



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 36

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

**TO:** File

### Issue 36 (Ammonia, Antidegradation)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 36 stated the following:

The Wisconsin rule at Wis. Admin. Code NR § 106.34(2) provides that, except for discharges to outstanding and exceptional resource waters, "if the department determines that a water quality based ammonia effluent limitation in effect in a permit as of March 1, 2004 may be increased in the next reissuance of that permit based solely on the application of the procedures in this subchapter, then the inclusion of the increased ammonia effluent limitation in the reissued permit is not subject to the provisions of ch. NR 207." For discharges to waters other than outstanding and exceptional resource waters, the rule does not appear to conform to § 301(b)(1)(C) of the CWA, 33 U.S.C. § 1311(b)(1)(C), and 40 C.F.R. § 122.44(d). In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the State's 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To address Issue 36, Wisconsin repealed Wis. Admin. Code NR § 106.34, including the rule regarding the inclusion of increased ammonia effluent limitations in reissued permits not being subject to the antidegradation requirements. Accordingly, Wisconsin NPDES permits are subject to the antidegradation requirements set forth at Wis. Admin. Code NR Chapter 207 and conform to Section 301(b)(1)(C) of the CWA, 33 U.S.C. § 1311(b)(1)(C), and 40 C.F.R. § 122.44(d).

## 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 36 is resolved.