



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 08 2019

REPLY TO THE ATTENTION OF

WN-15J

MEMORANDUM

SUBJECT: Wisconsin Legal Authority Review - Review and Recommendation of Resolution for Issue 69

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

TO: File

Issue 69 (Exempt Emergency Wis. Stat. § 283)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 69 stated the following:

Wisconsin law appears to allow the State to waive compliance with any requirement in Wis. Stat. § 283 to prevent an emergency threatening public health, safety, or welfare. This exemption is not provided for in the federal [National Pollutant Discharge Elimination System (NPDES)] program. State staff explained that they do not believe this provision has ever been implemented. The State must explain the intent of the provision and how this exemption is consistent with the federal program. If statutory amendment is required to address this deficiency, the State must explain in its response to this letter what timetable the State will follow to address this deficiency.

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

Analysis

Wis. Stat. § 283.81 provides:

Waiver. The department [WDNR] may waive compliance with any requirement of this [pollution discharge elimination] chapter or shorten the time periods under this chapter to the extent necessary to prevent an emergency condition threatening public health, safety or welfare.

Emphasis added. As stated above, the emergency waiver of federal Clean Water Act requirements is not provided for by the federal NPDES program. However, WDNR's authority to waive compliance under Wis. Stat. § 283.81 is discretionary. See underlined language in Wis. Stat. § 283.81.

To address Issue 69, WDNR and EPA modified the EPA-Wisconsin NPDES Memorandum of Agreement (MOA) by addendum. U.S. EPA and Wisconsin NPDES Memorandum of Agreement Addendum, November 30, 2018 (on file with U.S. EPA). Specifically, WDNR agreed in the 2018 MOA Addendum, "that a waiver under Wis. Stat. § 283.81 will not be granted for any requirement that is a federal requirement applicable to state programs under the CWA." *Id.* Thus, WDNR agreed to exercise its discretionary authority under Wis. Stat. § 283.81 in a manner consistent with the federal NPDES program.

Conclusion

Based on EPA's review of Wis. Stat. § 283.81 and the 2018 MOA Addendum, EPA concludes that Issue 69 is resolved.

Additional Notes

- To enhance regulatory clarity, EPA recommends that Wis. Stat. § 283.81 be modified to incorporate the 2018 MOA Addendum agreement language that addresses Issue 69.