



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
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 35

FROM: Candice Bauer, Chief
NPDES Permits Branch Section 2

A handwritten signature in black ink, appearing to read "Candice Bauer", written over the printed name.

TO: File

Issue 35 (Ammonia, WQBEL)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 35 stated the following:

The federal rule at 40 C.F.R. § 122.44(d) requires a permit issuing agency to determine whether pollutants are or may be discharged at a level that will cause, have a reasonable potential to cause, or contribute to an in-stream excursion beyond a water quality criterion, including a criterion for ammonia. To the extent that an NPDES authority makes a determination in the affirmative, the federal rule requires the permit to include effluent limits which are derived from and comply with water quality standards. Wis. Admin. Code NR § 106.33(2) provides that the State may not include ammonia limitations in a permit when a calculated WQBEL [Water Quality-Based Effluent Limitation] is greater than 20 mg/L in the summer or 40 mg/L in winter. EPA is concerned that the word "may" prevents Wisconsin from setting WQBEL despite a finding that a discharge will cause, have a reasonable potential to cause, or contribute to an excursion. Additionally, EPA is concerned that, as written, the State's provision provides discretion to refrain from setting limits when the State finds that a discharge will cause, have a reasonable potential to cause, or contribute to an excursion. In its response to this letter, Wisconsin must explain how it will address the concern noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the 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).

Analysis

To address Issue 35 WDNR repealed Wis. Admin. Code NR § 106.33 (2004) in its entirety and replaced it with Wis. Admin. Code NR § 106.33(1) (2016). Below, Table 1 compares the repealed and new versions of Wisconsin's rule.

Table 1: Wisconsin Regulations for Determining the Necessity of Ammonia WQBELs

Repealed Wis. Admin. Code NR § 106.33 (2004)	New Wis. Admin. Code NR § 106.33(1) (2016)
<p>Determination of the necessity for water quality based effluent limits for ammonia.</p> <p>(1) Except as provided in sub. (2) or (3), the procedures specified in s. NR 106.05 shall be used to determine if water quality based effluent limitations for ammonia are necessary in a permit. When application of the procedures in s. NR 106.05 results in a determination that ammonia effluent limits are not necessary in a permit, the wastewater treatment plant shall continue to be operated in a manner that optimizes the removal of ammonia within the design capabilities of the wastewater treatment plant. The department may require that the permittee monitor ammonia at a frequency established on a case-by case basis in its discharge permit for the purpose of determining representative discharge levels.</p> <p>(2) Whenever ammonia effluent limitations calculated under s. NR 106.32 for a sewage treatment works regulated under ch. NR 210 and treating primarily domestic wastewater are greater than or equal to 20 mg/L for the period of May through October or greater than or equal to 40 mg/L for the period of November through April, ammonia effluent limitations may not be included in the permit for the period or periods.</p> <p>(3) If a permittee can satisfactorily demonstrate to the department that the ammonia effluent limitations calculated under s. NR 106.32 are greater than the influent total nitrogen loading and the wastewater treatment process will not</p>	<p>Determination of the necessity for and expression of water quality-based effluent limits for ammonia.</p> <p>(1) REASONABLE POTENTIAL.</p> <p>(a) For a permitted discharge that is not already subject to an ammonia water quality-based effluent limitation, the procedures specified in s. NR 106.05 shall be used to determine if water quality-based effluent limitations for ammonia are necessary in a reissued permit. When application of the procedures in s. NR 106.05 results in a determination that ammonia effluent limits are not necessary in a permit, the permit holder shall continue to be operated in a manner that optimizes the removal of ammonia within the design capabilities of the wastewater treatment plant. The department may require that the permittee monitor ammonia at a frequency established on a case by-case basis in its permit for the purpose of determining representative discharge levels.</p> <p>(b) If a permittee is subject to an ammonia limitation in an existing permit, the limitation shall be included in any reissued permit. Ammonia limitations shall be included in the permit if the permitted facility will be providing treatment for ammonia discharges.</p> <p style="text-align: right;">(Table 1 continued on next page)</p>

cause periodic discharge levels greater than the proposed limits, ammonia effluent limitations may not be included in the permit that is up for reissuance. The department may require that the permittee monitor ammonia at a frequency established on a case-by case basis in its discharge permit for the purpose of determining representative discharge levels.

(Table 1 continued from previous page)

WDNR addressed both concerns raised in Issue 35 by repealing and recreating Wis. Admin. Code NR § 106.33. First, as can be observed in Table 1 above, WDNR addressed Issue 35 by not including the Wis. Admin Code NR § 106.33(2) (2004) language that prevented the inclusion of WQBEL ammonia limitations in permits due to specific seasonal conditions in Wis. Admin Code NR § 106.33(1) (2016).¹ Further, WDNR addressed the second concern in Issue 35 by excluding any language from the new version of Wis. Admin Code NR § 106.33(1) (2016) that suggested that the inclusion of ammonia WQBELs is discretionary.

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 35 is resolved.

¹ Wis. Admin Code NR §§ 106.33(2)-(4) (2016), which are reviewed separately in Issue 34, also do not contain the seasonal specific limitations of Wis. Admin Code NR § 106.33(2) (2004).