

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 29 stated the following:

The Wisconsin rule at Wis. Admin. Code NR § 106.13 provides, in part, that WDNR "shall, within its capabilities. . . establish an appropriate compliance schedule" where leachate from a solid waste facility affects the ability of a [publicly owned treatment works or] POTW to meet [water quality based effluent limitations or] WQBELs for toxic or organoleptic substances. The text of the rule leaves ambiguous whether the State is mandating the establishment of a compliance schedule or whether establishing such a schedule is discretionary. If the rule mandates a compliance schedule, the rule must be revised to be consistent with 40 C.F.R. § 122.47. In its response to this letter, Wisconsin must explain how the rule operates and how it will address any deficiency through corrective rulemaking.

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The ambiguity of the rule as stated above has been addressed by WDNR when it repealed Wis. Admin. Code NR § 106.13 in Rule Package 5.

## Rule Package 5, Public Notice, Hearing, and Comment

WDNR published a public hearing notice on proposed revisions to Wis. Admin. Code chapters NR 106, 200, 205, 207, 210, 220, 221, 225, 228, 231, 236, 239, 240, 245, 247, 250, 258, 261, 268, 269, 275, 276, 277, 280, 281, 284, 286, 290, 294, 295, and 296 on January 9, 2017 in the Wisconsin Administrative Register. 733A2 Wis. Admin. Reg. CR 17-002 (January 9, 2017). The public comment period was open through March 1, 2017, and public hearings were held in Green Bay, Wisconsin on February 6, 2017 and Madison, Wisconsin on February 7, 2017. Wis. Nat. Res. Bd., Agenda Item No. 2.A.1, July 10, 2017, Correspondence/Memorandum Attachment to Order WT-12-12. At the Green Bay hearing no one appeared in person. *Id.* Two members of the public attended the Madison hearing without providing oral comments. *Id.* Four entities, other than the Wisconsin Legislative Council Rules Clearing House, provided written comments: US EPA, Wisconsin Manufacturers & Commerce, WE Energies, and Midwest Environmental Advocates. Wis. Nat. Res. Bd., Agenda Item No. 2.A.1, July 10, 2017, Response to Comments on Rule Package 5, Attachment to Order WT-12-12. WDNR responded to the written comments in a written response summary, which adequately explained why certain rule changes were made in response to the comments received, and why other comments did not warrant changes. *Id.* After Wisconsin completed rulemaking, the revised regulations were published in the Wisconsin Administrative Register on April 30, 2018. 748B Wis. Admin. Reg. CR 17-002 (April 30, 2018).

## Conclusion

Based on EPA's review of Wisconsin's provisions above, EPA concludes that Issue 29 is resolved.