



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

REPLY TO THE ATTENTION OF:

NOV 09 2017

WN-15J

MEMORANDUM

**SUBJECT:** Wisconsin Legal Authority Review - Review and Recommendation of Resolution for Issue 38

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

A handwritten signature in cursive script, appearing to read "Candice Bauer".

**TO:** File

### Issue 38 (Ammonia, Variance)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 38 stated the following:

Wis. Admin. Code NR § 106.38 contains a process through which the owner or operator of a stabilization pond or lagoon system can obtain a variance from ammonia water quality criteria. Variances require EPA approval. Therefore, the State provision should, but does not have to, explain or reference Wisconsin's process to seek EPA approval of proposed variances.

Letter from Susan Hedman, Regional Administrator, U.S. EPA, to Cathy Stepp, Secretary, WDNR (July 11, 2011) (on file with U.S. EPA).

### Analysis

A variance is a time-limited designated use and criterion for a specific pollutant(s) or water quality parameter(s) that reflect the highest attainable condition during the term of the water quality standard variance under 40 C.F.R. § 131.3(o). A water quality variance is a water quality standard subject to EPA review and approval or disapproval under 40 C.F.R. § 131.14. The request for a water quality variance should be submitted to EPA for review and must be supported by documentation specified at 40 C.F.R. § 131.14(b)(2). 40 C.F.R. § 131.21 directs EPA to review and approve water quality variance requests before these variances can be implemented. Wisconsin amended Wis. Admin. Code NR § 106.38 to clarify EPA's approval role of variances to water quality standards, and repealed variance procedures for ammonia water-quality based effluent limits. The rule revision also amended Wis. Admin. Code NR § 106.83(2)(c) as follows:<sup>1</sup>

<sup>1</sup> Language add to the original regulation is underlined.

Department determinations. The department shall review the application submitted by the permittee. The application shall be approved if the department agrees with the permittee's basis for concluding that the findings under par. (a) for a chloride variance are applicable to its discharge. The department shall obtain U.S. environmental protection agency approval before a variance is included in a permit under this subsection.

As shown above, WDNR is now required to obtain EPA's formal approval before a variance can be included in NPDES permits.

## **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 38 is resolved.