



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

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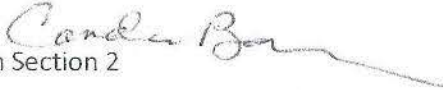
NOV 09 2017

REPLY TO THE ATTENTION OF:

WN-15J

MEMORANDUM

SUBJECT: Wisconsin Legal Authority Review - Review and Recommendation of Resolution for Issue 17

FROM: Candice Bauer, Chief 
NPDES Permits Branch Section 2

TO: File

Issue 17 (Noncontact Cooling Exempt)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 17 stated the following:

The Wisconsin rule at Wis. Admin. Code NR § 106.10 excludes noncontact cooling water from [water quality-based limitations] WQBELs, except to the extent that the limitations are for water treatment additives. Under the rule, water treatment additives do not include those compounds added at a rate and quantity necessary to provide a safe drinking water supply, or the addition of substances similar in type and amount to those typically added to a public drinking water supply. The relevant federal rule at 40 C.F.R. § 122.44(d)(1)(i) requires WQBELs for all pollutants that are or will be discharged at a level which will cause, have a reasonable potential to cause, or contribute to an excursion beyond applicable water quality criteria. Accordingly, Wisconsin must revise Wis. Admin. Code NR § 106.10 so it conforms to 40 C.F.R. § 122.44(d). To the extent that Wisconsin wants to consider intake pollutants when determining reasonable potential and setting WQBELs for discharges within the Great Lakes basin, the revised rules must conform to 40 C.F.R. part 132, Appendix F, Procedure 5, paragraphs D. and E. The response to this letter must include the State's plans, with a schedule and milestones, for revising Wis. Admin. Code NR § 106.10 so it conforms to 40 C.F.R § 122.44(d).

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

WDNR repealed and recreated Wis. Admin. Code NR § 106.10 (included below) to be consistent with the federal regulations. Specifically, the federal requirement for WQBELs for all pollutants that are or will be

discharged at a level that will cause, have a reasonable potential to cause, or contribute to an excursion beyond applicable water quality criteria:

Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

40 C.F.R. § 122.44(d)(1)(i).

Wisconsin's revised regulations at Wis. Admin. Code NR § 106.10 provide as follows:

Wis. Admin. Code NR § 106.10 Noncontact cooling water additives. The department shall establish water quality based effluent limitations for toxic and organoleptic substances in noncontact cooling water discharges as follows:

- (1) For toxic and organoleptic substances commonly added by suppliers of drinking water systems and present in the noncontact cooling water, a water quality based effluent limitation calculated under s. NR 106.06 that is based on the applicable water quality criterion or secondary value shall be included in the permit unless the permittee demonstrates at least one of the following:
 - a. The concentration of the substance in the intake water is dissipated within the system that supplies the intake water to the permittee and is consistently less than the water quality based effluent limitation.
 - b. An effluent limitation is not necessary as determined using the reasonable potential procedures in s. NR 106.05.
 - c. Prior to reaching the receiving water, the substance dissipates or is removed to a level that is below the water quality based effluent limitation.

- (2) For other toxic and organoleptic substances intentionally added to noncontact cooling water by the permittee, the department shall follow the procedures specified in ss. NR 106.05 and 106.06 to calculate a water quality based effluent limitation and determine whether the limitation is necessary in the permit. If there is no water quality criterion for an additive and there are potential water quality impacts from the additive, the department shall establish a secondary value for the additive in accordance with ch. NR 105 and calculate a limitation based on that value. All of the following requirements apply to the use and discharge of additives:
 - a. A permittee shall obtain written approval from the department prior to use of the additive.
 - b. A permittee shall provide the department with dosage information and safety data sheets and toxicological data, as requested by the department to meet minimum data requirements specified in ss. NR 105.05 (4) and 105.06 (6) for each additive for which approval is sought.

- c. Prior to increasing the usage of an additive in amounts greater than authorized by the department, a permittee shall get written approval from the department for the increased usage.
- d. After reissuance, if a permittee wants to use a new additive not previously approved by the department, the permittee shall get written approval from the department prior to use of the additive.
- e. A permittee may only use additives in accordance with the conditions of the department approval and any applicable permit terms. If the department does not approve use of the additive, the additive may not be discharged.

The revised rule requires evaluation of noncontact cooling water to determine whether water quality is impacted and WQBELs are necessary due to the addition of substances added by suppliers of drinking water (Wis. Admin. Code NR § 106.10(1)) or water treatment additives added by the permittee (Wis. Admin. Code NR § 106.10(2)). Wis. Admin. Code NR § 106.10(1) requires a WQBEL based on the applicable water quality criterion or secondary value unless one of three exceptions (Wis. Admin. Code NR § 106.10(1)(a)-(c)) are satisfied.

EPA sought clarification from WDNR regarding the provision at Wis. Admin. Code NR § 106.10(1)(a), which excludes the need for a WQBEL when the concentration of a substance in the intake water is “consistently” less than the WQBEL. Email from Candice Bauer, EPA, to Adrian Stocks, WDNR (June 16, 2017). WDNR responded that Wis. Admin. Code NR § 106.05(3) provides the acceptable conditions for establishing limitations based on representative discharge data. Email from Adrian Stocks, WDNR, to Candice Bauer, EPA (August 9, 2017). Wis. Admin. Code NR § 106.05(3) provides:

If representative discharge data are available for a toxic or organoleptic substance being discharged from a point source, limitations shall be established in accordance with any one of the following conditions:

- (a) The discharge concentration of the substance for any day exceeds the limit of detection and exceeds the limitations based on either the acute toxicity criterion or secondary acute value for the substance as determined in s. NR 106.06 (3) where appropriate,
- (b) The arithmetic average discharge concentration of the substance for any 4 consecutive days calculated as described in sub. (7) exceeds the limit of detection and exceeds the limitations based on either the chronic toxicity criterion or secondary chronic value for the substance as determined in s. NR 106.06 (4).
- (c) The arithmetic average discharge concentration of the substance for any 30 consecutive days calculated as described in sub. (7) exceeds the limit of detection and exceeds any limitation based on the wildlife, human threshold, or human cancer criteria or secondary values, or taste and odor criteria for the substance as determined in s. NR 106.06 (4).

EPA believes the conditions described in this provision make clear when WDNR would impose limits to address the addition of water treatment additives or substances added by suppliers of drinking water.

Wis. Admin Code NR § 106.10(2) requires evaluation of water treatment additives added to noncontact cooling water to determine if WQBELs are necessary. In addition to evaluating the need for a WQBEL for any water treatment additive, the revised rule also includes a list of requirements, all of which apply to the use and discharge of water treatment additives. See Wis. Admin. Code NR §§ 106.10(2)(a-e). These requirements, however, address the approval process for water treatment additives use and do not obviate the need for WQBELs where necessary.

Finally, EPA's Issue 17 also noted that to the extent the WDNR provides for the consideration of intake pollutants when determining reasonable potential and setting WQBELs in the Great Lakes basin, that the revised rules must conform to 40 C.F.R. Part 132, Appendix F, Procedure 5, paragraphs D and E. This issue is specifically addressed in Issue 10 of the Wisconsin Legal Authority Review and does not affect the resolution of Issue 17.

Rule Package 3, Public Notice, Hearing, and Comment

WDNR published a public hearing notice on proposed revisions to Wis. Admin. Code chapter NR 106 on November 9, 2015 in the Wisconsin Administrative Register. 719A2 Wis. Admin. Register CR15-084 (November 9, 2015). The public comment period was open from November 10 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.2 at 3, Dec. 15, 2015, Correspondence/Memorandum, Attachment to Order WT-31-10. At the December 7, 2015 public hearing, two members of the public attended but did not provide comments. *Id.* During the public comment period, written comments were received from the Wisconsin Legislative Council Rules Clearing House, Wisconsin Manufacturers Commerce, and EPA. Wis. Nat. Res. Bd., Agenda Item No. 3.A.2 at 1, Dec. 15, 2015, Response to Comments on Rule Package 3, Attachment to Order WT-31-10. 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 17 is resolved.