



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 43

FROM: Candice Bauer, Chief 
NPDES Permits Branch Section 2

TO: File

Issue 43 (Chlorides, Public Water System)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 43 stated the following:

The Wisconsin regulation at Wis. Admin. Code NR § 106.91 allows Wisconsin to set a chloride limit, other than the [Water Quality Based Effluent Limit] WQBEL, when a [Publicly Owned Treatment Works] POTW is not able to meet a WQBEL due to indirect discharges from a public water system treating water to meet the primary maximum contaminant levels specified in Wis. Admin. Code NR § 809. This rule does not conform to CWA § 301(b)(1)(C) and 40 C.F.R. § 122.44(d). Therefore, the State provision must be modified to be consistent with the federal requirement. To the extent that Wisconsin implements the rule as a variance, such variances are subject to EPA approval.

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

The provisions at CWA § 301(b)(1)(C) and 40 C.F.R. § 122.44(d) provide that discharges must meet any requirements in addition to or more stringent than promulgated effluent limitations guidelines, or standards. To address Issue 43, WDNR amended Wis. Admin. Code NR § 106.91 to read:¹

NR 106.91 ~~Publicly owned treatment works~~ Variances for POTWs which accept wastewater from public water systems treating water to meet primary safe drinking water act standards.

¹ Language added to Wis. Admin. Code NR § 106.91 is underlined, and language removed is ~~struck out~~.

Publicly owned treatment works ~~which~~ that accept wastewater from a public water system treating water to meet the primary maximum contaminant levels specified in ch. NR 809, if not able to meet the calculated limitation, may apply to the department for a variance from the water quality standard used to derive the limitation following the procedure specified in this subchapter. The department shall seek U.S. environmental protection agency [sic] approval before a variance is included in a permit. Upon approval, the permittee may be given an interim limitation, a target value, a target limitation and appropriate source reduction requirements, pursuant to under s. NR 106.83 in the permit upon permit reissuance or modification. No calculated limitation, interim limitation, target value, target limitation, or source reduction requirement shall interfere with the attainment of the primary maximum contaminant levels specified in ch. NR 809.²

As can be seen above, Wisconsin amended Wis. Admin. Code NR § 106.91 to transform the prior regulation into a request for a variance from water quality standards. The transformation of Wis. Admin. Code NR § 106.91 into a variance request aligns the Wisconsin and federal regulations, addressing Issue 43.

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 43 is resolved.

² Additionally, to address the issue, WDNR repealed a note to Wis. Admin. Code NR § 106.91, which was no longer relevant.

Additional Notes

1. The final sentence of Wis. Admin. Code NR § 106.91 states, “No calculated limitation, interim limitation, target value, target limitation, or source reduction requirement shall interfere with the attainment of the primary maximum contaminant levels specified in ch. NR 809.” EPA expressed its concern to Wisconsin that the rule language in question could improperly constrain the requirements of a variance granted under this regulation. Email from Candice Bauer, EPA, to Adrian Stocks, WDNR (June 16, 2017). WDNR responded that all approved variance requirements become part of the permit and cited Wis. Stat. s. 283.15 for the proposition that variances shall satisfy the requirements in 40 C.F.R. § 131.14 (the federal regulations for water quality standards variances). Email from Adrian Stocks, WDNR, to Candice Bauer, EPA (August 9, 2017). Additionally, WDNR noted that because all variances granted by WDNR are reviewed by EPA for approval, there is a mechanism in place to ensure that the correct requirements are included in variances granted to POTWs under Wis. Admin Code NR § 106.91. For the above reasons, EPA considers its concern regarding the final sentence of Wis. Admin. Code NR § 106.91 to be satisfactorily addressed.

2. Wis. Admin. Code NR § 106.91 is intended to be strictly concerned with chloride discharges because the regulation that it references for detailed variance procedures—Wis. Admin. Code NR § 106.83—is chloride specific. However, the text of the rule does not specifically mention chloride. For clarity, EPA recommends that the term chloride be added to Wis. Admin. Code NR § 106.91’s title at the next available opportunity.