2011 DRAFTING REQUEST

Bill

Received: **12/02/2011**

Wanted: **As time permits**

For: **Governor**

May Contact:

Subject: **Environment - air quality**

Received By: **btradewe**

Companion to LRB:

By/Representing: **Eileen Schoenfeldt**

Drafter: **btradewe**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Eileen.Schoenfeldt@wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Changes to wastewater discharge permitting program

Instructions:

See attached

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
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/P1	btradewe 01/23/2012	csicilia 01/25/2012	rschluet 01/25/2012		sbasford 01/25/2012		
/P2	btradewe 02/06/2012	csicilia 02/09/2012	rschluet 02/09/2012		ggodwin 02/09/2012		
/P3	btradewe 02/14/2012	csicilia 02/16/2012	rschluet 02/16/2012		sbasford 02/16/2012		
/1	btradewe	csicilia	jmurphy		lparisi		

Sent to Rep. Mursau per Gou

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None

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12

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Drafter: **btradewe**

Subject: **Environment - air quality**

Addl. Drafters:

Extra Copies:

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/1 cjs @ 2/27/12 jm 2/27 jf+jm 2/27

FE Sent For:

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FE Sent For: /P3 cjs 2/16 12 JF JM

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FE Sent For:

P2 gs 2/9 12 2/9/12

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/?	btradewe		Plijs 1/25 12				

FE Sent For:

<END>

Tradewell, Becky

From: Schoenfeldt, Eileen - GOV [Eileen.Schoenfeldt@wisconsin.gov]
Sent: Friday, December 02, 2011 12:24 PM
To: Tradewell, Becky
Cc: Roetker, Patrick - DOA
Subject: draft request
Attachments: EPAReviewletter2011 (3).pdf

Becky,

Here are changes that the department has identified so far. Attached is the original letter from the EPA. The items below reference a certain issue number in the attachment.

Please let me know if you have any questions. Thanks!

Eileen Schoenfeldt
Policy Advisor
Office of Governor Scott Walker
(608) 261-2163
eileen.schoenfeldt@wisconsin.gov

1.) Issues # 3 , # 48 and #50 Statutory Amendment to s. 283.53(2) Stats., related to modifications, revocation and reissuance and termination of WPDES permits:

Amend s. 283.53(2) to be consistent with federal regulations for 1.) Modifying 2.) Revoking and Reissuing, or 3.) Terminating a WPDES permit. The federal requirements EPA is concerned about are found at 40 CFR §§ 124.5(a) – (d) and 122.41(a).

2.) Parts of Issue #2, and issues #13, #15. Suggested statutory language changes to section 283.31, Stats., to address EPA's issues, are as follows:

a.) Parts of Issue #2 - 40 CFR 122.45(a)and (h) and Issue # 13—40 CFR 122.44(k) – limits apply at outfall, bmp authority:

Create s. 283.31(3)(g) and (3m), Stats., as follows:

283.31(3) **(3)**The department may issue a permit under this section for the discharge of any pollutant, or combination of pollutants, other than those prohibited under sub. (2), upon condition that such discharges will meet all the following, whenever applicable:
283.31(3)(a) **(g)** Best management practices to control or abate the discharge of pollutants when:
1. Authorized under section 304(e) of the Clean Water Act for the control of toxic pollutants and hazardous substances from ancillary industrial activities,
2. Numeric effluent limitations are infeasible, or
3. The department determines the practices are reasonably necessary to achieve effluent limitations or standards.
(Note: The Department needs to consult with EPA to see if the only missing authority is (g) 2. and whether subds. 1. and 3. can be removed. issue # 13; 40 CFR 122.44(k)

(3m) (a) All permit effluent limitations, standards and prohibitions shall be established for each outfall and discharge point except if the department determines limitations are infeasible or impracticable under sub. (3)(g) or par. (b)

(b) If the department determines limitations or standards imposed at the point of discharge or outfall are impracticable or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. If the limitations or standards are imposed on the internal waste streams in the permit, the internal waste streams shall be monitored for compliance and the fact sheet in s. 283.45 shall specify the basis for the Department's determination that exceptional circumstances made limitations on internal waste streams necessary.

b.) ***Issue # 2 -- 40 CFR 122.45(f) – mass limits required:***

Create s. 283.31(4)(g), Stats., as follows:

283.31(4) **s. 283.31(4)**The department shall prescribe conditions for permits issued under this section to assure compliance with the requirements of sub. (3). Such additional conditions shall include at least the following:

283.31(4)(a) **(g)** All pollutants that are limited in the permit shall have limitations, standards or prohibitions expressed in terms of mass, except any of the following:

1. For ph, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass.

2. When applicable standards and limitations are expressed in terms of other units of measurement.

3. If a technology based limitation is established by the department on a case-by-case basis and the department determines that expressing this limitation in terms of mass is not feasible because the mass of the pollutant discharged cannot be related to a measure of operation, then limitation may be expressed in another unit of measurement, provided dilution will not be used as a substitute for treatment.

4. For pollutants where the Department has by rule exempted mass limitations in accordance with one of the exceptions in pars. 1-3.

c.) **Issue # 15, 40 CFR 122.47 (a) – schedules of compliance:**

Create s. 283.31(5m), Stats., as follows:

(5m) (a) The department may, when appropriate, include a schedule of compliance leading to compliance with the federal water pollution control act (33 USC 1251 to 1387) this chapter and regulations promulgated under this chapter. Any schedules of compliance shall meet all of the following:

1. Require compliance as soon as possible, but not later than the applicable statutory deadline under the federal water pollution control act (33 USC 1251 to 1387).

2. For a new source* or new discharger**, the first permit issued shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with the requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge.

3. For recommencing dischargers***, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of the discharge.

4. Except as provided in par. 5, if the permit includes a schedule of compliance that is longer than 1 year from the date of permit issuance or reissuance, the schedule shall include interim requirements and dates for achievement of those requirements. Except for sewage sludge use and disposal, the time between interim dates shall not exceed 1 year. In the case of a schedule of compliance for sewage sludge use and disposal, the time between interim dates may not exceed six months.

5. If the time necessary for completion of an interim requirement, such as construction of a treatment

control technology, is more than 1 year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submissions of reports of progress toward completion of the interim requirements and indicate a projected completion date.

6. The permit shall require that no later than 14 days following each interim date and final date of compliance, the permittee shall notify the department in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports.

(b) The department may promulgate rules regarding compliance schedules for specific pollutants under this chapter.

***NOTE: Perhaps the definition of new source (283.01(8), Stats) should be revised (new source) - see 40 CFR 122.2 and also issue 27 in EPA's Letter. Perhaps a new definition of new discharger and recommencing discharger should also be created in s. 283.01, Stats., consistent with federal regulations – see 40 CFR 122.2 definitions.

3.) Issue # 14 Antibacksliding (40 CFR 122.44(L)):

Create s. 283.53 (3)(g), (h), (i) and (j), Stats., as follows: 33 USC 1342 (o)

283.53 (3)(g) Not withstanding section 402(o) of the Clean Water Act and except as provided in par. (h), when a permit is reissued, interim effluent limitations, standards or conditions shall be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit except if circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance. 33 USC 1311

(h) In the case of effluent limitations established on the basis of section 402(a)(1)(B) of the Clean Water Act, a permit may not be reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) subsequent to the original issuance of the permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except if:
1. Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify application of the less stringent effluent limitation;
2. Information is available which was not available at the time of permit issuance, other than revised regulations, guidance or other test methods, and such information would have justified the application of a less stringent effluent limitation at the time of permit reissuance or the department;
3. The department determined that mistakes were made in issuing the permit under section 402(1)(1)(b); 1326
4. A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy; 1311
5. The permittee has received a permit modification under sections 301(c), 301(g), 301(h), 301(i), 301(k), 301(n) or 316(a) of the Clean Water Act; or
6. The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities, but has been unable to achieve previous effluent limitations, in which case the limitations in the reissued or modified permit may reflect the level of pollutant control actually achieved, but shall not be less stringent than required by effluent guidelines in effect at the time of permit reissuance or modification.

(i) A permit may not be reissued or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the permit is reissued or modified.
(j) A permit may not be reissued or modified to contain an effluent limitation which is less stringent if implementation of the limitation will result in a violation of water quality standards.

4.) Issue #19. 40 CFR 122.24 relates to concentrated aquatic animal production facilities. There is no equivalent Wisconsin statute or code.

- Amend definition of point source in Wis. Stat. 283.01(12) to include concentrated aquatic animal production facilities as point sources.
- Create a definition of concentrated aquatic animal feeding operation by creating s. 283.01(1m). The statutory definition should follow the definition in 40 CFR 122.24(b) and (c). Instead of creating a new definition of s. 283.01(1m), s. 283.37 could be amended to provide that a permit application shall be required for a concentrated aquatic animal feeding operation that meets the criteria in 40 CFR 122.24(b) and may be required for a concentrated aquatic animal production facility designated by DNR if DNR has conducted an on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program, i.e., it is a significant contributor of pollution to waters of the state, considering the location and quality of the receiving waters of the state, the holding, feeding, and production capacities of the facility, the quantity and nature of the pollutants reaching waters of the state and other relevant factors. { 40 CFR 122.24(c).

5.) Issue #20. 40 CFR 122.50 provides for an adjustment to effluent limitations when part of the wastewater is disposed into POTWs or by land application. There is no equivalent Wisconsin statute or code.

Create s. 283.31(4)(m) to provide for an adjustment to effluent limitations under s. 283.31(3)(a)-(c) when part of the wastewater is disposed into a POTW or by land application.

6.) Issues #21 and 66 - 40 CFR 124.56 and 124.8 has a description of elements to be included in fact sheets and requires fact sheets to be prepared for every NPDES facility or activity.

Amend s. 283.45, Wis. Stats., to include all of the applicable elements in 40 CFR ss. 124.56 and 124.8. The Department should also later amend ch. NR 201, Wis. Adm. Code, to incorporate any provisions in 40 CFR 124.56 that are not currently included in ch. NR 201.

7.) Issue #38 and #39 Chloride and Ammonia Variances require EPA approval:

Amend Wis. Stats. s. 283.15, to provide that DNR must seek approval from EPA for proposed variances, as follows:

283.15(4) FINAL DECISION ON VARIANCE.

283.15(4)(a)(a)**283.15(4)(a)1.**1. The secretary shall approve all or part of a requested variance, or modify and approve a requested variance if the department has obtained approval from the United States Environmental Protection Agency for the variance and if the permittee demonstrates, by the greater weight of the credible evidence, that attaining the water quality standard is not feasible because:

8.) Issue # 44 Point Source Definition and Pollutant Definition -- 40 CFR 122.2:

Amend the definition of point source in s. 283.01(12) to include "discharges from landfill leachate collection systems"

Amend the definition of pollutant in s. 283.01(13) to include "filter backwash"

9.) Issue #45 – Permit is not a property interest, permit as a shield:

Create s. 283.31(9), Wis. Stats., to incorporate 40 CFR 122.5(a) and (b). Could also incorporate 122.5 (c), but this federal provision isn't mandatory for states.

10.) Another storm water proposed statutory change

Not directly responsive to EPA issues, but statutory change should be made to clarify that inspection warrant authority exists under s. 283.33.

See 283.55(2)

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

JUL 1 8 2011

REPLY TO THE ATTENTION OF:

Cathy Stepp, Secretary
Wisconsin Department of Natural Resources
Post Office Box 7921
Madison, Wisconsin 53707-7921

Dear Ms. Stepp:

I am writing with regard to the legal authority under which Wisconsin administers its National Pollutant Discharge Elimination System (NPDES) approved program. The U.S. Environmental Protection Agency has completed a review to determine if the State has the minimum legal authority needed to properly administer the program. In general, the provisions in 40 C.F.R. §§ 123.25, 123.27, and 123.30 formed the basis for the review. EPA promulgated these provisions under section 304(i) of the Clean Water Act, 33 U.S.C. § 1314(i). We conducted the review as part of EPA's Permitting for Environmental Results (PER) initiative, a national partnership with states to strengthen the NPDES program. Under PER, EPA reviews the integrity of state NPDES programs and works together with states to make improvements as needed.

EPA approved Wisconsin's NPDES base program in 1974. EPA subsequently approved the State to regulate discharges from federal facilities, administer the pretreatment program, issue general permits, and implement the biosolids program.

During the review of Wisconsin's legal authorities, EPA coordinated closely with your staff to understand the State's authority and identify and resolve questions. We thank you and your staff for the time and effort spent during this lengthy process, which included six meetings or calls with the State beginning September 2009.

The enclosure to this letter identifies concerns with or questions about the State's authority. Omissions or deviations from federal requirements are specifically identified. As noted in the enclosure, certain of the concerns remain the subject of prior disapprovals by EPA under 40 C.F.R. § 123.62. These require immediate corrective action by the State.

Recently, the Wisconsin Supreme Court issued an opinion in *Andersen v. Department of Natural Resources*, 332 Wis. 2d 41, 796 N.W. 2d 1 (2011), which, among other things, stated:

> When the EPA approved the WPDES permit program, the EPA deemed Wisconsin's statutory and regulatory authority adequate to issue permits that comply with the requirements of the Clean Water Act and of 40 C.F.R. pt. 123. See 33 U.S.C. § 1342(b)(1)(A), (2)(A); § 1342(c)(1); 40 C.F.R. § 123.61(b). 40 C.F.R.

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> § 123.25 sets forth the permitting requirements that a proposed permit program must meet. Significantly, both 40 C.F.R. §§ 122.44 and 122.45 are included among those permitting requirements. See 40 C.F.R. § 123.25(a)(15), (16). Thus, when the EPA approved the WPDES permit program, the EPA necessarily determined that the program complies with 40 C.F.R. §§ 122.44 and 122.45. Similarly, any substantial revisions to the WPDES permit program have been, and will continue to be, subject to the EPA's approval. See 40 C.F.R. § 123.62(a).

Id. at 72-3, 796 N.W. 2d at 17. Our comments in the enclosure indicate numerous apparent omissions and deviations between Wisconsin's current statute and regulations and federal requirements. In light of the *Andersen* case, we are requesting that the omissions and deviations in State authority be corrected quickly. Further, we emphasize that EPA has not approved those elements of the State's program that are less stringent or comprehensive than federally required.

Please provide a written response to this letter. With the reply, please provide a detailed statement from the Wisconsin Attorney General, with specific citations, demonstrating that the State has adequate authority on the topics identified in the enclosure. If the State lacks explicit authority, please provide the State's plan, including a schedule with milestones, for establishing the required authority. Please ensure that required administrative rules will be promulgated not later than one year after the reply letter, and that required statutory provisions are promulgated within no more than two years. Please provide the reply letter and any Attorney General's statement by October 15, 2011.

Again, thank you for cooperating with EPA to review Wisconsin's NPDES authority. Please contact me if you have any questions.

Sincerely,

Susan Hedman
Regional Administrator

Enclosure

Enclosure[1]

1. The federal rule at 40 C.F.R. § 122.41(m) pertains to intentional diversions around a portion of a treatment facility. Wisconsin amended its analog in January 2011. The analog now appears at Wis. Admin. Code NR §§ 205.07(1)(v) and (2)(d). The Wisconsin rule appears inconsistent with the federal rule for the following reasons. First, the state regulation includes overflows from collection systems. The federal provision at 40 C.F.R. § 122.41(m)(1) limits bypass to mean the intentional diversion around any *portion of a treatment facility* (emphasis added). Second, the Wisconsin rule allows the State to authorize scheduled bypasses whereas the federal rule provides that a permittee may allow a bypass only if it is for essential maintenance and the bypass does not cause effluent limits to be exceeded. Third, the federal regulation provides that the Director may approve an anticipated bypass if the Director determines that the conditions in 40 C.F.R. §§ 122.41(m)(4)(A) - (C) are met. The state regulation does not appear to include these as necessary conditions for authorizing scheduled bypasses. Fourth, some of the reporting requirements under the state regulation appear less rigorous than those in 40 C.F.R. § 122.41(m). The federal regulation requires oral reporting of bypass within 24 hours; the state regulation allows for fax or e-mail reporting. The federal regulation requires written reporting within 5 days of the time the permittee becomes aware of the bypass; the state regulation requires reporting within 5 days of the *cessation* of the bypass. The federal regulation requires reporting of the date and time of bypass; the state regulation requires only that the date be reported. Wisconsin must modify the State rule to be consistent with federal requirements, or document the specific basis of the State's authority to implement the provisions above consistent with federal program requirements and in a manner that addresses the concerns raised above.

2. The federal rule at 40 C.F.R. § 122.45 addresses a variety of topics, such as the duration over which effluent limitations are to be expressed, pollutants in intake water, internal waste streams, and mass limitations. EPA did not find Wisconsin statutory or code provisions that implement 40 C.F.R. § 122.45. The State needs to promulgate rules to include a provision equivalent to 40 C.F.R. § 122.45, or document the specific basis on which the State has the necessary authority to implement the federal regulatory provision as described.

3. The federal rule at 40 C.F.R. §§124.5 (a), (c) and (d) provides a process for the modification, revocation and reissuance, or termination of permits. § 124.5(a) allows "interested persons" to request these actions in writing; § 124.5(c) provides a process for issuance of a modified permit; and § 124.5(d) provides a process for permit termination. Wisconsin's provisions at Wis. Stat. §§ 283.53(2) and 283.63, and in Wis. Admin. Code NR § 203, do not allow an "interested person" to request modification, revocation and reissuance, or termination of permits, and therefore the State's rules appear to functionally restrict the class of individuals that may seek review of a permit. Additionally, Wisconsin's regulations do not appear to provide a mechanism for the termination of a permit (further discussed below). The State must modify its statute

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[1] EPA's legal authority review considered Wisconsin's governing statute and rules generally as they existed in 2005. Subsequent changes to Wisconsin's NPDES legal authorities need to be submitted to EPA for possible program revision and approval under 40 C.F.R. § 123.62. Changes that have not been submitted to and approved by EPA are not part of the state's federally approved NPDES program and cannot supersede or revise the previously approved provisions without specific EPA approval.

and/or rule to include a provision equivalent to 40 C.F.R. § 124.5, or document the specific basis on which the State has the necessary authority to implement the regulatory provision as described.

4. 40 C.F.R. part 125, Subpart I, includes requirements for cooling water intake structures at new facilities, under § 316(b) of the Clean Water Act (CWA), 33 U.S.C. §1326(b). While Wis. Stat. § 283.31 provides authority for Wisconsin to require that the location, design, construction and capacity of water intake structures reflect the best technology available for minimizing adverse environmental impacts, EPA did not find code provisions prescribing the manner in which Wisconsin will carry out its statutory authority relative to new facilities. The State must modify its rules to include a provision equivalent to 40 C.F.R. part 125, Subpart I, and the related provisions of the CWA, or document the specific basis on which the State has the necessary authority to implement the regulatory provision as described.

5. The federal rule at 40 C.F.R. § 123.30 provides that all states shall provide an opportunity for judicial review in state court of the final approval or denial of permits, without limitations based on financial interest or proximate property ownership. Wisconsin's requirement at Wis. Stat. § 227.52 that an administrative decision "adversely affect the substantial interests of any person," does not define "adversely affect" and "substantial interests." It appears that § 227.52 restricts the class of persons entitled to seek judicial review as set out in 40 C.F.R. § 123.30 and CWA § 509, 33 U.S.C. § 1369. The State must document how its provisions for judicial review provide as expansive an opportunity for judicial review as do the federal requirements, or modify its statute and/or promulgate a rule to be consistent with federal requirements.

6. Wisconsin law at Wis. Stat.§ 283.17(2) provides a 10-year period of protection from the requirement to meet more stringent effluent limitations when modifications have been made to a facility to meet thermal effluent limits established on the basis of water quality standards or Wis. Stat. § 283.17(1). This provision is similar to CWA § 316(c), 33 U.S.C. § 1326(c). However, the Wisconsin provision appears broader in scope than the federal equivalent in that it includes in this exemption facilities with alternate thermal limitations (established under Wis. Stat. § 283.17(1)), not just facilities with water quality-based effluent limitations (WQBELs).

The basis for a period of protection in the Clean Water Act is a modification to a facility to meet thermal limitations. A facility to which an alternative thermal limit has been granted generally is not similarly situated to a facility which has made modifications to meet thermal effluent limits established on the basis of water quality standards. Alternative thermal limitations are premised on a demonstration that the current discharge is protective of the balanced and indigenous population (BIP) of shellfish, fish, and wildlife. See CWA § 316(a), 33 U.S.C. § 1326(a), and 40 C.F.R. part 125, Subpart H. Pursuant to this statutory provision, alternate thermal limitations require ongoing assessment, including data collection, to be able to demonstrate that a BIP is being protected. If studies indicate that a BIP is not being protected, then modifications to the facility may be required to meet protective limitations. Thus, the period of protection in CWA § 316(c) is not applicable to facilities with alternative thermal limitations. Under Wis. Stat. § 283.17(2), however, a facility with such alternative thermal limitations could claim an entitlement to a period of protection. The State must amend Wis. Stat. § 283.17(2) to eliminate

coverage of dischargers with alternate thermal limitations, or explain the basis on which the State will limit the period of protection consistent with the scope of the federal provision as described.

7. Wis. Stat § 283.19 requires the Wisconsin Department of Natural Resources (WDNR) to establish New Source Performance Standards (NSPS) by rule. EPA's review found that Wisconsin has not consistently updated Wis. Admin. Code NR §§ 221 through 299 to incorporate new or revised federal NSPS. Accordingly, please explain:

(a) Under what authrority does Wisconsin incorporate federal NSPS into permits where Wisconsin omits a federal NSPS from Wis. Admin. Code NR §§ 221 through 299?

(b) Under what authority does Wisconsin incorporate the federal NSPS into permits where a NSPS in Wis. Admin. Code NR §§ 221 through 229 is less stringent than the federal NSPS?

Additionally, EPA reviewed Wis. Stat. § 283.31(3)(d) 2 and Wis. Admin. Code NR § 220.13. These provisions appear to authorize the establishment of effluent limitations based on federal effluent limitations guidelines (ELG) even when Wisconsin omits a federal ELG from Wis. Admin. Code NR §§ 221 to 299, or includes in those chapters an ELG that is less stringent than the federal counterpart.

(c) To the extent that Wisconsin cites to Wis. Stat. § 283.31(3)(d) 2 and Wis. Admin. Code NR § 220.13 in answering either question (7)(a) or 7(b) above, please explain how the provision operates for NSPS in light of the specificity provided in Wis. Admin. Code NR §§ 221 to 299. For issues 7 (a) – (c), if Wisconsin does not have authority to implement federal NSPS and ELG into permits, then the response to this letter must include the State's plan, with a schedule and milestones, for establishing the necessary authority.

8. The Wisconsin rule at Wis. Admin. Code NR §§ 106.145 pertains to the establishment of WQBELs for mercury discharges. By letter of February 17, 2009, EPA disapproved certain aspects of this rule. Wisconsin must amend the rule to cure the disapproval.

9. The Wisconsin rules at Wis. Admin. Code NR § 219 pertain to analytical methods.

(a) Wis. Admin. Code NR § 219 allows use of solid waste methods in the WPDES and Wisconsin pretreatment programs. EPA has not approved solid waste methods for use in the NPDES or federal pretreatment programs. Wisconsin must amend Wis. Admin. Code NR § 219 to exclude solid waste methods from use in the Wisconsin programs, except when such methods have been approved by EPA as alternative test procedures under 40 C.F.R. § 136.5.

(b) Wis. Admin. Code NR § 219 incorporates some of the methods that EPA has promulgated under 40 C.F.R. part 136. Does the chapter incorporate an EPA method only as of the date Wisconsin incorporated each such method into the chapter or are revisions to EPA methods prospectively incorporated?

(c) Has Wisconsin amended the chapter to include new EPA methods? Please see the attached list of changes to 40 C.F.R. part 136 since 2000.

The response to this letter needs to include the State's plan, with a schedule and milestone, for correcting Wis. Admin. Code NR § 219 to address the deficiency in number 9 (a) and any deficiency identified through the State's analysis of 9(b) and (c) above.

10. The federal rule at 40 C.F.R. § 132.6 identifies provisions of 40 C.F.R. part 132, Appendix F, which apply to the Great Lakes States, including Wisconsin. These specifically include: Procedure 3 (pertaining to total maximum daily loads (TMDL), wasteload allocations (WLA) in the absence of a TMDL, and preliminary WLAs for purposes of determining the need for WQBELs); Procedure 5, paragraphs D and E (pertaining to consideration of intake pollutants in determining "reasonable potential" and establishing WQBELs); and Procedure 6, paragraph D (pertaining to whole effluent toxicity). In 2000, EPA disapproved the corresponding Wisconsin rules and promulgated 40 C.F.R. § 132.6 for Wisconsin (see 65 *Federal Register* 66511 (November 6, 2000)). Wisconsin must amend the State rules as required to cure the disapproval.

11. The federal rule at 40 C.F.R. § 122.44(d) pertains to the establishment of effluent limitations based on water quality standards, including water quality criteria expressed in either a numeric or narrative fashion. Except for the general statement in Wis. Stat. § 283.31(5) (providing that the Department shall establish more stringent limitations if necessary to meet water quality standards), and the specific provisions in Wis. Admin. Code NR § 106 (pertaining to toxic and organoleptic substances) and Wis. Admin. Code NR § 217, Subchapter III (2010) (pertaining to phosphorus), EPA did not find equivalent State provisions that implement 40 C.F.R. § 122.44(d). The response to this letter must include the State's plan, with a schedule and milestones, to establish rules (in addition to those in NR 106 and 217) that conform to 40 C.F.R. § 122.44(d).

12. Federal regulations prohibit permit issuance when permit conditions do not ensure compliance with the applicable water quality requirements of all affected states. 40 C.F.R. § 122.4(d). Wisconsin appears to lack an equivalent provision. We note that Wis. Stat. § 283.31(3) provides that a permit may issue only when discharges will meet all effluent limitations, standards of performance for new sources, effluent standards, and any more stringent limitations necessary to comply with any applicable federal law or regulation, but this provision is silent as to how the State prohibits discharges that would violate applicable water quality standards of affected states. Wisconsin must explain how it will address the deficiency noted in this comment, either through statutory amendment or corrective rulemaking, including a schedule and milestones for completion, or by citing existing, specific authority in a written explanation from the State's Attorney General.

13. The federal rule at 40 C.F.R. § 122.44(k) identifies circumstances in which best management practices (BMP) must be included as conditions in permits. Except for the practices in Wis. Admin. Code NR §§ 216 and 243 pertaining to storm water and concentrated animal feeding operations, respectively, EPA did not find that Wisconsin has a statutory or rule provision requiring incorporation of BMPs into permits as provided in 40 CFR § 122.44(k). The response to this letter needs to include the State's plan, with a schedule and milestones, for promulgating a rule equivalent to 40 C.F.R. § 122.44(k).

14. The federal rule at 40 C.F.R. §122.44(l) generally provides that the interim effluent limitations, standards, and conditions in a reissued or renewed permit must be at least as stringent as the final limitations, standards, and conditions in the previous permit. EPA did not find an equivalent Wisconsin statutory or rule provision. The response to this letter needs to

include the State's plan, with a schedule and milestones, for promulgating a rule equivalent to 40 C.F.R. § 122.44(l).

15. The federal rule at 40 C.F.R. § 122.47 pertains to compliance schedules in permits. Except for problematic provisions noted elsewhere in this enclosure, EPA did not find an equivalent Wisconsin statutory or rule provision to implement this federal requirement. EPA reviewed Wis. Admin. Code NR § 106.117, but this rule is inconsistent with the federal requirement for several reasons, including that it: (a) only applies to WQBELs for toxic and organoleptic substances, (b) allows time to be added to a schedule so a permittee can perform work intended to justify a change in an effluent limitation, (c) does not include an "appropriateness" standard for the granting of a schedule, (d) does not require reports on progress toward meeting the final limitation, (e) does not mandate interim requirements, and (f) does not restrict schedules to statutory deadlines. In addition to establishing a compliance schedule rule with program-wide applicability, Wisconsin must amend Wis. Admin. Code NR § 106.117 to resolve the inconsistencies noted here. The response to this letter must include the State's plan for promulgating a rule equivalent to 40 C.F.R. § 122.47, and for correcting issues outlined in number 15 (a) – (f) above.

16. The federal rule at 40 C.F.R. Part 403 establishes requirements for pretreatment of nondomestic discharges to publicly-owned treatment works (POTWs). EPA revised this rule and related NPDES provisions at 40 C.F.R. §§ 122.21(j)(6)(ii), 122.44(j)(1), and 122.62(a)(7), in 2005. Some of the revisions make the federal program less stringent than it used to be. Wisconsin can choose to incorporate these revisions into its pretreatment program. However, some of the revisions make the federal program more stringent than the predecessor rule. EPA described the more stringent provisions at: http://www.epa.gov/npdes/pubs/pretreatment_streamlining_required_changes.pdf. Under 40 C.F.R. § 123.62, Wisconsin was required to adopt the more stringent provisions by November 2006, but the State has not done this. Wisconsin must adopt the more stringent provisions into its code. The response to this letter needs to include the State's plan, with a schedule and milestones, for promulgating a rule equivalent to 40 C.F.R. Part 403.

17. The Wisconsin rule at Wis. Admin. Code NR § 106.10 excludes noncontact cooling water from WQBELs, except to the extent that the limitations are for water treatment additives. Under the rule, water treatment additives do not include those compounds added at a rate and quantity necessary to provide a safe drinking water supply, or the addition of substances similar in type and amount to those typically added to a public drinking water supply. The relevant federal rule at 40 C.F.R. § 122.44(d)(1)(i) requires WQBELs for all pollutants that are or will be discharged at a level which will cause, have a reasonable potential to cause, or contribute to an excursion beyond applicable water quality criteria. Accordingly, Wisconsin must revise Wis. Admin. Code NR § 106.10 so it conforms to 40 C.F.R. § 122.44(d). To the extent that Wisconsin wants to consider intake pollutants when determining reasonable potential and setting WQBELs for discharges within the Great Lakes basin, the revised rules must conform to 40 C.F.R. part 132, Appendix F, Procedure 5, paragraphs D. and E. The response to this letter must include the State's plans, with a schedule and milestones, for revising Wis. Admin. Code NR § 106.10 so it conforms to 40 C.F.R § 122.44(d).

18. The federal rule a 40 C.F.R. § 122.22 (d) requires that anyone signing a permit application or a report required under 40 C.F.R. § 122.22(a) or (b) certify that the information: is accurate and complete, was gathered by qualified persons, and was properly gathered and evaluated.[2] Wisconsin's rule at Wis. Admin. Code NR § 205.07(1)(g), while including that signatories make a certification that the information they are submitting is "true, accurate, and complete," does not require inclusion of the information quality certification language set out in § 122.22 (d). The response to this letter must include the State's plans with a schedule for promulgating a rule equivalent to 40 C.F.R. § 122.22(d).

19. The federal rule at 40 C.F.R. § 122.24 pertains to concentrated aquatic animal production facilities. EPA did not find an equivalent Wisconsin statutory or code provision. The response to this letter must include the State's plan, with a schedule and milestones, for promulgating a rule equivalent to 40 C.F.R. § 122.24.

20. The federal rule at 40 C.F.R. § 122.50 provides for an adjustment to effluent limitations when part of a discharger's process wastewater is disposed into wells or POTWs or by land application. EPA did not find an equivalent Wisconsin statutory or code provision. The response to this letter must include the State's plan, with a schedule and milestones, for promulgating a rule equivalent to 40 C.F.R. § 122.50 if Wisconsin permits or wants to permit part of a discharger's process wastewater to be disposed into wells or POTWs or by land application.

21. The federal rule at 40 C.F.R. § 124.56 contains a description of elements to be included in fact sheets, including where explanations of specific permit conditions are required. Wisconsin's rules do not appear to have an equivalent provision. The response to this letter must identify the required rule provisions or include the State's plan, with a schedule and milestones, for promulgating a rule equivalent to 40 C.F.R. § 124.56. 124.8

22. The federal rule at 40 C.F.R. § 124.10 requires that draft permits be sent to a variety of agencies as well as the applicant. We understand that Wisconsin provides electronic access to information regarding a permit application. Wisconsin's response to this letter must explain how its practice of providing notice is equivalent to the public notice requirement found at § 124.10(c) or what steps, taken on what timetable, the State will take to cure deficiencies in the State analog.

23. Wisconsin law at Wis. Stat. § 30.2022(1) provides that "activities affecting waters of the state, as defined in s. 281.01 (18), that are carried out under the direction and supervision of the department of transportation in connection with highway, bridge, or other transportation project design, location, construction, reconstruction, maintenance, and repair are not subject to the prohibitions or permit or approval requirements specified under ... chs. 281 to 285 or 289 to 299." This provision does not conform to 40 C.F.R. §§ 123.1(g)(1) (requiring approved states to

[2] The certification provided at 40 C.F.R. § 122.22(d) states: " I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

prohibit point source discharges including, but not limited to, storm water discharges as provided in 40 C.F.R. § 122.26, unless such discharges are in compliance with a permit issued under the federally approved state program) and 123.25(a)(4) (providing that approved states shall require any person who discharges or proposes to discharge to apply for a permit).

Wis. Admin. Code § NR 216.42(5) (which appears to implement Wis. Stat. § 30.2022(1) and (2) with respect to storm water discharges from Department of Transportation (DOT) construction sites) exempts DOT project from NPDES permit coverage by providing that such discharges "shall be deemed to be in compliance with s. 283.33, Stats., and the requirements of ch. NR 216, Subchapter III, if the project from which the discharges originate is in compliance with Trans 401 Wis. Admin. Code and the liaison cooperative agreement between WDNR and DOT. . Unless EPA formally approves the division of NPDES permitting responsibility between WDNR and DOT (or any other state agency), and DOT prohibits discharges without a permit, Wisconsin cannot simply exempt DOT projects from NPDES permitting requirements. If the State has divided permitting authority for various categories of projects, the State's response to this letter must describe the division of permitting authority. EPA must review and approve any agreement to divide permitting authority before any permits issued by DOT or any other agency of the State will be considered equivalent to NPDES permits. Such a review, if it occurs, is intended to ensure that the implementing agencies have legal authority and are acting consistent with federal program requirements including permit issuance; sufficiency of public notice, hearing, and judicial review requirements; compliance evaluation; and enforcement authority. If the State has divided permitting authority, then Wisconsin must include the State's plan, with a schedule and milestones, for correcting the deficiency with Wis. Admin. Code § NR 216.42(5).

EPA has additional concerns if Wisconsin purports that Wis. Admin. Code § NR 216.42(5) establishes an NPDES "permit-by-rule." For example, the authorities cited in that administrative code provision (Wis. Admin. Code § Trans 401 and the "liaison cooperative agreement"): (1) are not subject to EPA review and potential objection under 40 C.F.R. § 123.44, (2) are likely not subject to reissuance proceedings (including notice and the opportunity for the public to comment) once every five years, (3) likely do not require terms and conditions that are standard to all NPDES permits, and (4) may not be subject to judicial review as required for NPDES permits by 40 C.F.R. § 123.30. Furthermore, the text of the rule is not written to provide, consistent with Wis. Admin. Code § NR 205.08(5), that WDNR may require any point source covered by a general permit to obtain an individual permit, and that any person may petition WDNR to require an individual permit for a source covered by a general permit.

Wisconsin's response to this letter must provide a plan with appropriate milestones for amending Wis. Stat. § 30.2022(1) and Wis. Admin. Code § NR 216.42(5) to conform to federal NPDES requirements.

24. The Wisconsin rules at Wis. Admin. Code §§ NR 216.42(4), (6), and (9) provide that certain dischargers of storm water "shall be deemed to hold a NPDES permit" or may be "determine[d] to be in compliance with permit coverage required under s. 283.33 Stats." where such projects are regulated by the Wisconsin Department of Commerce or environmental programs other than the WPDES program. EPA has virtually identical concerns about these provisions as those

communicated in the second and third paragraphs of comment 23, above.[3] In addition, we are concerned that Wis. Admin. Code § NR 216.42(6) may not conform to 40 C.F.R. 123.1(g)(1) and 123.25(a)(4). Wisconsin's response to this letter must provide a plan with appropriate milestones for amending all of these provisions to conform to federal NPDES requirements.

25. The Wisconsin rule at Wis. Admin. Code § NR 216.415(4) provides that a landowner of a construction site that is regulated by an authorized local municipal program is deemed to be covered under a department construction site storm water permit issued pursuant to Wis. Admin. Code § NR 216, Subchapter III. EPA has three concerns about this provision.

First, because the CWA does not provide for authorizing local governments to implement NPDES authorities, we are concerned about the apparent division of NPDES program responsibilities between WDNR and authorized municipalities. While the State's rule provides that authorized programs will grant permit coverage under WDNR's construction stormwater general permit, the rule also allows authorized municipalities to issue "equivalent" notice of intent forms, and appears to allow municipalities to take the lead for inspections and enforcement. While we encourage states to find supplemental resources to improve NPDES program implementation, the state's primary responsibility for NPDES program implementation, including compliance evaluation and enforcement, cannot be subdivided with local governments. We are concerned that although WDNR retains the ability to take enforcement actions for dischargers under authorized municipal programs, the provision lacks a mechanism to allow the timely notification of WDNR and consequently places the primary responsibility for compliance and enforcement with the authorized municipality, which is required to report to WDNR only an annual "estimate" of "the number of construction site inspections performed and citations issued." Wis. Admin. Code NR § 215.415(8)(b)(3). Wisconsin's response to this letter must provide an updated program description that explains, pursuant to 40 C.F.R. § 123.22, how Wisconsin's authorized municipality program is consistent with the State's retention of primary NPDES permitting and compliance evaluation responsibility under 40 C.F.R. §§ 123.25 – 123.27. If the State has not retained primary NPDES program responsibility where municipalities have become authorized, then the response to this letter must provide a plan with appropriate milestones for amending the existing state provisions to conform to federal NPDES requirements.

Second, Wis. Admin. Code § 216.415(4) appears to preclude the State from requiring a landowner who seeks coverage under the general permit to obtain, where appropriate, an individual permit under Wis. Admin. Code s. NR 205.08(5). While Wis. Admin. Code § 216.415(6) provides that an authorized municipality may deny coverage under the general permit, there appears to be no provision for an applicant to seek individual permit coverage (see 40 C.F.R. § 122.28(b)(3).[4] In its response to this letter, Wisconsin must provide a plan with

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[3] We understand that Wisconsin recently re-established a role for the Department of Commerce (now the Department of Safety and Professional Services) with respect to erosion control during the construction of commercial buildings. 2011 Wis. Act 32, § 2896 – 2905, 9135 (June 26, 2011).

[4] We note that there is such a provision directing landowners to contact WDNR to resolve issues and seek permit coverage where projects involve wetlands, endangered species, and historic properties. Wis. Admin. Code § NR 216.415(7)(b).

appropriate milestones for amending Wis. Admin. Code § 216.415 to conform to federal NPDES requirements.

Third, while the federal rules governing general permits allow for the possibility that a state may choose not to require notice of intent forms be filed for general permit coverage for certain categories of dischargers (see 40 C.F.R. § 122.28(b)(2)(v)), this exemption does not apply to sites where five acres of land or more will be disturbed (see 40 C.F.R. § 122.28 (b)(2)(v) (made applicable to states by 40 C.F.R. § 123.25(a)(11)). Wisconsin's response to this letter must provide a plan with appropriate milestones for amending Wis. Admin. Code § NR 216.415(4) to conform to federal NPDES requirements.

26. The State's regulations at Wis. Admin. Code s. NR § 216.022 appear to create an exclusion for those Municipal Separate Stormwater System (MS4) dischargers which are in compliance with an Memorandum of Understanding with another agency of the State. Unless EPA formally approves the bifurcation of NPDES responsibilities between WDNR and other State agencies, and the other agencies prohibit discharges without a permit, WDNR cannot exclude these MS4s from NPDES permitting requirements. As stated in comment 22 above, EPA must review and approve any such arrangements regarding the divisibility of permitting authority to ensure that federal program requirements are met. The State's response to this letter must identify any MS4s that are the subject of such an arrangement, including a description of the authorities and responsibilities covered. It must also include the State's plan, with a schedule and milestones, for correcting the problem identified with Wis. Admin. Code NR NR § 216.022.

27. Wisconsin law at Wis. Stat. § 283.19(2)(b) defines the term "new source" to mean "any source, the construction of which commenced after the adoption of the standard of performance applicable to the category of sources of which it is a member." The definition appears in a section that requires WDNR to promulgate, by rule, standards of performance for classes and categories of point sources. Given its placement, the definition appears to have the effect of establishing that a source is a new source if construction commenced after WDNR promulgated applicable standards of performance by rule. The federal regulation at 40 C.F.R. § 122. 2 defining "new source" defines such sources as those constructed after the adoption of standards of performance applicable to such source under CWA § 306, 33 U.S.C. § 1316. The State definition of new source, therefore, appears to provide an exemption from new source performance standards between the date of federal promulgation and the date of State adoption. In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through an amendment to the statute or corrective rulemaking (and associated milestones and timetables).

28. To ensure that substances are not present in amounts that are acutely harmful to aquatic life in all surface waters, including those portions of mixing zones normally inhabitable by aquatic life, Wis. Admin. Code NR NR §§ 106.06(3)(b), 106.32(2)(b), and 106.87(1) provide that effluent limitations shall be set equal to the final acute value (FAV). The State rule as written appears to deviate from the federal requirement at 40 C.F.R. § 122.44(d)(1)(vii)(A), which provides that WQBELs must be derived from and comply with water quality standards, in the following three instances:

(a) Acute water quality criteria will be exceeded in a stream or river when the effluent

limit is equal to the FAV and the effluent flow rate is one-half or more of the flow rate in the receiving waters;

(b) Limitations set equal to the FAV may not meet the requirements for mixing zones in Wis. Admin. Code NR § 102.05(3)(b); and

(c) A discharge equal to the FAV may cause chronic toxicity absent companion limits based on chronic water quality criteria.

In its response to this letter, Wisconsin must explain how it will address the deficiencies noted in this comment. If Wisconsin asserts that it has the authority necessary to address these deficiencies, the State must provide a written opinion from the Attorney General specifically identifying what authority the State will use to set effluent limits less than the FAV in the situations identified in comment 25 (a) – (c). If the State lacks the authority to implement 40 C.F.R. § 122.44(d)(1)(vii)(A), then Wisconsin must include the State's plan, with a schedule and milestones, for correcting the deficiencies noted above.

29. The Wisconsin rule at Wis. Admin. Code NR § 106.13 provides, in part, that WNDR "shall, within its capabilities, ... establish an appropriate compliance schedule" where leachate from a solid waste facility affects the ability of a POTW to meet WQBELs for toxic or organoleptic substances. The text of the rule leaves ambiguous whether the State is mandating the establishment of a compliance schedule or whether establishing such a schedule is discretionary. If the rule mandates a compliance schedule, the rule must be revised to be consistent with 40 C.F.R. § 122.47. In its response to this letter, Wisconsin must explain how the rule operates and how it will address any deficiency through corrective rulemaking.

30. The Wisconsin rule at Wis. Admin. Code NR § 106.32(2)(a) provides that ammonia limits based on acute water quality criteria shall be expressed as daily maxima. For continuous discharges, 40 C.F.R. § 122.45(d) provides that effluent limits must be expressed as seven-day average and average monthly limits for POTWs,[5] and maximum daily and average monthly limits for other discharges. Please identify in your response to this letter the basis for the State's authority to supplement daily maximum limits with average monthly limits based on acute criteria for ammonia. If such authority does not exist, the response must include the State's plan, with a schedule and milestones, for amending the rule so it is consistent with 40 C.F.R. § 122.45(d).

31. Wisconsin rules at Wis. Admin. Code NR §§ 106.32(2)(b)2, 106.32(3)(a)4.a, and 106.37(2) provide that Wisconsin shall or may add time to a compliance schedule so a permittee can gather data or perform demonstrations to justify a change in effluent limits. Section 502(17) of the CWA, 33 U.S.C. § 1362(17), defines a compliance schedule as an "enforceable sequence of actions or operations leading to compliance with an effluent limitation." A demonstration or data collection that is intended to justify a change in an effluent limitation is not an action leading to compliance with a final effluent limitation under the CWA, and a schedule based solely on time needed to perform such a demonstration or collect such data is not appropriate under 40 C.F.R. § 122.47. Wisconsin must revise these provisions to make them consistent with

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[5] Section 5.2.3 of the *Technical Support Document for Water Quality-based Toxics Control*, EPA/505/2-90-001), recommends maximum daily and monthly average limits for toxic pollutants in POTW permits.

federal requirements. The response to this letter needs to include the State's plan, with a schedule and milestones, for amending these rules so they conform to 40 C.F.R. § 122.47.

32. Wis. Admin. Code NR § 106.07(8) provides that a permittee may ask for time to be added to compliance schedule to complete work with the intent of modifying limitations based on "secondary" (e.g., Tier II) values. While 40 C.F.R. Part 132, Appx. F, procedure 9, allows time to be added to a compliance schedule for this purpose within the Great Lakes basin, 40 C.F.R. § 122.47 does not allow time to be added outside the basin. The State provision must be modified to clarify that this exception applies only to dischargers within the Great Lakes basin.

33. Wisconsin rules at Wis. Admin. Code NR §§ 106.32(3)(c)(2) and 106.32(4)(d) provide that certain effluent limitations may be based on real time conditions. Does Wisconsin have current or administratively continued permits that implement either of these provisions? If so, how does the State receive and manage discharge monitoring reports and other data to evaluate compliance?

34. The Wisconsin rule at Wis. Admin. Code NR § 106.32(5)(c) provides that effluent limitations based on acute, four-day average chronic, and 30-day average chronic criteria must be expressed as daily maxima, weekly averages, and 30-day averages, respectively. For continuous dischargers, 40 C.F.R. § 122.45(d) provides that effluent limitations shall be expressed as seven-day average and average monthly limits for POTWs and maximum daily and average monthly limits for other dischargers. Under what authority can Wisconsin supplement limits that are expressed in accordance with Wis. Admin. Code NR § 106.32(5)(c) such that permits comply with the requirements of 40 C.F.R. § 122.45(d)? If such authority does not exist, the response must include the State's plan, with a schedule and milestones, for amending the rule so it conforms to 40 C.F.R. § 122.45(d).

35. The federal rule at 40 C.F.R. § 122.44(d) requires a permit issuing agency to determine whether pollutants are or may be discharged at a level that will cause, have a reasonable potential to cause, or contribute to an in-stream excursion beyond a water quality criterion, including a criterion for ammonia. To the extent that an NPDES authority makes a determination in the affirmative, the federal rule requires the permit to include effluent limits which are derived from and comply with water quality standards. Wis. Admin. Code NR § 106.33(2) provides that the State may not include ammonia limitations in a permit when a calculated WQBEL is greater than 20 mg/L in the summer or 40 mg/L in winter. EPA is concerned that the word "may" prevents Wisconsin from setting WQBEL despite a finding that a discharge will cause, have a reasonable potential to cause, or contribute to an excursion. Additionally, EPA is concerned that, as written, the State's provision provides discretion to refrain from setting limits when the State finds that a discharge will cause, have a reasonable potential to cause, or contribute to an excursion. In its response to this letter, Wisconsin must explain how it will address the concern noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the Attorney General.

36. 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.

37. Wis. Admin. Code NR § 106.37(1) allows compliance schedules greater than five years when an ammonia variance has been granted. 40 C.F.R. § 122.47 provides that a permit may include a compliance schedule when appropriate. It is not appropriate to provide a compliance schedule to meet an effluent limitation based on a variance from water quality standards. Therefore, the State provision needs to be modified to remove the possibility that a compliance schedule can be used to meet an effluent limitation that is based on a variance from water quality standards.

38. 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.

39. 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.

40. Wis. Admin. Code NR § 106.88(1) provides, in part, that Wisconsin may include a WQBEL for chloride in a permit if such a limitation is deemed necessary in accordance with Wis. Admin. Code NR § 106.85. Use of the word "may" in this provision appears to make the establishment of a WQBEL discretionary. 40 C.F.R. § 122.44(d) mandates WQBELs whenever the permit issuing agency determines that a pollutant is present in a discharge at a level which will cause, have a reasonable potential to cause, or contribute to an excursion beyond a water quality criterion. Wisconsin must revise the rule to provide that a WQBEL shall be established when such a limit is deemed necessary.

The same rule allows Wisconsin to include a compliance schedule in a permit even when a discharger can meet a chloride WQBEL. 40 C.F.R. § 122.47 allows compliance schedules in permits when appropriate. It is not appropriate to include a compliance schedule in a permit when a discharger can meet an effluent limitation upon issuance of the permit. Therefore, the State provision must be modified to remove the possibility that a compliance schedule can be used when a discharger can meet an effluent limitation upon issuance of the permit, or the State should explain how its implementation of this provision is consistent with the described limitation set out in the federal program requirement.

41. Wis. Admin. Code NR § 106.88(4) provides that effluent limitations based on acute criteria shall be expressed as daily maxima and limitations based on chronic criteria shall be expressed

as weekly averages. For continuous dischargers, 40 C.F.R. § 122.45(d) provides that effluent limitations shall be expressed as seven-day average and average monthly limits for POTWs; and maximum daily and average monthly limits for other dischargers. Under what authority can Wisconsin supplement limits that are expressed in accordance with Wis. Admin. Code NR § 106.88(4) such that permits comply with the requirement of 40 C.F.R. § 122.45(d)? If such authority does not exist, the response to this letter must include the State's plan, with a schedule and milestones, to bring its regulation into conformity with the federal rule.

42. The Wisconsin rules at Wis. Admin. Code NR §§106.89(2) and (3), provide that where WQBELs for chloride are deemed necessary pursuant to Wis. Admin. Code NR § 106.87(1), whole effluent toxicity limitations (WET) may be held in abeyance during a source reduction period if chloride exceeds a threshold of 2,500 mg/L, or if the effluent concentration is less than 2,500 mg/L but exceeds the calculated acute WQBEL, where chloride is the sole source of acute toxicity. 40 C.F.R. § 122.44(d)(1)(v) provides, in part, that limitations on WET are not necessary when the permit-issuing agency demonstrates in the fact sheet or statement of basis for the permit, using the procedures in 40 C.F.R. § 122.44(d)(1)(ii), that chemical-specific limitations are sufficient to attain and maintain the applicable numeric and narrative water quality standards. During discussions between EPA and WDNR, Wisconsin explained that it implements Wis. Admin. Code NR §§ 106.89(2) and (3) in accordance with 40 C.F.R. § 122.44(d)(1)(v) with respect to permits that contain a chemical-specific WQBEL for chloride. Please confirm that this is the State's approach. If corrective rulemaking is required to address a deficiency in the rule, the State must explain in its response to this letter what timetable the State will follow to address the deficiency.

EPA's review suggests that Wis. Admin. Code NR §§ 106.89(2) and (3) do not conform to the CWA § 301(b)(1)(C) and 40 C.F.R. § 122.44(d) (requiring a WQBEL when a discharge will cause, have a reasonable potential to cause, or contribute to an excursion beyond an applicable water quality criterion expressed in terms of toxicity) when Wisconsin holds a WET limit in abeyance because chloride exceeds a threshold but the permit does not contain a chemical-specific WQBEL for chloride. Another interpretation would be that the State could implement "held in abeyance" such that the permit includes the WET limit but compliance with the limit is not required until the end of a compliance schedule. Therefore, in response to this letter, please explain how Wisconsin implements Wis. Admin. Code NR §§ 106.89(2) and (3) when chloride exceeds one or more of the specified thresholds, and provide the State's explanation of how these provisions are consistent with the federal requirement, or provide the State's plan to correct these provisions to make them consistent with the federal requirement.

43. The Wisconsin regulation at Wis. Admin. Code NR § 106.91 allows Wisconsin to set a chloride limit, other than the WQBEL, when a 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.

44. (a) Wisconsin's definition of "point source" in Wis. Admin. Code NR § 205.03(27) does not

specify landfill leachate collection systems even though such systems are expressly included in the federal definition in 40 C.F.R. § 122.2 [and applicable to state programs, see 40 C.F.R. § 123.2]. During discussions, WDNR explained that the agency has issued WPDES permits for discharges from landfill leachate collection systems. In response to this letter, please provide an explanation of Wisconsin's authority to issue WPDES permits for landfill leachate collection systems and provide the permit numbers for such permits and the names of the permitees.

(b) Wisconsin's definition of "pollutant" in Wis. Admin. Code NR § 205.03(28) does not specify filter backwash as a pollutant even though filter backwash is expressly enumerated as a pollutant in 40 C.F.R. § 122.2 [and applicable to state programs, see 40 C.F.R. § 123.2]. 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.

45. The federal regulation at 40 C.F.R. § 122.5 explains the effect of a permit. It includes permit as a shield, use of a permit as an affirmative defense, prohibition of the use of a permit as a property interest, and prohibition of the use of a permit as an authorization to injure persons or property. This provision appears to have no equivalent in Wisconsin's rules. 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.

46. The federal regulation at 40 C.F.R. § 122.21(o) contains a provision for expedited variance procedures or time extensions for filing requests for variances. The Wisconsin rules do not contain this provision. Is this an instance where Wisconsin wishes to implement a more stringent authorized program, or is this an oversight? In its response to this letter, Wisconsin should explain that it implements a more stringent program or how it will address this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the State's Attorney General.

47. Wisconsin's regulations at Wis. Admin. Code NR § 205.07(1)(g) provide that the signatory to a permit can be a "person authorized by one of those officers or officials and who has responsibility for the overall operation of the facility or activity regulated by the permit." However, there is no requirement for how the authorization will be documented or any requirements that apply. While EPA's regulations at 40 C.F.R. § 122.22 do not require a demonstration that a corporate officer has the requisite authority to sign permit documents, Wisconsin's regulations appear to allow non-corporate officers to sign such documents without providing an accountable process for such delegation of authority. In its response to this letter, Wisconsin should 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.

48. Wisconsin's regulations do not include permit "termination" as a consequence of violating the permit, as provided by the federal regulations at 40 C.F.R. § 122.41(a). Wisconsin should explain whether and how its rules are consistent with this federal requirement, even if the specific terminology used in the State's rules differ. If corrective rulemaking 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 potential deficiency.

49. The federal regulations at 40 C.F.R. § 122.41(l)(1)(i) require that a permitted facility must provide notice where, because of an alteration or addition to a permitted facility, the facility may meet one of the criteria for defining a new source (40 C.F.R. § 122.29(b)). Wisconsin should explain how its provision at Wis. Admin. Code NR § 205.07(1)(q)(1) is equivalent to this federal requirement. If corrective rulemaking is required to address this potential deficiency, the State must explain in its response to this letter what timetable the State will follow.

50. Federal regulations at 40 C.F.R. § 124.5 (a) – (d) provide for termination of permits. Wisconsin regulations do not appear to provide for permit termination. Specifically, the Wisconsin regulations lack an equivalent provision for "notice of intent to terminate," as specified in 40 C.F.R. § 124.5(d). The State must explain how its regulations are consistent with the federal requirement. If corrective rulemaking is required to address this deficiency, the State must explain in its response to this letter what timetable the State will follow.

51. Federal regulations at 40 C.F.R. § 124.11 provide that "any interested person . . . may request a public hearing, if no hearing has already been scheduled," as long as the request is in writing and states the nature of the issues proposed to be raised in the hearing. The regulation at 40 C.F.R. § 124.12 provides that a hearing shall be held if the Director finds on the basis of requests that there is significant public interest in the draft permit. The Wisconsin rules governing public hearings appear to be set out in Wis. Admin. Code NR § 203.10(5) and Wis. Stat. 283.49 (public hearing), and limit hearing requests to those made by groups of five or more petitioners. Wisconsin must explain how its provisions for allowing requests for hearing are consistent with federal requirements. If corrective rulemaking 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 potential deficiency.

52. Wis. Admin. Code NR § 216.21(2)(b) excludes access roads and rail lines from tier 2 category industries. They are included within the federal analog at 40 C.F.R. § 122.26(b)(14). 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.

53. Wis. Admin. Code NR § 216.21(3)(e)(2) does not require that the facility submit its latitude and longitude when certifying 'no exposure.' This information is required under 40 C.F.R. § 122.26(g)(4)(ii). 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.

54. Wis. Admin. Code NR § 216.42(1) requires a permit for discharges from construction sites that are one or more acre in size. However, Wisconsin does not include the requirement found in 40 C.F.R. § 122.26(b)(15)(i) that disturbances less than one acre, when part of a common plan of development that disturbs more than one acre, also require permit coverage for discharges. Wisconsin's definition of "construction site" at Wis. Admin. Code NR § 216.002(2) includes

common plan language but does not explicitly include areas less than one acre. In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through corrective rulemaking or in by citing existing, specific authority in a written explanation from the State's Attorney General.

55. Under 40 C.F.R. § 122.26(b)(2), illicit dischargers to an MS4 are defined as "any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a NPDES permit. . . and discharges resulting from fire fighting activities." The State definition of illicit discharges appears to exempt many more classes of activities from the definition. As a result, the requirement that MS4s identify illicit discharges pursuant to Wis. Admin. Code NR § 216.07(3), appears less comprehensive, and therefore less stringent, than the federal requirement found at 40 C.F.R. § 122.34(b)(iii), which requires MS4s to address all illicit discharges ". . . which are [ ] found to be a significant contributor of pollutants to the [MS4]." 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.

56. Wis. Admin. Code NR § 216.07(8) provides for an annual report. The rule does not include the requirements of 40 C.F.R. § 122.34(g)(3)(v) pertaining to notice that the permittee is relying on another government entity to satisfy some of the permit obligations. In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through corrective rulemaking or in a written explanation from the State's Attorney General.

57. The annual report required by Wis. Admin. Code NR § 216.07 lacks provisions equivalent to 40 C.F.R. § 122.42(c)(2) (proposed changes to the storm water management programs that are established as permit condition). 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.

58. Wisconsin's definition of "waters of the state" in Wis. Admin. Code NR §205.03(44) does not refer to mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, or playa lakes. These categories are included in the definition of "waters of the United States" as set out at 40 C.F.R. § 122.2, which includes these categories where "the use, degradation, or destruction of which would affect of could affect interstate or foreign commerce including any such waters." Are the more specific categories in the federal definition included under the umbrella language of Wis. Admin. Code NR § 205.03(44) which states "and other surface or groundwater, natural or articial, public or private within the state or under its jurisdiction. . . ."? In its response to this letter, Wisconsin must explain how it will address the potential deficiency noted in this comment, either through corrective rulemaking or in a written explanation from the State's Attorney General citing existing, specific authority

59. Wisconsin appears to exempt from NPDES permitting "the disposal of solid wastes, including wet or semi-liquid wastes, at a site or operation licensed pursuant to chs. NR 500 to 536, except as required for municipal sludge in ch. NR 204 or where storm water permit coverage is required under ch. NR 216." (Wis. Admin. Code NR § 200.02.) This exclusion goes beyond those exclusions enumerated at 40 C.F.R. § 122.3. Wisconsin must explain whether the

State prohibits discharge of such materials and whether Wisconsin requires permits for such discharges when they occur. If corrective rulemaking 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.

60. Wisconsin appears to exempt from NPDES permitting "discharges from private alcohol fuel production systems as exempted in s. 283.61, Stats." Wis. Admin. Code NR § 200.03(3)(f), and Wis. Stat. § 283.61 provide that the exemption applies where the waste product "discharge or disposal is confined to the property of the owner." (Wis. Stat. § 283.61(2).) Does Wisconsin allow the discharge exemption where waters of the United States are located within, or traverse through, privately-owned property? In its response to this letter, Wisconsin must explain how it will address the deficiency noted in this comment, either through statutory amendment, corrective rulemaking, or by citing existing, specific authority in a written explanation from the State's Attorney General.

61. Wisconsin appears to lack rules that establish permit application requirements for the following categories of dischargers: existing manufacturing, commercial, mining, and silvicultural dischargers (40 C.F.R. § 122.21(g)); aquatic animal production facilities (40 C.F.R. § 122.21(i)); new sources and new discharges (40 C.F.R. § 122.21(k)); and facilities with cooling water intake structures (40 C.F.R. § 122.21(r)). Wisconsin must document where permit application requirements for these categories of discharges are set out. If corrective rulemaking is required to address a deficiency, the State must explain in its response to this letter what timetable the State will follow.

62. Wisconsin regulations allow a permit to be "suspended," an action that is not included in the federal regulations (federal regulations provide for permit revocation and reissuance or permit termination (40 C.F.R. § 122.41(f)). The federal regulations contemplate "revocation and reissuance" as a separate action from termination for cause. Revocation and reissuance is generally used if transfer of a permit (because of ownership change) is not appropriate or if there has been a significant change in the nature of a discharge to warrant a new permit. The federal regulations provide that a permit may be terminated for cause, as set out in 40 C.F.R. § 122.64. It is unclear whether Wisconsin (which does not use the term "termination") is able to exercise equivalent authorities to those permit actions identified in 40 C.F.R. § 122.41(f). The State must document the scope and basis of its authorities to cover the requirements in 40 C.F.R. § 122.41(f). If corrective rulemaking is required to address a deficiency, the State must explain in its response to this letter what timetable the State will follow.

63. Wisconsin rules appear to lack a provision which allows the State to assess multiple penalties for multiple instances of knowingly making false statements. This requirement is found in the federal regulations at 40 C.F.R. § 123.27. Wisconsin must document where it has the equivalent authority required to address cases involving multiple false statements. If corrective rulemaking 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.

64. Wisconsin does not appear to have a provision equivalent to 40 C.F.R. § 123.27(d), which provides for public participation in the enforcement process (including provisions to allow

intervention as of right in any civil or administrative action; or assurance that the State will provide written responses to requests to investigate and respond to citizen complaints, provide for permissive intervention, and provide public notice and comment on proposed settlements). Wisconsin must document where it has the equivalent authority required by 40 C.F.R. § 123.27(d). If corrective rulemaking 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.

65. Federal regulations require the preparation of a draft permit where a state determines to proceed to permit issuance following receipt of a complete permit application. Wisconsin appears to lack provisions equivalent to 40 C.F.R. § 124.6, which provides the informational and procedural requirements for preparation of a draft permit. The State must document where it has the equivalent authority required by 40 C.F.R. § 124.6. If corrective rulemaking 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.

66. Federal regulations require the preparation of a fact sheet for every NPDES facility or activity, with fact sheet contents and processes outlined in 40 C.F.R. §§ 124.8 and 124.56. Wisconsin appears to require fact sheets only for discharges having a volume of more than 500,000 gallons/day (and no fact sheets are required for storm water dischargers). Wisconsin must explain whether and how it has the authority to meet the requirements of 40 C.F.R. §§ 124.8 and 124.56. If corrective rulemaking 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.

67. The Wisconsin rules for small MS4s do not contain provisions equivalent to 40 C.F.R. § 122.34(g)(1) (required storm water management program evaluation) and (2) (records must be available to the public). 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.

68. The CWA requires that effluent limitations will be established "in no case later than 3 years after the date such limitations are established, and in no case later than March 31, 1989." 33 U.S.C. § 1311(b)(2)(F). Wisconsin law requires effluent limitations to be established "not later than 3 years after the date effluent limitations are established, but in no case before July 1, 1984 or after July 1, 1987. Wis. Stat. § 283.13(2)(f). The State must explain the basis for the discrepancy of dates given in the State provision. If a 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.

69. 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 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.

70. Wis. Admin. Code NR §106.05(8) provides that a permittee may request "alternative limits" when an analytical test method is not sufficiently sensitive, despite a determination by the State that the discharge may cause or contribute to an excursion beyond the applicable water quality standards. Any permit that included such limits would not conform to § 301(b)(1)(C) of the Clean Water Act 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.

71. Wis. Admin. Code NR § 106.06(2) contains a note expressing the State's intent to develop a rule to phase-out mixing zones for existing dischargers of bioaccumulative chemicals of concern (BCC). Wisconsin must establish such a rule for discharges within the Great Lakes basin. Under 40 C.F.R. Part 132, such mixing zones for Great Lakes dischargers are being phased out beginning in November 2010. In its response to this letter, Wisconsin needs to provide a plan, with a schedule and milestones, for revising the rule to phase out mixing zones for BCCs.

72. When calculating effluent limitations, Wis. Admin. Code NR §§ 106.06(4)(c)(5), (8), and (10) mandate that the State allow the discharge to be diluted with a defined quantity of the receiving water. These provisions appear to allow continued violations of water quality standards when the receiving waters are impaired for a pollutant that is present in a discharge. In addition, it is unclear whether the dilution mandate is subject to, and constrained by, the mixing zone provisions in Wis. Admin. Code NR § 102.05(3). In its response to this letter, Wisconsin needs to explain how it will address the deficiency noted in this comment, either through corrective rulemaking or in a written explanation from the State's Attorney General. A written opinion of the State Attorney General must include an identification of the authority under which the State will set effluent limitation which are derived from and comply with water quality standards, as required by § 301(b)(1)(C) of the CWA and 40 C.F.R. § 122.44(d), the provisions of §§ 106.06(4)(c), (5), and (8) notwithstanding.

73. Wis. Admin. Code NR §§ 106.06(4)(c) 5 and 10 mandate that the State provide time for a discharger to complete mixing demonstrations. These provisions are contrary to the federal regulation at 40 C.F.R. § 122.47 to the extent that they require the time to be included in a compliance schedule in a permit. Please clarify whether the rules require the State to provide time before permit issuance or as a compliance schedule. If corrective rulemaking is required, the State must explain in its response to this letter what timetable the State will follow to address this deficiency.

74. Wis. Admin. Code NR §§ 106.08 and 106.09 mandate that the State include effluent limitations for whole effluent toxicity (WET) when it determines that such limits are necessary based on an evaluation of five or more samples. The rule includes a procedure for assessing effluent variability in this circumstance. The rule allows limitations for WET when fewer than five samples are available, but it does not include procedures that the State will use to assess variability in this circumstance. Wisconsin needs to revise the rule to mandate limitations when it determines, based on four or fewer samples, that a discharge will cause, have a reasonable potential to cause, or contribute to an excursion above a WET criterion. In addition, the State

needs procedures for assessing effluent variability when four or fewer samples exist. See 40 C.F.R. § 122.44(d). If corrective rulemaking 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.

75. Wisconsin law at Wis. Stat. § 227.10(2m) was recently amended to provide that "No agency may implement or enforce any standard, requirement, or threshold, including as a term or condition of any liecnse issued by the agency, unless that standard, requirement, or threshold is explicitly required or explicitly permitted by statute or by a rule that has been promulgated in accordance with this subchapter."[6] The response to this letter must include a statement from the Attorney General explaining the relationship between the limitation in Wis. Stat. § 227.10(2m), the permitting and enforcement provisions set forth in Wis. Stat. § 283 and the applicable administrative code provisions, and the federal requirements for permitting and enforcement authority for state NPDES permit programs set out in 40 C.F.R. §§ 123.25 and 123.27. If corrective legislation or rulemaking is required to ensure that the State has permitting and enforcement authority commensurate with 40 C.F.R. §§ 123.25 and 123.27, the State must explain in its response to this letter the timetable and milestones the State will follow to address this potential deficiency.

[6] 2011 Wis. Act 21, § 1r (May 23, 2011).

New Chemical Test Methods

ASTM D6508, Dissolved Inorganic Anions by Capillary Ion Electrophoresis.
QuikChem Method 10-204-00-1-X, Cyanide using MICRO DIST and flow injection analysis.
Kelada-01, Automated Methods for Total Cyanide, Acid Dissociable Cyanide, and Thiocyanate.
Method CP-86.07, Chlorinated Phenolics by In situ Acetylation and GC/MS.
EPA Method 245.7, Mercury by Cold Vapor Atomic Fluorescence Spectrometry.
Standard Methods 4500-Cl, Chlorine by Low Level Amperometry.
ASTM D6888-04 Available Cyanide by Ligand Exchange-FIA.
ASTM D 6919-03, Cations and Ammonium in by Ion Chromatography.
Standard Method 4500-Cl-D. Chloride by Potentiometry.
ASTM D512-89 Chloride by Ion Selective Electrode.
Standard Method 4500-CN-F, Cyanide by Ion Selective Electrode.
ASTM D2036-98 A, Cyanide by Ion Selective Electrode.
Standard Method 4500-S2-G, Sulfide by Ion Selective Electrode.
ASTM D4658-92, Sulfide by Ion Selective Electrode.
Standard Method 4500-NO3-D, Nitrate by Ion Selective Electrode.
Method D99-003, Free Chlorine by Color Comparison Test Strip.
Method OIA-1677, DW Available Cyanide by Ligand Exchange_FIA.
Radium-226 and 228 by Gamma Spectrometry.
EPA Method 327.0, Chlorine Dioxide by Colorimetry.
EPA Method 300.1 for Anions.
EPA Method 552.3 for Dalapon.
Determination of Radium-226 and Radium-228 in Drinking Water by Gamma-ray Spectrometry Using HPGE or Ge(Li) Detectors.

Updated Chemical Test Methods

Method 200.2,Total Recoverable Elements Digestion.
Method 200.8, Metals by Inductively Coupled Plasma-Mass Spectrometry.
Method 200.9, Metals by Stabilized Temperature Graphite Furnace Atomic Absorption.
Method 218.6, Hexavalent Chromium by Ion Chromatography.
Method 300.0, Inorganic Anions by Ion Chromatography.
Method 353.2, Nitrate and Nitrite by Colorimetry.
Revisions to Methods 180.1, 200.7, 245.1, 335.3, 350.1, 351.2, 353.2, 365.1, 375.2, 410.4, and 420.4

Updated Versions of Currently Approved Methods

This rule approved about 200 updated methods, including:
An errata sheet for the whole effluent toxicity manuals.
74 newer versions of ASTM methods.
88 newer versions of Standard Methods from the 18th, 19th and 20th editions, but not the 21st.
19 methods published in the 16th edition of Official Methods of Analysis of AOAC International, 1995

Method Modifications, Analytical Requirements, and Reporting Requirements

The final rule includes a new section to introduce greater flexibility in the use of approved methods

The section describes the circumstances in which approved methods may be modified and the requirements that analysts must meet to use these modified methods in required measurements without prior EPA

approval

Sample Collection, Preservation, and Holding Time Requirements,

The rule includes many detailed changes to Table II, including:
The general sample preservation temperature from has changed 4 C to < 6.00 C.
For metals other than boron, hexavalent chromium, and mercury, the EPA will allow sample preservation with nitric acid 24 hours prior to analysis. In other words, acid preservation in the field for metals is not required.
Clarification that the start of a holding time for a grab sample would start at the time of sample collection. The holding time for a composite sample would start at the time the last grab sample component is collected

Withdrawal of Methods

The rule deletes Methods 612 and 625 as approved procedures for 1,2-dichlorobenzene, 1,3-dichlorobenzene, and 1,4-dichlorobenzene, and withdraws approval for all oil and grease methods that use Freon-113 as an extraction solvent.. In addition, the rule withdraws 105 methods contained in the EPA's Methods for the Chemical Analysis of Water and Wastes for which approved alternatives published by voluntary consensus standards bodies (i.e., ASTM and Standard Methods) are available. The methods that are deleted are listed below:

110.1	208.2	236.1	272.1	330.3
110.2	210.1	236.2	272.2	330.4
110.3	210.2	239.1	273.1	330.5
130.2	212.3	239.2	279.1	335.1
150.1	213.1	242.1	282.1	335.2
160.1	213.2	243.1	282.2	335.3
160.2	215.1	243.2	283.1	340.1
160.3	215.2	246.1	286.1	340.2
160.5	218.1	246.2	286.2	340.3
170.1	218.2	249.1	289.1	350.2
202.1	218.3	249.2	305.1	350.2
202.2	218.4	252.1	310.1	350.3
204.1	219.1	253.1	320.1	351.3
204.2	219.2	255.1	325.1	351.4
206.2	220.1	258.1	325.2	353.1
206.3	220.2	265.1	325.3	353.3
206.4	231.1	267.1	330.1	354.1
208.1	235.1	270.2	330.2	360.1

360.2	375.3	377.1	413.1
365.2	375.4	405.1	415.1
370.1	376.1	410.1	425.1
375.1	376.2	410.2	

Tradewell, Becky

From: Schoenfeldt, Eileen - GOV [Eileen.Schoenfeldt@wisconsin.gov]
Sent: Wednesday, December 28, 2011 2:28 PM
To: Tradewell, Becky
Subject: addition to draft request

Hi Becky,

Below is an additional change suggested by the DNR after their meeting with EPA on their concerns with our WPDES program. Could you please add this to the draft request I had sent you a couple of weeks ago?

I also wanted to check on the status of the bill draft. Thanks!

Eileen Schoenfeldt
Policy Advisor
Office of Governor Scott Walker
(608) 261-2163
eileen.schoenfeldt@wisconsin.gov

The statutory change is as follows:

√ Amend s. 283.17(2) as follows:

283.17 Thermal effluent limitations.

(2) Any point source of a discharge having a thermal component, the modification of which is commenced after October 18, 1972, and which, as modified, meets the most stringent effluent limitation established under s. 283.13 ~~or sub. (1)~~ and this subsection, where the limitation assures protection and propagation....

According to EPA, since there aren't any permittees with effluent limitations calculated under 283.17(1), so striking out this language will not have an impact on any permittee in Wisconsin. This is yet another example that many of EPA's issues are "nitpicky" and won't have an impact on the program ---it is an issue of legal authority on paper.