




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

REPLY TO THE ATTENTION OF:

WN-15J

MEMORANDUM

SUBJECT: Wisconsin Legal Authority Review - Review and Recommendation of Resolution for Issue 62

FROM: Kevin Pierard, Chief 
NPDES Permits Branch

TO: File

Issue 62 (Permit Suspension)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 62 stated the following:

Wisconsin regulations allow a permit to be "suspended", an action that is not included in the federal regulations (federal regulations provide for permit revocation and reissuance or permit termination (40 C.F.R. § 122.41 (f)). The federal regulations contemplate "revocation and reissuance" as a separate action from termination for cause. Revocation and reissuance is generally used if transfer of a permit (because of ownership change) is not appropriate or if there has been a significant change in the nature of a discharge to warrant a new permit. The federal regulations provide that a permit may be terminated for cause, as set out in 40 C.F.R. § 122.64. It is unclear whether Wisconsin (which does not use the term "termination") is able to exercise equivalent authorities to those permit actions identified in 40 C.F.R. § 122.41(f). The State must document the scope and basis of its authorities to cover the requirements in 40 C.F.R. § 122.41(f). If corrective rule making is required to address a deficiency, the State must explain in its response to this letter what timetable the State will follow.

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 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. These revisions included the following changes which were subsequently codified into the Wisconsin Administrative Code.

Federal Provisions	Wisconsin Provisions
<p>40 C.F.R. § 122.41 provides:</p> <p>(Applicable to State programs, see § 123.25). The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in § 122.42. All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.</p>	<p>Wis. Admin. Code NR § 205.07(1) (2015) provides in pertinent part:</p> <p>The following conditions shall be included in all WPDES permits issued by the department. . . .</p>
<p>40 C.F.R. § 122.41(a) provides:</p> <p>Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.</p>	<p>Wis. Admin. Code NR § 205.07(1)(a) (2015) provides:</p> <p>Duty to comply. The permittee shall comply with all conditions of the permit. Any permit noncompliance is a violation of the permit and is grounds for enforcement action; permit termination, revocation and reissuance, or modification; or denial of a permit reissuance application. . . .</p>
<p>40 C.F.R. § 122.41(f) provides:</p> <p>Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.</p>	<p>Wis. Admin. Code NR § 205.07(1)(b) (2015) provides:</p> <p>Permit actions. As provided in s. 283.53, Stats., after notice and opportunity for a hearing the permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.</p>

As demonstrated in the table above, Wisconsin's revised rules are consistent with their federal counterparts. For example, Wisconsin addresses the heart of Issue 62 by removing the option of permit suspensions from Wis. Admin. Code NR § 205.01(1)(a) and (b). Additionally, Wisconsin also removed the permit suspension language for general permits found at Wis. Admin. Code NR § 205.08(8) and § 205.08(10)(a, e), which are not included in the table above.

Rule Package 6, Public Notice, Hearing, and Comment

The 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 EPA's review of the revised Wisconsin's regulations, EPA concludes that Issue 62 is resolved.