



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 39

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

**TO:** File

**Issue 39 (Chlorides, Variance)**

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 39 stated the following:

Wis. Admin. Code NR § 106.83(2) contains a process through which a discharger can obtain a variance from chloride 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**

To address Issue 39, Wisconsin amended Wis. Admin. Code NR § 106.83(2) to clarify EPA's approval role for water quality standard variances and clarified variance procedures for chloride water quality-based effluent limitations. Wisconsin amended Wis. Admin. Code NR § 106.83(2)(c) as follows:<sup>1</sup>

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.

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

Wis. Admin. Code NR § 106.83(2) now requires WDNR to obtain EPA's formal approval before a variance is included in a NPDES permit. In addition, the rule also repealed variance procedures for ammonia water-quality based effluent limits specified at Wis. Admin. Code NR § 106.38.

## 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 39 is resolved.