

MEMORANDUM OF AGREEMENT
BETWEEN THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

AND

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V

INTRODUCTION

The Environmental Protection Agency (EPA) Guidelines for state program elements necessary for participation in the National Pollutant Discharge Elimination System (NPDES), 40 CFR 124, prepared pursuant to the authority contained in Section 304(h)(2) of the Federal Water Pollution Control Act Amendment of 1972 (referred herein as the Federal Act) were published in the Federal Register on December 22, 1972. Various sections of the Guidelines permit the chief administrative officer of a state water pollution control agency and the Regional Administrator of EPA to reach agreement on the manner in which the 40 CFR 124 Guidelines are to be implemented.

To satisfy the requirements of the Guidelines, the following procedures are hereby agreed to by the Administrator of the Division of Environmental Protection, State of Wisconsin Department of Natural Resources (referred to herein as the Administrator), and the Regional Administrator.

The sections and subsections of 40 CFR 124 related to these agreements are: 124.22, 124.23, 124.35(b), 124.35(c), 124.41(c), 124.44(d), 124.46, 124.47, 124.61(b), 124.62(c), 124.71(c), 124.72(b), 124.73(b)(2), and 124.80(d). The terms used in this Memorandum of Agreement have the same meaning as those used and defined in 40 CFR 124.1

I. RECEIPT AND USE FEDERAL DATA

- A. The two purposes of this part of the agreement are: (1) to provide for the transfer of data bearing on NPDES permit determinations from the EPA to the Wisconsin Department of Natural Resources and (2) to insure that any significant deficiencies in the transferred NPDES application will be corrected prior to issuance of an NPDES permit.
- B. Commencing immediately after the effective date of this agreement the Regional Administrator will transmit to the Administrator a list of all NPDES permit applications received by EPA. This list will include the name of each discharger, SIC Code, application number and indicate those applications which EPA has determined are administratively complete.

- C. After receipt of the list, the Administrator will indicate the order to be used by EPA to transmit the application files to him. The application file will include the NPDES permit application and any other pertinent data collected by EPA. The application files will be transmitted to the Administrator according to the order indicated. EPA will retain two copies of each file transmitted to the Administrator and route one copy to the Permit Branch and the second to the Regional Data Management Section, Surveillance and Analysis Section.
- D. For an application identified by EPA as not administratively complete, EPA will obtain the necessary information from the discharger and complete the application prior to its transmittal to the Administrator. The Administrator will obtain effluent data and any other additional information for those applications identified by EPA as administratively complete which he deems necessary to update or process the application.
- E. For each application for which additional information was obtained by the Administrator, two (2) copies of each completed application or completing amendments and a cover letter indicating that the application has been determined to be complete will be transmitted by the Administrator to the Regional Administrator, Attention: Permit Branch. One copy will be routed by the Regional Administrator to the Regional Data Management Section, Surveillance and Analysis Division, for processing into the National Data Bank and the other copy will be placed in the NPDES Permit Branch file.

II. TRANSMISSION OF NPDES APPLICATION FORMS TO REGIONAL ADMINISTRATOR

- A. After final approval of Wisconsin's NPDES permit program, the Administrator will assume initial responsibility for determining that applications submitted to the Department after that date are complete. When the Administrator determines that the NPDES forms received from the applicant are complete, two (2) copies of the forms with a cover letter indicating that the forms are complete will be transmitted to the Regional Administrator, Attention: Permit Branch. If EPA concurs with the Administrator, one (1) copy will be routed to the Regional Data Management Section, Surveillance and Analysis Division, through the Compliance Section, Enforcement Division for processing into the National Data Bank and the other copy will be placed in the Regional NPDES Permit Branch file. If the Regional Administrator does not concur that the application is complete, he shall within 20 days notify the Administrator by letter in which respects the application is deficient. No NPDES permit will be issued by the Administrator until the deficiencies are corrected.
- B. After receipt of an NPDES short form application from the Administrator, the Regional Administrator may identify the discharge as one for which an NPDES standard form shall be submitted. The Regional Administrator shall notify the Administrator of any such determination made with respect to any such discharge. After receipt of this determination the Administrator shall require the applicant to submit an NPDES standard application form or any other information requested by the Regional Administrator.

- C. When requested by the Regional Administrator, the Administrator will transmit copies of notices received by him from publicly owned treatment works pursuant to 40 CFR 124.45(d) and (e) and Section 147.14, Wisconsin Statutes, within 20 days of receipt of the request.
- D. The Regional Administrator may waive his right to receive copies of NPDES application forms with respect to classes, types and sizes within any category of point sources and with respect to minor discharges or discharges to particular navigable waters or parts thereof. Such written waiver must be issued by the Regional Administrator before the Administrator can discontinue transmitting copies of NPDES forms to EPA.

III. PUBLIC ACCESS TO INFORMATION

- A. The Administrator will protect any information (other than effluent data) contained in such NPDES form, or other records, reports or plans as confidential upon a showing by any person that such information, if made public, would divulge methods or processes entitled to protection as trade secrets of that person. If, however, the information being considered for confidential treatment is contained in an NPDES form, the Administrator will forward such information to the Regional Administrator for his concurrence in any determination of confidentiality. If the Regional Administrator does not agree that some or all of the information being considered for confidential treatment merits such protection, he will request advice from the Office of the General Counsel, stating the reasons for his disagreement with the determination of the Administrator. The Regional Administrator will simultaneously provide a copy of the request to the Administrator and to the person claiming trade secrecy. The General Counsel will determine whether the information in question would, if revealed, divulge methods or processes entitled to protection as trade secrets. In making such determinations, he will consider any additional information submitted to the Office of the General Counsel within 30 days of receipt of the request from the Regional Administrator. If the General Counsel determines that the information being considered does not contain trade secrets, he will so advise the Regional Administrator and will notify the person claiming trade secrecy of such determination by certified mail. No sooner than 30 days following the mailing of such notice, the Regional Administrator will communicate to the Administrator his decision not to concur in the withholding of such information and the Regional Administrator will then make available to the public, upon request, that information determined not to constitute trade secrets, unless an appeal is made to EPA by the person claiming trade secrecy. Following an appeal, the determination made by EPA will be conclusive unless reviewed in an appropriate district court of the United States.
- B. Any information accorded confidential status, whether or not contained in an NPDES form, will be disclosed by the Administrator, upon written request, to the Regional Administrator, or his authorized representative, who will maintain the disclosed information as confidential.

IV. TRANSMISSION TO REGIONAL ADMINISTRATOR OF PROPOSED NPDES PERMIT

- A. At the time a public notice required by 40 CFR 124.32 and Section 147.09, Wisconsin Statutes, is issued, the Administrator will transmit one copy of the NPDES public notice, the fact sheet (if one is required) and proposed NPDES permit to the Regional Administrator, Attention: NPDES Permit Branch. The information transmitted with the proposed permit will include any and all terms, conditions, requirements or documents which are part of the proposed NPDES permit or which affect the State's authorization of the discharge of pollutants.
- B. The Regional Administrator will be provided 45 days from the time he receives the proposed NPDES permit from the Administrator within which to object to, as provided for in Section 402(d)(2) of the Federal Act, comment upon or make a recommendation with respect to the proposed NPDES permit. Upon request of the Regional Administrator, the Administrator will provide the Regional Administrator additional time for review, provided that the total review period shall not exceed 90 days. The Regional Administrator shall notify the Administrator within the time periods set forth above if EPA objects to or concurs with the issuance by the Administrator of the NPDES permit as proposed.
- C. If a proposed NPDES permit issued with a public notice is modified as a result of comments received by the Department during the thirty-day comment period or as a result of a public hearing, the Administrator will transmit a revised copy of the proposed NPDES permit to the Regional Administrator, Attention: NPDES Permit Branch, and shall specify the reasons for the modifications.

The Regional Administrator shall be provided 45 days from the time he receives the proposed NPDES permit, as revised, within which to object, comment upon or make recommendations with respect to any such revisions. Upon request of the Regional Administrator, the Administrator will provide the Regional Administrator additional time for review, provided that the total review period shall not exceed 90 days. The Regional Administrator shall notify the Administrator within the time periods set forth above if EPA either objects to or concurs with the issuance by the Administrator of the NPDES permit as revised.

- D. Upon receipt of any written comments on any proposed NPDES permit from any State whose waters may be affected by the issuance of such a permit, the Administrator shall consider such written recommendations and may modify the proposed NPDES permit accordingly. If the Administrator fails to accept, in whole or in part, the written recommendations of such a State, he shall immediately notify the Regional Administrator of his reasons for so doing. The Regional Administrator, notwithstanding the provisions of Paragraph B above, shall be provided 45 days from the time he receives such notification from the Administrator within which to object to, comment upon or make recommendations with respect to the issuance of the proposed NPDES permit. Upon request of the Regional Administrator, the Administrator will provide the Regional Administrator additional time for review, provided that the total review period shall not exceed 90 days.

- E. No later than 120 days from the date of EPA approval of Wisconsin's NPDES permit program, the Regional Administrator, pursuant to Section 402(e) of the Federal Act, shall consider whether to waive his right to receive, review, object to or comment upon proposed NPDES permits for all industrial discharges into navigable waters with daily discharges of less than 100,000 gallons per day and all discharges from publicly owned treatment works of less than 500,000 gallons per day and for all discharges, irrespective of size, for such categories and classes of point sources as the Regional Administrator shall specify at that time.

The Regional Administrator shall promptly notify the Administrator of his decision. If the Regional Administrator does not respond to the Administrator within this 120-day period, his right to receive, review, object to or comment upon proposed permits of less than the above levels shall be considered waived.

V. TRANSMISSION TO REGIONAL ADMINISTRATOR OF ISSUED NPDES PERMITS

The Administrator will transmit to the Regional Administrator two (2) copies of every issued NPDES permit, Attention: NPDES Permit Branch, together with any and all terms, conditions and requirements of the NPDES permit. The Administrator will transmit the above information, together with a copy of the Administrator's letter to the applicant forwarding the NPDES permit, at the same time the NPDES permit issued by the Department is transmitted to the applicant.

VI. COMPLIANCE REPORTS

On the last day of the months of February, May, August and November the Administrator will transmit to the Regional Administrator, Attention: Compliance Section, Enforcement Division, a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of an NPDES permittee to comply with an interim or final requirement of a schedule of compliance or to notify the Department of compliance or noncompliance with each interim or final requirement. The list will be available to the public for inspection and copying and will contain at least the following information with respect to each instance of noncompliance.

1. The name and address of each noncomplying NPDES permittee;
2. A short description of each instance of noncompliance (e.g., failure to submit preliminary plans, two-week delay in commencement of construction of treatment facilities, etc.);
3. A short description of any action or proposed action by the permittee or the Administrator to comply or enforce compliance with an interim or final requirement; and
4. Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, etc.).

VII. MONITORING

- A. Any discharge authorized by an NPDES permit which (1) is not a minor discharge, (2) the Regional Administrator requests, in writing, to be monitored, or (3) contains toxic pollutants for which an effluent standard has been established pursuant to Section 307(a) of the Federal Act, will require monitoring by the permittee for at least the following:
- (i) Flow (in gallons per day); and
 - (ii) All of the following pollutants:
 - a. Pollutants (either directly or indirectly through the use of accepted correlation coefficients or equivalent measurements) which are subject to reduction or elimination under the terms and conditions of the permit;
 - b. Pollutants which the Department finds, on the basis of information available to it, could have significant impact on the quality of navigable waters;
 - c. Pollutants specified by the Administrator of EPA, in regulations issued pursuant to the Federal Act, as subject to monitoring; and
 - d. Any pollutants in addition to the above which the Regional Administrator requests, in writing, to be monitored.
- B. The Regional Administrator may make the request specified in A (2) and (3) above at any time before an NPDES permit is issued.
- C. The Administrator will ensure that the Regional Administrator receives two (2) copies of all NPDES reporting forms submitted to the Department. If the Regional Administrator determines that the NPDES reporting forms are complete, he shall route one copy to the Permit Branch and the second to the Regional Data Management Section, Surveillance and Analysis Division, for processing into the National Data Bank. If the Regional Administrator determines that the NPDES reporting forms submitted to the Department are not complete or are otherwise deficient, he shall specify to the Administrator in which respects the forms are deficient. Upon receipt of the specification of deficiencies, the Administrator shall require the permittee to supply such additional information as the Regional Administrator specifies.
- D. The Administrator will evaluate data submitted by NPDES permittees in NPDES reporting forms and other forms supplying monitoring data for possible enforcement or remedial action.

On the last day of the months of February, May, August and November the Administrator will transmit to the Regional Administrator, Attention: Compliance Section, Enforcement Division, a list of all instances, as of 30 days prior to the date of such report, of each failure or refusal of an NPDES permittee to comply with an interim or final effluent limitation. The list will be available to the public for inspection and copying and will contain at least the following information with respect to each instance of noncompliance.

1. The name and address of each noncomplying NPDES permittee;
2. A short description of each instance of noncompliance;
3. A short description of any action or proposed action by the permittee or the Administrator to comply or enforce compliance with an interim or final effluent limitation; and
4. Any details which tend to explain or mitigate an instance of noncompliance with an interim or final effluent limitation.

VIII. MONITORING RESULTS

During the term of a permit, upon request of the Regional Administrator, the Administrator shall notify and require the permittee to extend the normal three-year retention of monitoring records required under 40 CFR 124.62(c).

IX. RECEIPT AND FOLLOW-UP OF NOTIFICATIONS AND REQUESTS

If the Administrator determines that a condition of a permit to a publicly owned treatment works relating to a new introduction or changes in the volume or character of pollutants introduced into such treatment works is violated, he shall notify the Regional Administrator in writing and consider taking action to restrict or prohibit the introduction of pollutants into treatment works.

X. MODIFICATION, SUSPENSION AND REVOCATION OF NPDES PERMITS

- A. If an NPDES permit is modified, suspended or revoked by the Administrator for good cause, a copy of the proposed modification, suspension or revocation shall be transmitted to the Regional Administrator, Attention: NPDES Permit Branch. The Regional Administrator will be provided 45 days from the time he receives the proposed modification, suspension or revocation from the Administrator within which to object, as provided for in Section 402(d)(2) of the Federal Act, comment upon or make a recommendation with respect to the proposed modification, suspension or revocation.

Upon request of the Regional Administrator, the Administrator shall provide the Regional Administrator additional time for review, provided that the total review period does not exceed 90 days.

- B. If the Administrator, upon request of the permittee, decides to revise or modify a schedule of compliance for good cause, he shall notify the Regional Administrator in writing. The Regional Administrator shall notify the administrator in writing of his acceptance or rejection of such request within 20 days of receipt of the notice.

XI. EMERGENCY NOTICE

The Administrator or his authorized representative will notify the Regional Administrator by telephone as soon as he is notified of any actual or immediate threat to the health or welfare of persons resulting from the discharge of pollutants. The Administrator or his authorized representative will utilize the telephone numbers identified in the current Regional Oil and Hazardous Materials Contingency Plan to notify the Regional Administrator. Telephone contact may be made with either the EPA District Offices or the Regional Offices, as the Administrator determines appropriate.

XII. CONTROL OF DISPOSAL OF POLLUTANTS INTO WELLS

The Regional Administrator shall transmit to the Administrator any policies, technical information, or requirements specified by the Administrator of EPA in regulations issued pursuant to the Act or in directives issued to Environmental Protection Agency Regional Offices.

XIII. OTHER ITEMS

- A. Attached hereto is a list of major dischargers which shall be given priority in processing and a schedule for such processing. This schedule is premised on the availability of guidance material from EPA for dischargers identified. Also attached is a six-month schedule covering all permits to be processed in the six-month period. This is the first part of the schedule aimed at completing all all permits to be issued in the State of Wisconsin by December 31, 1974. The schedule will be expanded by the Department on a quarterly basis thereafter to identify the remainder of the workload until all permits are issued. A copy of each quarterly schedule will be forwarded by the Administrator to the Regional Administrator for review.
- B. After the effective date of this agreement, the Administrator and the Regional Administrator shall pursue additional discussions as to appropriate responsibilities with respect to the input of application and monitoring data into the National Data Bank.
- C. This Memorandum of Agreement may be modified by the Administrator and the Regional Administrator following the public hearing to evaluate the State Program submitted pursuant to Section 402(b) of the Federal Act on the basis of issues raised at the hearing. The hearing record will be left open for a period of five days following the hearing to permit any person to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing. Any revisions of agreements following public hearing will be finalized, reduced to writing and signed by the Administrator and the Regional Administrator prior to forwarding of this Memorandum of Agreement and the recommendations of the Regional Administrator to the Administrator of EPA for review and approval. The Administrator and Regional Administrator will make any such revised agreements available to the public for inspection and copying.

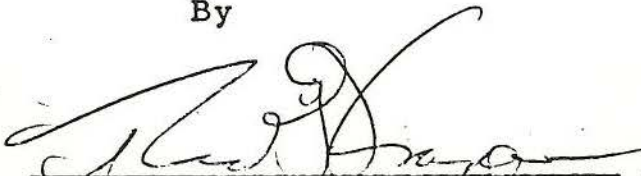
- D. All agreements between the Wisconsin Department of Natural Resources and the Regional Administrator are subject to review by the Administrator of EPA. If the Administrator of EPA determines that any provisions of such agreement do not conform to the requirements of Section 402(b) of the Federal Act or to the requirements of Section 304(h)(2) Guidelines, he will notify the Administrator and Regional Administrator of any revisions or modifications which must be made in the written agreements.
- E. This Memorandum of Agreement will take effect after it has been executed by the Administrator and the Regional Administrator and concurred in by the Administrator of EPA.
- F. This Memorandum of Agreement shall remain in effect until such time as it is modified or suspended.
- G. After the date of approval of Wisconsin's Pollutant Discharge Elimination System Permit Program, the Department shall be primarily responsible for the administration and enforcement of all federally issued NPDES permits issued prior to that date, except those NPDES permits issued to agencies and instrumentalities of the federal government and for Indian activities on Indian lands as provided by 40 CFR 125.2(a)(2).

State of Wisconsin
Department of Natural Resources

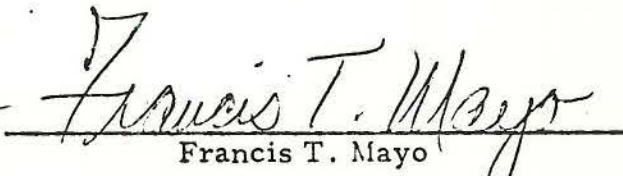
U.S. Environmental Protection Agency
Region V

By

By



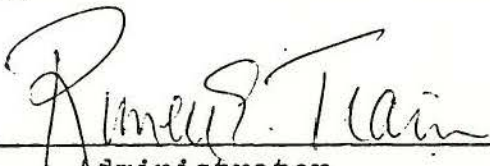
Thomas G. Frangos, Administrator
Division of Environmental Protection



Francis T. Mayo
Regional Administrator

12/19/73
Date

12/17/73
Date

APPROVED: 

Administrator
Environmental Protection Agency

2/4/74
Date

Attachment I to the Memorandum of Agreement

The Department proposes to issue permits to all major industrial and major municipal dischargers listed below by December 31, 1974.

IA MAJOR INDUSTRIAL DISCHARGERS
IN WISCONSIN

<u>DISCHARGER</u>	<u>LOCATION</u>	<u>RECEIVING WATER</u>
Sterling Pulp & Paper	Eau Claire, WI	Chippewa River
Flambeau Paper Company Peavey Paper Mills	Park Falls, WI Ladysmith, WI	Flambeau River Flambeau River
American Can Co.	Green Bay, WI	Fox River
Appleton Papers, Inc.	Combined Locks, WI	Fox River
Bergstrom Paper Co.	Neenah, WI	Fox River
Charmin Paper Products Co.	Green Bay, WI	Fox River
Chicago & Northwestern Consolidated Papers, Inc.	Green Bay, WI Appleton, WI	Fox River Fox River
Fort Howard Paper Co.	Green Bay, WI	Fox River
George A. Whiting Paper Co.	Menasha, WI	Fox River
Green Bay Packaging Inc.	Green Bay, WI	Fox River
John Strange Paper Co.	Menasha, WI	Fox River
Kimberly-Clark Corp. (Badger Globe Division)	Neenah, WI	Fox River
Kimberly-Clark Corp. (Kimberly Mill)	Kimberly, WI	Fox River
Kimberly-Clark Corp. (Lakeview Division)	Neenah, WI	Fox River
Kimberly-Clark Corp. (Neenah Paper Mill)	Neenah, WI	Fox River
Nicolet Paper Company	West De Pere, WI	Fox River
Riverside Paper Corp.	Appleton, WI	Fox River
Thilmany Pulp & Paper Co.	Kaukauna, WI	Fox River
Chicago & Northwestern	Altoona, WI	Lake Altoona
Wisconsin Electric Power (Lakeside Plant)	Milwaukee, WI	Lake Michigan
Wisconsin Electric Power (Oak Creek Plant)	Oak Creek, WI	Lake Michigan
Wisconsin Electric Power (Point Beach Nuclear Plant)	Two Rivers, WI	Lake Michigan
Wisconsin Electric Power (Port Washington)	Milwaukee, WI	Lake Michigan
Wisconsin Power & Light*	Sheboygan, WI	Lake Michigan
Wisconsin Public Service*	Green Bay, WI	Lake Michigan
Wisconsin Public Service (Kewaunee Nuclear Plant)	Kewaunee, WI	Lake Michigan
Madison Gas & Electric*	Madison, WI	Lake Monona

Owens-Illinois, Inc.
St. Regis Paper Co.
Tomahawk Power & Pulp
Ward Paper Co.
Wausau Paper Company
Wisconsin Public Service Corp.*

Tomahawk, WI
Rhineland, WI
Tomahawk, WI
Merrill, WI
Brokaw, WI
Weston, WI

Wisconsin River
Wisconsin River
Wisconsin River
Wisconsin River
Wisconsin River
Wisconsin River

Shawano Paper Mills

Shawano, WI

Wolf River

IB MAJOR MUNICIPAL DISCHARGERS
IN WISCONSIN

DISCHARGER

RECEIVING WATER

Antigo, City of
 Appleton, City of*
 Ashland, City of
 Baraboo, City of
 Beaver Dam, City of
 Beloit, City of
 Berlin, City of
 Brookfield, City of *
 Burlington, City of
 Cedarburg, City of
 Chippewa Falls, City of
 Delavan, City of
 DePere, City of*
 Eau Claire, City of
 Fond du Lac, City of
 Fort Atkinson, City of
 Green Bay Metro. Sewerage District
 Janesville, City of
 Jefferson, City of
 Kaukauna, City of*
 Kenosha, City of
 La Crosse, City of
 Madison Metro. Sewerage District
 Manitowoc, City of
 Marinette, City of
 Marshfield, City of
 Menomonee Falls, Village of*
 Menomonie, City of
 Merrill, City of
 Milwaukee Metro. Sewerage Commission:
 Jones Island Plant*
 South Shore Plant*
 Monroe, City of
 Neenah-Menasha Sewerage Commission*
 Oconomowoc, City of
 Oconto, City of
 Oconto Falls, City of
 Oshkosh, City of
 Peshtigo, City of
 Platteville, City of
 Prairie du Chien, City of
 Racine, City of
 Reedsburg, City of
 Rhineland, City of
 Rice Lake, City of
 Ripon, City of
 Shawano, City of

Spring Brook
 Fox River/Green Bay
 Lake Superior
 Baraboo River
 Beaver Dam River
 Rock River
 Fox River/Green Bay
 Fox (Illinois) River
 Fox (Illinois) River
 Cedar Creek
 Chippewa River
 Turtle Creek
 Fox River/Green Bay
 Chippewa River
 Lake Winnebago
 Rock River
 Fox River/Green Bay
 Rock River
 Rock River
 Fox River/Green Bay
 Lake Michigan
 Mississippi River
 Ditch to Badfish Creek
 Lake Michigan
 Menominee River
 Mill Creek
 Menomonee River
 Red Cedar River
 Wisconsin River

 Lake Michigan
 Lake Michigan
 Honey Creek
 Fox River/Green Bay
 Oconomowoc River
 Oconto River
 Oconto River
 Fox River/Green Bay
 Peshtigo River
 Roundtree Branch, Little Platte River
 Mississippi River
 Lake Michigan
 Baraboo River
 Pelican River
 Red Cedar River
 Silver Creek
 Wolf River

DISCHARGER

Sheboygan, City of
South Milwaukee, City of*
Sparta, City of
Stevens Point, City of
Superior, City of
Two Rivers, City of
Wapun, City of
Watertown, City of
Waukesha, City of*
Wausau, City of
West Bend, City of*
Whitehall, City of
Whitewater, City of
Wisconsin Rapids, City of

RECEIVING WATER

Lake Michigan
Lake Michigan
La Crosse River
Wisconsin River
Lake Superior
Twin River
South Branch, Rock River
Rock River
Fox (Illinois) River
Wisconsin River
Milwaukee River
Trempealeau River
Whitewater Creek
Wisconsin River

*Also listed in Table 3

Attachment II to the Memorandum of Agreement

Projected Six-Month Schedule
of Permits to be Processed

<u>Priority</u>	<u>Projected Number</u>
A. Major Municipal	35
B. Major Industrial	30

MODIFICATION TO NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT BETWEEN THE
WISCONSIN DEPARTMENT OF NATURAL RESOURCES
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REGION V

The Memorandum of Agreement approved February 4, 1974, by the Administrator of the United States Environmental Protection Agency between the Wisconsin Department of Natural Resources (hereinafter, the "State") and the United States Environmental Protection Agency (hereinafter, "USEPA") Region V is hereby modified as follows:

The State will administer the NPDES permit program with respect to Federal facilities and has shown that it has the authority to enter and inspect Federal facilities. The State is responsible for the issuance, modification, reissuance, compliance monitoring and enforcement of all NPDES permits in Wisconsin, including permits applicable to Federal facilities but excluding permits to Indian tribes or tribal organizations discharging from point sources located on Indian lands or reservations in Wisconsin.

All references in the Memorandum of Agreement which have the effect of retaining responsibility to USEPA Region V over Federal facilities have no force or effect after the effective date of this Modification. Nothing in this Modification shall be construed to limit the authority of USEPA to take action pursuant to Sections 308, 309, 311, 402, 504, or other Sections of the Act.

This Modification will become effective upon approval of the Administrator.

WISCONSIN DEPARTMENT OF NATURAL
RESOURCES

By Anthony S. Earl
Anthony S. Earl, Secretary

Date: 22 June 1979

U.S. ENVIRONMENTAL PROTECTION
AGENCY, REGION V

By John McGuire
John McGuire, Administrator

Date: SEP 28 1979

Approved:

Jerry G. Hill
Acting Assistant Administrator for Enforcement
United States Environmental Protection Agency

Date: 12/3/79

Modification to National Pollutant Discharge Elimination System
Memorandum of Agreement Between the State of Wisconsin Department of
Natural Resources (hereafter the State) and the United States Environ-
mental Protection Agency, Region V (hereafter the U.S. EPA).

The Memorandum of Agreement approved February 4, 1974 by the Administrator
of the U.S. EPA between the State and the U.S. EPA is hereby modified to
define State and U.S. EPA responsibilities for the establishment and
enforcement of National Pretreatment Standards for existing and new
sources under Section 307(b) and (c) of the Clean Water Act (hereinafter
the Act) as follows:

The State has primary responsibility for: (a) enforcing the prohibited
discharge standards contained in 40 CFR Section 403.5; (b) applying and
enforcing National Pretreatment Standards established by the U.S. EPA in
accordance with Section 307(b) and (c) of the Act; (c) reviewing, approving
and overseeing pretreatment programs developed by Publicly Owned Treat-
ment Works (POTW) in accordance with 40 CFR Section 403.11; (d) requiring,
as provided for in 40 CFR Section 403.9 and Section 402(b)(8) of the
Act, development of a pretreatment program as a condition of NPDES
permits issued to POTW's; (e) reviewing and approving modification of
categorical pretreatment standards to reflect removal of pollutants by a
POTW and enforcing related conditions in the POTW's NPDES permit. The
U.S. EPA will overview State pretreatment program operations consistent
with 40 CFR Part 403 regulations and this Memorandum of Agreement.

The State shall perform inspection, surveillance and monitoring pro-
cedures to determine independent of information supplied by the POTW,
compliance or noncompliance by the POTW with pretreatment requirements
incorporated into the POTW's permit. The State shall also perform
inspection, surveillance and monitoring procedures to determine indepen-
dent of information supplied by the industrial user, whether the industrial
user is in compliance with Pretreatment Standards. The number of
inspections to be performed shall be agreed upon as part of the annual
section 106 program plan process.

The Regional Administrator will be provided 45 days from the time he
receives a proposed NPDES permit or permit modification containing
pretreatment requirements within which to comment upon or make a recom-
mendation with respect to the proposed NPDES permit or modification.
The Regional Administrator shall notify the State within the time period
set forth above if EPA objects to the issuance by the State of the NPDES
permit or modification, as proposed. Upon receipt of a general objec-
tion to a proposed permit the state shall allow an additional 45 days
for the Regional Administrator to file a specific objection.

Section 403.6 National Pretreatment Standards: Categorical Standards

The State shall incorporate into the Wisconsin Administrative Code
categorical pretreatment standards which are neither more nor less
stringent than those promulgated by the U.S. EPA.

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Until such time as the provisions of 40 CFR Section 403.6 are revoked or modified, the State shall review requests from industrial users which solicit certification as to whether or not the user falls within a particular industrial subcategory. After making a written determination on the request, the state shall submit its findings, together with a copy of the request and the necessary supporting information to the U.S. EPA Regional Enforcement Division Director for concurrence. If the Enforcement Division Director does not modify the State's decision within 60 days of receipt thereof, the State's finding shall be final. Where the Enforcement Division Director elects to modify the State's decision, the Enforcement Division Director's decision shall be final. Where the final decision is made by the Enforcement Division Director, he shall send a copy of this determination to the requestor and to the State.

Section 403.7 Consistent Removal Credits and Section 403.9 POTW Pretreatment Program Approvals

The State shall review POTW applications for consistent removal credits and requests for approval of POTW Pretreatment Programs. It shall submit its findings together with the application and supporting information to the U.S. EPA Regional Enforcement Division Director for review. No POTW Pretreatment Program or request for consistent removal credits shall be approved by the State if during the 30 day (or extended) evaluation period provided for in 40 CFR Section 403.11(b)(1)(ii), the U.S. EPA objects in writing to the approval of such submission. The State will as soon as possible adopt the administrative rules necessary to approve POTW applications for consistent removal credits. Until such rules have been enacted, the State will recommend approval or denial of the POTW application to U.S. EPA Regional Enforcement Division Director.

Section 403.13 Variances From Categorical Pretreatment Standards for Fundamentally Different Factors

The State shall make an initial finding on all requests from industrial users for variances from categorical Pretreatment Standards, where the request is based on the allegation of the existence of fundamentally different factors. Where the State's initial finding is to approve the request, the finding, together with the request and supporting information shall be forwarded to the U.S. EPA Regional Enforcement Division Director for a final determination. The State may deny, but shall not approve a fundamentally different factor request until written approval has been received from the Enforcement Division Director. The State will as soon as possible adopt the administrative rules necessary to approve and deny requests for fundamentally different factors variances. Until such rules have been enacted, the State will recommend approval or denial of the request to the U.S. EPA Regional Enforcement Division Director.

Miscellaneous

The State shall submit a list of municipalities which will be required to fully develop their own pretreatment programs. This list may be

revised from time to time and the additions or deletions will not require modification to the Memorandum of Agreement. No municipality shall be deleted from the list without the approval of the U.S. EPA Regional Enforcement Division Director.

Nothing in this agreement is intended to affect any Pretreatment requirements including any standards or prohibitions, established by state or local law as long as the state or local requirements are not less stringent than any set forth in the National Pretreatment Standards, or other requirements or prohibitions established under the Act or this regulation.

Nothing in this Modification shall be construed to limit the authority of U.S. EPA to take action pursuant to Section 204, 208, 301, 304, 306, 307, 308, 309, 311, 402, 404, 405, 501, or other Sections of the Clean Water Act of 1977 (33 USC S1251 et seq).

This Modification will become effective upon approval of the Administrator.

DEPARTMENT OF NATURAL RESOURCES

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION

By Anthony A. Paie

By John M. Smith

Date: 25 Feb. 1986

Date: MAY 2 1980

Approved:

Stephen L. Lewis
Administrator

United States Environmental Protection Agency

Date: DEC 24 1980

E
F



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

230 SOUTH DEARBORN ST.

CHICAGO, ILLINOIS 60604

REPLY TO THE ATTENTION OF

5RA-14

JAN 05 1987

Honorable Tommy G. Thompson
Governor of Wisconsin
Madison, Wisconsin 53703

Dear Governor Thompson:

It is with great pleasure that I am today approving the State of Wisconsin NPDES General Permits Program in accordance with the National Pollutant Discharge Elimination System General Permits Program, 40 CFR 122.28.

Your State is the eleventh State to request and receive approval for administration of this important program. I congratulate you and your staff for moving to assume administration of this important environmental program.

We look forward to working with you and the Department of Natural Resources in continued efforts toward the prevention and control of water pollution in the State of Wisconsin.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Valdas V. Adamkus".

Valdas V. Adamkus
Regional Administrator

ADDENDUM TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT BETWEEN
THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V
TO INCORPORATE PROVISIONS INVOLVING SLUDGE USE AND DISPOSAL

The Memorandum of Agreement (MOA) between the Wisconsin Department of Natural Resources (WDNR) and the Regional Administrator of the U.S. Environmental Protection Agency (EPA), initially approved on February 4, 1974, is hereby modified to define the respective responsibilities of the WDNR and EPA in accordance with the sewage sludge regulations promulgated under sections 402 and 405 of the Clean Water Act and Chapter 283, Wis. Stats., and as described in the program description.

Section 1. General

1. Nothing in this Addendum should be interpreted to restrict EPA's oversight responsibility for all aspects of a Sludge Management Program.
2. This Addendum shall become effective when signed by the Administrator and the WDNR.
3. Nothing in this chapter shall limit or relieve the parties established by the initial NPDES MOA and the modifications to that MOA of which this is an Addendum
4. The WDNR and EPA will negotiate priorities for implementation of a Sludge Management Program and inspection of POTW's and other sludge generators and disposers.
5. The WDNR's noncompliance with any of the terms contained herein is grounds for withdrawal of EPA approval of the WDNR's Sludge Management Plan.

Section 2 . Permit Administration and Specific Conditions

1. EPA reserves the right to review and object to any permits. Upon EPA's request, the WDNR shall forward copies of the permit application, draft or proposed permits, and fact sheets for review, comment, and possibly, objection. Pursuant to s. 283.31(2), Stats., the WDNR shall not issue any permit that EPA has objected to in writing.
2. The WDNR agrees to provide notification of a completed permit application to those entities listed in s. NR 203.03, Wis. Adm. code, as well as to any other entity requesting such notification, and agrees to mail the permit documents listed in 40 CFR 124.10(e) to those agencies upon request. The WDNR also agrees to provide a notice of

final determination to issue or deny a permit to discharge to those entities listed in s. NR 203.13, Wis. Adm. Code, as well as to any other entity requesting such notice.

3. Copies of all permits issued shall be transmitted to EPA at their request.
4. The WDNR agrees to use the attached sludge management information form (Appendix C) as part of the WPDES permit applications. To satisfy the requirement in 40 CFR 501.15(2)(ix)(E), the Department agrees to include a phone number and address in the permit public notices which members of the public can utilize to find out information on presently known approved land application sites, and sites that may be approved in the future during the term of the permit.
5. The WDNR agrees to provide a written response to comments in accordance with 40 CFR 124.17. The response will be made available to the public.
6. Copies of all inspection reports (Form 3560-3) shall be transmitted to EPA at their request.
7. Annual sludge production volumes and specific sludge use or disposal activities are currently being tabulated and will be submitted to EPA within no more than 5 years.

Section 3. Enforcement and Compliance Monitoring

The enforcement and compliance monitoring provisions contained in the NPDES MOA between WDNR and EPA shall apply to treatment works treating domestic sewage and to sludge users and disposers and to sludge uses and disposal practices. Additionally the following provisions have been agreed upon:

1. The WDNR shall have the procedures and ability for inspecting all Class I sewage sludge management facilities at least annually, pursuant to 40 CFR 501.16. The frequency and scope of inspections will be negotiated between WDNR and EPA, on an annual basis.
2. The WDNR agrees to download report information submitted on WDNR form 3400-165 to PCS, annually by no later than May 19, unless a different agreement is negotiated between WDNR and EPA.¹
3. For sewage sludge management, the WDNR will continue its use of stepped enforcement, with an emphasis on compliance assistance. In instances of non-

¹ It is the WDNR's intent to eventually download electronically all biosolids reporting data to the Biosolids Data Management System (BDMS). This system has been developed for national use by USEPA Headquarters and Region 8 and is expected to become the biosolids component of the redesigned PCS. This assumes that a link is built by EPA or WDNR, to interface between the BDMS and the WDNR database.

compliance, the WDNR recognizes that EPA has the authority to issue administrative orders or assess a penalty.

4. The WDNR will submit an annual report regarding non-compliance as documented through the issuance of Notice of Violations for all sewage sludge facilities in accordance with 40 CFR 501.21. Notice of Violations will continue to be issued in accordance with standard WDNR enforcement procedures.
5. The WDNR will input data related to compliance inspections from form 3560-3, into PCS within 45 days after the end of the quarter in which the inspection occurred.
6. The WDNR and EPA shall have periodic enforcement conferences to decide priorities for initiating enforcement actions and to coordinate enforcement activities.
7. For purposes of sludge management facilities, compliance inspections may include toxicity testing, sludge sampling, soil sampling, and groundwater sampling.

Section 4. Independent EPA Powers

Nothing in this MOA shall be construed to limit the authority of EPA to take action pursuant to its powers under the CWA or to limit its oversight responsibilities with respect to sludge management program administration. The MOA is for the administrative convenience of EPA, and does not confer any right to violators.

Section 5. Incorporation by Reference

Whenever the WDNR is required to adopt Federal standards or requirements, it may do so by reference. Unless permissible under state law, the WDNR will not prospectively incorporate regulations by reference.

Section 6. Procedure to Modify this Agreement

Signed written modifications may be made to this MOA upon mutual agreement of EPA and WDNR.

FOR STATE AGENCY:

George E. Meyer

George E. Meyer, Secretary
Wisconsin Department of Natural Resources

2/18/00

Date

FOR U. S. ENVIRONMENTAL PROTECTION AGENCY:

Francis X. Lyons

Francis X. Lyons, Regional Administrator
USEPA Region 5

7/28/00

Date

Attachment 2

**ADDENDUM TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT
BETWEEN
THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V
CONCERNING WISCONSIN'S GREAT LAKES RULES AND PROCEDURES**

ADDENDUM TO THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
MEMORANDUM OF AGREEMENT BETWEEN
THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V
CONCERNING WISCONSIN'S GREAT LAKES RULES AND PROCEDURES

Section 1. General

The federal Water Quality Guidance for the Great Lakes System (federal guidance), 40 CFR Part 132, contains the minimum water quality standards, antidegradation policies, and implementation procedures for the Great Lakes System to protect human health, aquatic life, and wildlife. The Great Lakes states and tribes were required to adopt provisions consistent with (as protective as) the federal guidance for their waters within the Great Lakes System. The state of Wisconsin adopted rules incorporating the federal guidance in 1997.

The United States Environmental Protection Agency Region 5 (USEPA) and the Wisconsin Department of Natural Resources (WDNR) enter into this Addendum to ensure that Wisconsin's rules, WPDES permits and procedures are implemented in a manner consistent with the federal guidance.

This Addendum only applies to those portions of Wisconsin's WPDES permit program applicable to the Great Lakes System within Wisconsin.

Except for Issue 7, this Addendum does not apply to discharges of pollutants listed in Table 5 of 40 CFR Part 132.

The WDNR intends to request permission to initiate the rulemaking process to specifically incorporate some of the interpretations addressed in this Addendum below. At the end of this rulemaking effort, USEPA and WDNR may modify this Addendum as necessary.

Section 2 . Permit Administration and Specific Conditions

1. Monitoring for Bioaccumulative Chemicals of Concern (BCC): Pursuant to the authority in s. NR106.05(9), Wis. Adm. Code, if a BCC is known or believed to be present in a discharge to the Great Lakes System, the WDNR will include a monitoring requirement in the WPDES permit for the BCC. (*Appendix E, Section II.D.2. of 40 CFR Part 132*).
2. Tier II Values - Development of Data: If a pollutant listed in Table 6 of Part 132 is known or believed to be present in a WPDES permitted discharge to the Great Lakes System, and there are no pollutant data available to calculate a Tier II value for noncancer human health, acute aquatic life or chronic aquatic life, the WDNR will estimate ambient screening values to protect humans from health effects other than cancer, and aquatic life from acute and chronic effects. The WDNR will then develop preliminary effluent levels (PELs) based on those values and compare them to the permittee's preliminary effluent

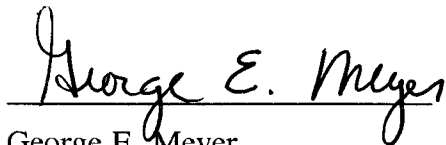
quality (PEQ). If the PEQ exceeds the PELs that were developed based on the screening values, the WDNR will generate sufficient data to calculate Tier II values. (*Section C of Procedure 5 in Appendix F to 40 CFR Part 132.*)

3. Whole Effluent Toxicity (WET) Limits in Lieu of Tier II: If pursuant to s. NR 106.05(1)(c), Wis. Adm. Code, a permittee requests a WET limit under s. NR 106.07(7), Wis. Adm. Code, as an alternative to a Tier II value based limitation, the WDNR agrees to specifically list the pollutant of concern that is the basis for the alternative limit in the permit, and agrees to explain, in the fact sheet, the basis for the alternative limit and how the alternative limit will control the pollutant of concern. In addition, in the event the WDNR determines that the alternative limit is not sufficient to maintain water quality standards, the WDNR will, pursuant to the authority in s. 283.53(2), Stats., reopen the permit to include a Tier II value based limit. (*Paragraph 6.e. of Section C of Procedure 5 in Appendix F to 40 CFR Part 132*)
4. Fish Tissue Reasonable Potential: Pursuant to s. 281.31(3)(d), Stats., and s. NR 106.05(2), Wis. Adm. Code, in cases where the geometric mean of a pollutant in a fish tissue sample collected from a Great Lakes System waterbody exceeds the tissue basis of a Tier I criterion or a Tier II value, after consideration of the variability of the pollutant's bioconcentration and bioaccumulation in fish, the WDNR will impose a limitation in a WPDES permit of each facility that discharges detectable levels of the pollutant to the water body. The WDNR will request permission to initiate rulemaking to clarify this requirement into the state's reasonable potential procedures. (*Paragraph 4 of Section F of Procedure 5 in Appendix F to 40 CFR Part 132.*)
5. Monitoring Requirements - Levels of Quantification: When a water quality-based effluent limitation below the Level of Quantification for a pollutant is included in a permit issued to a Great Lakes System discharger, the WDNR will include the following statement in the permit, "*For pollutants with water quality-based effluent limitations below the Level of Quantification (LOQ) in this permit, the Level of Quantification calculated by the permittee and reported on the Discharge Monitoring Reports is incorporated by reference in this permit. The LOQ shall be reported on the Discharge Monitoring Reports, shall be the lowest quantifiable level practicable, and shall be no greater than the minimum level (ML) specified in or approved under 40 CFR Part 136 for the pollutant at the time this permit was issued, unless this permit specifies a higher LOQ.*" The WDNR further agrees that it will not specify a higher LOQ in the permit unless the permittee demonstrates that a higher LOQ is appropriate because of effluent-specific matrix interference. The WDNR further agrees that if analytical methods more sensitive than the methods specified in ch. NR 219 are promulgated in 40 CFR Part 136, pursuant to the authority in s. 106.07(6), Wis. Adm. Code, when a permit is issued or reissued, the WDNR will require in the WPDES permit that the more sensitive method in 40 CFR Part 136 be used in testing the effluent and calculating the LOQ. (*Section B of Procedure 8 in Appendix F to 40 CFR Part 132.*)
6. Limit of Quantification Compliance Language: The WDNR agrees that it will not include the compliance provisions in s. NR 106.07(6)(c) in WPDES permits issued to dischargers to the Great Lakes System.
7. Pollutant Minimization Program: Pursuant to the authority in ss. NR 106.07(6)(f) and

106.04(5) and s. 283.31(3)(d), Stats., where there is a water quality-based limitation for a pollutant that is below the Level of Quantification (LOQ) in a WPDES permit issued to Great Lakes System discharger, the WDNR will require that the permittee develop and implement a pollutant minimization program that contains all of the elements listed in Section D of Procedure 8 in Appendix F to 40 CFR Part 132, including the requirement for quarterly influent monitoring and semiannual monitoring of potential sources, unless less frequent monitoring or no monitoring, is justified based upon information generated in the pollutant minimization plan. The WDNR will request permission to initiate rulemaking to clarify this intent.

8. Mixing Zones: The WDNR will not approve an alternative mixing zone unless the provisions of Sect. F of Proc. 3 in Appendix F to 40 CFR Part 132 are met.
9. Compliance Schedules for Tier II Limits: Pursuant to s. NR 106.17(2)(c), Wis. Adm. Code, the WDNR will initially limit the compliance schedule for a Tier II value based limitation to no more than five years and will only extend that compliance schedule for a period of up to two more years, if necessary, and if the secondary value studies are completed by the permittee or a third party. Any extension will be done through a permit modification. In addition, any time allowed to conduct studies pursuant to s. NR 106.17(2)(c), Wis. Adm. Code will occur within the first two years of the compliance schedule.

FOR WISCONSIN DEPARTMENT OF NATURAL RESOURCES

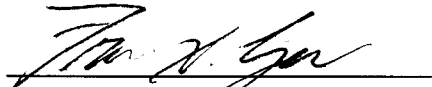


George E. Meyer
Secretary

10/11/00

Date

FOR U.S. ENVIRONMENTAL PROTECTION AGENCY



Francis X. Lyons
Regional Administrator

10/26/00

Date

RECEIVED

OCT 30 2018

Addendum to the
National Pollutant Discharge Elimination System
Memorandum of Agreement between the
U.S. Environmental Protection Agency, Region 5
and the

NPDES PROGRAMS BRANCH
EPA, REGION 5 Wisconsin Department of Natural Resources

The U.S. Environmental Protection Agency (EPA), Region 5, and the Wisconsin Department of Natural Resources (WDNR) enter into this Addendum to their National Pollutant Discharge Elimination System (NPDES) Memorandum of Agreement (MOA) for three purposes.

First, this addendum supersedes Sections IV and X of the MOA pertaining to the timeframe for EPA to review and potentially object to permits and permit modifications (including permits that are being modified, permits that are being reissued or have been revoked and are being reissued, and permits that modify compliance schedules). Specifically, by this addendum, the parties agree in accordance with 40 C.F.R. §§ 123.44(a) and (b), and 123.44(j) that, notwithstanding any language to the contrary in Sections IV and X of the MOA, EPA shall review "draft permits" (as "draft permit" is defined at 40 C.F.R. § 122.2) rather than "proposed permits." Moreover, the parties agree that EPA shall have up to 90 days from receipt of "draft permits" to make general comments upon, objections to, or recommendations with respect to "draft permits," in accordance with 40 C.F.R. §§ 123.44(a) and (b). The parties also agree that WDNR will prepare and transmit to EPA for review in accordance with 40 C.F.R. § 123.44(j), a "proposed permit" (as "proposed permit" is defined at 40 C.F.R. § 122.2) if WDNR proposes to issue a permit or permit modification which differs from the "draft permit" reviewed by EPA; EPA has objected to the "draft permit"; there are written recommendations from an affected state in accordance with CWA Section 402(b)(5), 33 U.S.C. § 1342(b)(5), and 40 C.F.R. § 123.44(c)(2); or there is significant public comment. Finally, the parties agree that EPA shall have up to 90 days from receipt of "proposed permits" to make general comments upon, objections to, or recommendations with respect to "proposed permits." Although the parties have agreed to a 90 day time period, EPA will strive to complete its review of a draft permit or proposed permit within 45 days of submittal.

Second, this addendum deletes Section IV.E of the MOA and terminates any waiver that the Regional Administrator may have made regarding the right to receive, review, object to or comment upon proposed NPDES permits for all industrial discharges into navigable waters with daily discharges less than 100,000 gallons per day and all discharges from publicly owned treatment works of less than 500,000 gallons per day and for all discharges, irrespective of size, for such categories and classes of point sources as the Regional Administrator may have specified.

Third, this addendum is intended to ensure that Wisconsin permits and the process through which they are issued comply with 40 C.F.R. § 123.25. The provisions listed in the table below address the implementation of Wis. Stat. §§ 283.15, 283.31(3)(d) and (4), and 283.81 and Wis. Admin. Code chapter NR 106. EPA and WDNR enter into this addendum because WDNR has discretionary authority to act consistent with the federal requirements, but State regulations do not specifically include all of the requirements set forth in federal regulations, as detailed below. By this addendum, WDNR agrees that State permits and the process through which they are issued will include the requirements set forth below.

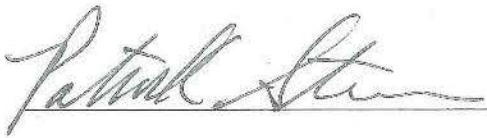
US EPA-WDNR MOA Addendum

Nothing in this addendum limits EPA's authority to review and object to draft and proposed permits in accordance with Section 402(d)(2) of the Clean Water Act, 33 U.S.C. § 1342(d)(2), and 40 C.F.R. § 123.44.

Provisions Applicable to State Permits

Federal Statute or Regulation	Applicable to State Programs	State Statute or Regulation	Agreement
Permits must be issued consistent with applicable provisions of 40 C.F.R. Parts 123 and 124.	40 C.F.R. §§ 123.25(24)-(35) and 123.44.	Wis. Admin. Code NR § 106.61(1)(a) provides WDNR discretionary authority to establish certain effluent limitations for thermal discharges in a general permit discharge authorization letter rather than the permit itself.	WDNR agrees that it will not establish effluent limitations for thermal discharges in general permit discharge authorization letters.
State programs must comply with the Clean Water Act and applicable federal regulations under the Act 33 U.S.C. § 1342(b).	40 C.F.R. § 123.25 (Issue 69 in EPA's July 18, 2011 Legal Authority Review Letter).	Wis. Stat. § 283.81 provides the department with discretionary authority to waive requirements to the extent necessary to prevent an emergency condition threatening public health, safety or welfare.	WDNR agrees that a waiver under Wis. Stat. § 283.81 will not be granted for any requirement that is a federal requirement applicable to state programs under the CWA.
A state may not issue a permit when the imposition of conditions in the permit cannot ensure compliance with the applicable water quality requirements of all affected States 40 C.F.R. § 122.4(d).	40 C.F.R. § 122.4(d) (Issue 12 in EPA's July 18, 2011 Legal Authority Review Letter).	The Department shall impose water quality based effluent limitations when necessary to meet applicable water quality standards. Wis. Adm. Code NR §§106.04 and 106.05. Pursuant to Wis. Stat. § 283.31(3)(d) and (4), the Department shall prescribe conditions in permits that are necessary to comply with any applicable federal law or regulation and that are necessary to meet federal or state water quality standards.	Pursuant to Wis. Stat. § 283.31(3)(d) and (4), WDNR may not issue a WPDES permit if the permit conditions do not ensure compliance with applicable water quality standards of affected waters, including downstream waters within the State of Wisconsin and waters of all other affected States.

Wisconsin Department of Natural Resources

By: 

for Daniel L. Meyer, Secretary

Date: 10/4/18

U.S. Environmental Protection Agency, Region 5

By: 

James Payne, Acting Deputy Regional Administrator

Date: 11-30-18

**Addendum to the
National Pollutant Discharge Elimination System
Memorandum of Agreement between the
U.S. Environmental Protection Agency, Region 5
and the
Wisconsin Department of Natural Resources**

The U.S. Environmental Protection Agency (EPA), Region 5, and the Wisconsin Department of Natural Resources (WDNR) enter into this Addendum to their National Pollutant Discharge Elimination System (NPDES) Memorandum of Agreement to ensure that Wisconsin permits which implement ss. NR 217.14(2) and 217.18 *Wisconsin Administrative Code (Wis. Adm. Code)*, and the fact sheets that accompany such permits, are prepared in conformance with all NPDES requirements including 40 C.F.R. §§ 122.44(d), 122.45(d), 122.47, 124.8, and 124.56. EPA retains its authority to review and object to specific proposed and draft permits in accordance with Section 402(d)(2) of the Clean Water Act, 33 U.S.C. § 1342(d)(2), for any of the grounds set forth in 40 C.F.R. § 123.44(c).

I. Section NR 217.14(2) *Wis. Adm. Code* provides that: (a) concentration effluent limitations calculated under s. NR 217.13 shall be expressed as a monthly average in permits, except for concentrations of less than or equal to 0.3 milligrams per liter (mg/L) where limitations may be expressed as annual averages; and (b) if a concentration limitation expressed as an annual average is included in a permit, a monthly average concentration limitation equal to three times the water quality based effluent limitation calculated under s. NR 217.13 shall also be included in the permit. For continuous discharges, 40 C.F.R. § 122.45(d) provides that effluent limitations shall, unless impracticable, be expressed as average weekly and average monthly limitations for publicly-owned treatment works (POTWs) and maximum daily and average monthly limitations for other than POTWs. 40 C.F.R. § 122.44(d)(1)(vii) provides that water quality-based effluent limitations (WQBELs) shall be derived from, and comply with, water quality standards and shall be consistent with the assumptions and requirements of any wasteload allocation (WLA) approved by EPA under 40 C.F.R. § 130.7.

A. For the reasons explained in the attached April 30, 2012, paper entitled *Justification for Use of Monthly, Growing Season and Annual Averaging Periods for Expression of NPDES Permits Limits for Phosphorus Discharges in Wisconsin* (Justification Paper), EPA and WDNR agree that it is impracticable to express phosphorus WQBELs as maximum daily or average weekly values and, when the magnitude of the limit calculated in accordance with s. NR 217.13 *Wis. Adm. Code* is 0.3 mg/L or less, EPA and WDNR agree that it may be impracticable to express phosphorus WQBELs as average monthly values.

B. When the magnitude of the limit calculated in accordance with s. NR 217.13 *Wis. Adm. Code* is 0.3 mg/L or less, WDNR agrees to express the WQBEL over an applicable duration provided in the table on the first page of the Justification Paper provided, however, that the duration shall be consistent with the assumptions and requirements of any applicable EPA-approved WLA. In the atypical or uncommon situations contemplated in the Justification Paper, (e.g. discharges to small inland lakes) on a case-by-case basis WDNR may express a WQBEL over a duration other than a monthly average provided that the fact sheet for the draft permit sets

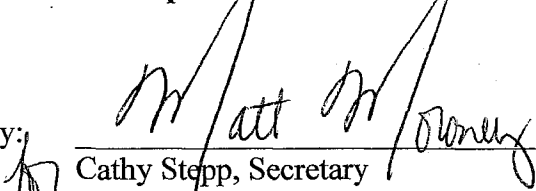
forth the facts which justify conclusions that: (1) it is impracticable to set the limit as a monthly average and (2) the draft limit was derived from and complies with the applicable phosphorus water quality criterion and is consistent with the assumptions and requirements of any applicable EPA-approved WLA.

II. Section NR 217.18(3) *Wis. Adm. Code* provides minimum terms and conditions for permits that include watershed adaptive management actions.

A. To conform to 40 C.F.R. § 122.44(d), WDNR agrees that the initial and any subsequent reissued, modified, or revoked and reissued permit issued to each point source under s. NR 217.18(3) will include the final water quality-based effluent limitation and identify the subset of adaptive management actions that offset the mass of phosphorus which corresponds to the difference between the interim effluent limitation under s. NR 217.18(3)(e) 2. or 3., as the case may be, and the water quality-based effluent limitation.

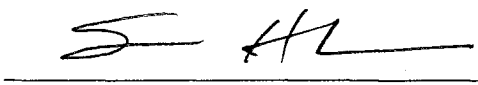
B. To conform to 40 C.F.R. § 122.47, WDNR agrees that the initial permit issued to each point source under s. NR 217.18(3) will include the s. NR 217.18(3)(b) and (e) 2., 3., and 4. compliance schedule in its entirety. 40 C.F.R. § 122.62(a) and (b) identify the causes for permit modification or revocation and reissuance, respectively. 40 C.F.R. § 122.44(l)(1) provides that interim effluent limitations, standards or conditions in a reissued permit must be at least as stringent as the previous permit unless the circumstances have changed and would constitute cause for permit modification or revocation and reissuance. Subject to 40 C.F.R. §§ 122.62, 122.44(l)(1), and s. 283.53 (2), Wis. Stats., as applicable, WDNR agrees that any reissued, modified, or revoked and reissued permit will include a continuation of the compliance schedule to meet the requirements established in the initial permit.

Wisconsin Department of Natural Resources

By: 
Cathy Stepp, Secretary

Date: 4/30/12

U.S. Environmental Protection Agency, Region 5

By: 
Susan Hedman, Regional Administrator

Date: July 12, 2012

Enclosure

Revision to the Wisconsin NPDES Program for Effluent Standards and Limitations for Phosphorus

Wisconsin amended its Chapter NR 217 “Effluent Standards and Limitations for Phosphorus” by adding Subchapter III, NR ss. 217.10-217.19 “Water Quality-Based Effluent Limitations for Phosphorus” in 2010. Except for s. NR 217.19, the U.S. Environmental Protection Agency reviewed these regulations for consistency with 40 C.F.R. § 123.25(a). In addition, EPA reviewed the compliance schedule authorizing provisions in ss. NR 217.17 and 217.18 under section 303(c) of the Clean Water Act (CWA), 33 U.S.C. § 1313.

EPA review of NR 217, Subchapter III, Wisconsin Administrative Code

Wisconsin added the following provisions in Chapter NR 217, Subchapter III:

217.10	Applicability
217.11	Definitions
217.12	General
217.13	Calculation of water quality based effluent limitations for phosphorus
217.14	Expression of limitations
217.15	Determination of necessity for water quality based effluent limitations for phosphorus
217.16	Relationship of WQBELs and TMDL based limitations
217.17	Schedules of compliance
217.18	Watershed adaptive management option
217.19	Variances for stabilization ponds and lagoon systems

EPA addressed s. NR 217.19 and the compliance schedule authorizing provision in s. 217.17 on December 30, 2010 as part of its approval of the phosphorus water quality criteria. EPA approves ss. NR 217.10, 217.11, 217.12, 217.13, 217.14, 217.15, 217.16, 217.17, and 217.18 as discussed below. EPA is approving ss. NR 217.14(2) and 217.18 based, in part, on an addendum to the National Pollutant Discharge Elimination System (NPDES) Memorandum of Agreement (“MOA”) between the Wisconsin Department of Natural Resources (“WDNR” or “the Department”) and EPA concerning implementation of these provisions, as discussed below. Finally, EPA approves the compliance schedule authorizing provisions in s. NR 217.18(3) under CWA § 303(c) based on the fact that compliance schedules, including those established under s. NR 217.18(3), are subject to s. NR 217.17, 40 C.F.R. § 122.47, and the signed MOA Addendum.

Prior to this approval, EPA consulted with the Wisconsin tribes on the draft MOA and WDNR’s NPDES rules. On May 4, 2011, EPA issued its Policy on Consultation and Coordination with Indian Tribes. While EPA is in a transition period of determining when it is appropriate to consult under this Policy, and working with tribes as part of this process, EPA Region 5 decided in this instance to consult with tribes on its pending decision concerning

Wisconsin's NPDES rules for the new phosphorus water quality criteria, rather than wait until the process for implementing the policy is more developed. EPA participated in conference calls with the tribes and provided an opportunity for the tribes to comment. The tribes were overall supportive of the NPDES rules implementing the phosphorus water quality standards. The Bad River Band of Lake Superior Tribe of Chippewa Indians had comments which are included in the cover letter.

EPA Approval

1. s. NR 217.10 Wis. Adm. Code: Applicability. This section contains the applicability statement for Chapter NR 217, Subchapter III. It specifies that the Subchapter is applicable to four specified categories of point sources, including, but not limited to, publicly and privately owned wastewater facilities or treatment works. EPA asked WDNR to clarify that point sources not covered under s. NR 217.10 may still be subject to a requirement for a water quality-based effluent limitation (WQBEL) for phosphorus under Wis. Stat. section 283.13(5), which provides that WDNR shall establish more stringent effluent limitations if these limitations are necessary to meet applicable water quality standards, or any other state or federal law or regulations. WDNR added a footnote to clarify this point. Thus, this provision makes clear that other point sources may need phosphorus WQBELs in permits to meet the criteria in s. NR 102.06, even if they are not subject to Subchapter III, Chapter NR 217.

EPA approves s. NR 217.10 Wis. Adm. Code.

2. s. NR 217.11 Wis. Adm. Code: Definitions. This section contains definitions that apply solely for carrying out Subchapter III. WDNR added a definition of "new discharger" which, unlike EPA's definition of new discharger in 40 C.F.R. § 122.2, does not exclude new sources from the definition. However, the lack of an exclusion for new sources is not consequential given the narrow applicability of the term "new discharger" as well as its use in Subchapter III.

In addition, WDNR added a definition of "privately owned treatment works" to address EPA's concern that this term, as used in s. 217.10, could be interpreted to exclude commercial and industrial sources which discharge process wastewater. WDNR's definition makes clear that the term as used in Subchapter III includes industrial and commercial sources which discharge process wastewater.

EPA approves s. NR 217.11 Wis. Adm. Code.

3. s. NR 217.12 Wis. Adm. Code: General. This section contains the Department's authority to establish WQBELs for phosphorus. WDNR revised its proposed regulation to address EPA's comments that, to match the language in EPA's regulations at 40 C.F.R. § 122.44(d)(1)(i) and (ii), Wisconsin should revise ss. NR 217.12(1)(a), 217.15(1)(a) and 217.15(1)(c) to provide that WQBELs for phosphorus shall be included in a permit whenever

WDNR determines that the discharge from a point source contains phosphorus at concentrations which will cause, have a reasonable potential to cause, or contribute to an excursion above the phosphorus water quality criterion. WDNR did this. Section NR 217.12(a) states that the Department shall set WQBELs for discharges that will cause, have the reasonable potential to cause or contribute to an exceedance of the criteria in s. NR 102.06 in either the receiving water or downstream waters.

Regarding downstream waters, 40 C.F.R. § 122.4(d) prohibits issuance of permits when the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected states.¹ Section NR 217.12(a) is not clear on its face that it means downstream waters in other states, as well as Wisconsin waters. However, Wisconsin has authority to take downstream impacts in affected states into account in calculating effluent limits. Wis. Stats. sections 283.31(3) and (5) provide WDNR authority for applying 40 C.F.R. § 122.4(d) if necessary to ensure compliance with water quality requirements of all affected states. Wisconsin has confirmed it has this authority. In a January 19, 2012 letter to WDNR, Wisconsin's Attorney General stated that in Wisconsin provisions allowing the Department to establish WQBELs necessary to protect downstream waters, "downstream waters" includes navigable waters of the U.S. that are protected by state and tribal water quality standards. EPA expects WDNR to take the potential for downstream impacts into account and retains the authority to object to a permit if the permit does not ensure compliance with applicable water quality requirements of affected states and tribes.

Based on the foregoing discussion, EPA approves s. NR 217.12 Wis. Adm. Code.

4. s. NR 217.13 Wis. Adm. Code: Calculation of water quality-based effluent limitations for phosphorus. This provision provides procedures for calculating a WQBEL for phosphorus for discharges to streams and rivers, inland lakes and reservoirs, and the Great Lakes. Several paragraphs are discussed below.

Section NR 217.13(4) provides that WDNR will establish WQBELs for discharges directly to the Great Lakes consistent with near shore or whole lake model results approved by WDNR. Sections NR 217.12 and 217.15 make clear that WDNR must determine whether a discharger will cause, have a reasonable potential to cause, or contribute to an excursion beyond the applicable phosphorus water quality criterion. These sections also make clear that WDNR is required to set a WQBEL when the Department determines that a discharge will cause, have the reasonable potential to cause, or contribute to an excursion above the phosphorus water quality criterion. Thus, Wisconsin is required by ss. 217.12 and 217.15 to identify a model with which it will calculate WQBELs for discharges into the Great Lakes, and actually establish such limits when required under ss. NR 217.12 and 217.15.

¹ 40 C.F.R. § 122.2 defines the term "state" to include Indian Tribes.

Section NR 217.13(8) provides that a new discharger will not be able to discharge phosphorus in a phosphorus impaired water unless, among other things, the discharge will “improve water quality in the phosphorus impaired segment.” In response to comments on this provision, WDNR said that “New dischargers could improve water quality in a receiving water in a number of ways. For example, a large effluent volume with a very low phosphorus concentration--well below the applicable criterion--would improve water quality. The department will make this determination on a case-by-case basis.” To show an “improvement” in water quality, EPA expects that the permittee will demonstrate that its discharge will result in a decrease in the phosphorus concentration or loading in the receiving water.

Section NR 217.13(8) also provides an exception for a new discharger if it can demonstrate that the new phosphorus load will be offset through a phosphorus trade. Section NR 217.17(3)(f) also addresses pollutant trading. EPA has developed guidance on pollutant trading that sets out necessary terms and conditions of a trade. See “The Water Quality Trading Policy” and “The Water Quality Trading Toolkit for Permit Writers” (2007, EPA-833-R-07-004, and <http://water.epa.gov/type/watersheds/trading/WQTToolkit.cfm>). Generally, EPA recommends that trade programs include several elements to ensure credibility and compliance with water quality standards. These elements include:

- Applying CWA regulations and established state law provisions to provide legal authority for administration of water quality trade programs.
- Clearly defining a common unit of trade.
- Generating credits before or during the same time period they are to be used to comply with permit limits.
- Including methods for managing uncertainty such as using trading ratios, modeling, and best management practice efficacy estimates.
- Ambient water quality monitoring, in addition to effluent monitoring requirements in NPDES permits. Samples should be collected at strategic locations to ensure progress in meeting water quality standards.
- Compliance and enforcement mechanisms, including a combination of record-keeping, certifications, inspections, and reporting.
- Provisions for adequate public notice through, for example, the TMDL and permit process and a public website.
- Trade programs should be evaluated in order to modify and make improvements to the program.

Sections 217.13(8) and 217.17(3)(f) do not include anything that is inconsistent with EPA’s trading policy. In particular, s. NR 217.13(8) says that the offset through a phosphorus trade must be implemented prior to the new discharge, and the note to s. NR 217.14 states that trades must be incorporated into the permit and approved by the Department prior to

implementation.² EPA understands that WDNR is currently working on promulgating trading provisions.

EPA approves s. NR 217.13 Wis. Adm. Code.

5. s. NR 217.14 Wis. Adm. Code: Expression of limitations. Section NR 217.14(1) requires that limits be expressed as a concentration, and as a mass limit for certain identified waters, including outstanding resource waters (ORWs) and exceptional resource waters (ERWs). WDNR may establish mass limitations in permits for any other discharges of phosphorus where an increase in phosphorus load is likely to result in adverse effects on water quality in the receiving water or downstream water. Under 40 C.F.R. §122.45(f) mass limits must be included in permits except when the applicable standard is expressed in other units of measurement. Here, the phosphorus water quality criteria in s. NR 102.06 are expressed in terms of concentration, so EPA's regulations do not mandate mass limitations. The Bad River Tribe, in its comments to EPA, asked for confirmation that WDNR will include a mass limit in permits for phosphorus discharges when the receiving water or downstream water is designated as an ERW or ORW by the Tribe. As noted earlier, Wisconsin concludes that its provisions allowing the Department to establish WQBELs necessary to protect downstream waters includes authority to protect waters protected by other state and tribal water quality standards. EPA asks WDNR to confirm in guidance or by letter to EPA that the Section 217.14(1) requirement concerning mass limits applies to receiving and downstream waters on tribal lands designated by a tribe as ORW or ERW. If the confirmation is included in guidance, please provide EPA a copy of the revised guidance.

Section NR 217.14(2) and (3) provides that the Department will express effluent limits as a monthly average in permits, except for concentrations of less than or equal to 0.3 milligrams per liter (mg/L) where limitations may be expressed as annual averages. The CWA section 402(c)(2) specifically requires NPDES permits to include all the conditions that are required under 40 C.F.R. § 122.45 (made applicable to state NPDES programs by 40 C.F.R. §123.25(a)(16)). Section § 122.45(d) provides that for continuous dischargers, all effluent limitations necessary to achieve water quality standards shall, unless impracticable, be stated as maximum daily and average monthly discharge limitations for all dischargers other than publicly-owned treatment works (POTWs) and average weekly and average monthly discharge limitations for POTWs.

Based on discussions with EPA, WDNR developed a Justification Paper for use of averaging periods for expression of WQBELs for phosphorus other than the averaging periods in 40 C.F.R. § 122.45(d). WDNR set out the basis for impracticability of weekly and daily limits,

² In approving Subchapter III, EPA's approval does not extend to the notes to s. NR 217.14 or to notes in any other section.

and also, when the phosphorus wasteload allocation (WLA) is 0.3 mg/L or less, that monthly limits may be impracticable. WDNR explains that its phosphorus criteria were developed based on correlations between median growing season phosphorus concentrations and biotic indices, and that this is consistent with EPA guidance for nutrient criteria development. WDNR evaluated several studies on the response of fresh waters to phosphorus. Further, WDNR relied on a March 3, 2004 memorandum from James Hanlon, Director of EPA's Office of Wastewater Management, "Annual Permit Limits for Nitrogen and Phosphorus for Permits Designed to Protect Chesapeake Bay and its Tidal Tributaries from Excess Nutrient Loading under the National Pollutant Discharge Elimination System." In this 2004 memorandum, EPA concluded that annual average limits were appropriate for nitrogen and phosphorus in the Chesapeake Bay and that it was impracticable in that case to express such limits as daily/weekly/monthly average values. WDNR noted that the EPA memo indicates that the nature of the water quality problem can be used to determine impracticability.

WDNR then relied on the information above to support its conclusion that due to the nature of phosphorus loadings and the manner in which its phosphorus water quality standards were derived, daily and weekly limits were impracticable. Further, that monthly limits may be impracticable when the WLA is 0.3 mg/L or less, as is recognized in Wisconsin s. NR 217.14(2). For rivers, streams, reservoirs and lakes with residence time of less than one year, where the WLA is 0.3 mg/L or less, the Justification Paper provides that WDNR may establish a monthly average or six-month average limit. When it sets a six-month average limit, the Justification Paper provides that WDNR will also set a monthly limit of 3 times the WLA. For lakes and reservoirs with a residence time of one year or more, where the WLA is 0.3 mg/L or less, the Justification Paper provides that WDNR may establish a six-month average or annual average limit along with a monthly limit of 3 times the WLA. WDNR signed an addendum to the EPA-WDNR NPDES MOA confirming that WDNR will implement 217.14(2) in this manner. EPA expects the State will have to modify its Enforcement Management System to describe the way in which it will manage seasonal and annual average phosphorus limits in its compliance evaluation and enforcement program.

EPA approves s. NR 217.14 Wis. Adm. Code.

6. s. NR 217.15 Wis. Adm. Code: Determination of necessity for water quality-based effluent limitations for phosphorus. This section requires WDNR to determine when WQBELs are required for phosphorus. Sections 301 and 402 of the CWA require NPDES permits to include effluent limitations as needed for discharges to meet water quality standards. The regulation at 40 C.F.R. § 122.44(d) requires the permit-issuing agency to: (1) determine whether point source discharges will cause, have a reasonable potential to cause, or contribute to an excursion beyond applicable water quality criteria; and (2) when the agency makes an affirmative determination, set WQBELs that are derived from and comply with water quality standards. Section NR 217.15 requires a WQBEL where the Department makes an affirmative

determination on reasonable potential. It establishes procedures for the Department to make this determination.

In response to a comment from EPA to address the situation where phosphorus data are not available, WDNR revised its rule to provide that where phosphorus data are not available, it may require phosphorus sampling as part of a permit application or use effluent data from similar point sources to make a determination as to whether the point source discharge will cause, have a reasonable potential to cause, or contribute to an excursion beyond the phosphorus water quality criterion. This addressed the concern raised by EPA on the proposed rule.

EPA approves s. NR 217.15 Wis. Adm. Code.

7. s. NR 217.16 Wis. Adm. Code: Relationship of WQBELs and TMDL based limitations. Section NR 217.16 provides WDNR authority to establish a WQBEL consistent with the waste load allocation and assumptions of an EPA approved TMDL that is designed to achieve water quality standards for the waterbody. EPA expects that a limit based on a TMDL will be derived from, and comply with, the applicable phosphorus criteria in NR 102 Wis. Adm. Code in order to be in conformance with 40 C.F.R. § 122.44(d)(1)(vii)(A). Additionally, pursuant to s. NR 217.16(4) if the WQBEL based on an approved TMDL is more stringent than the WQBEL calculated under s. NR 217.13, the Department must include the more stringent TMDL based limitation in the permit. Thus, Wisconsin has the authority to issue permits consistent with the assumptions and requirements of a TMDL's wasteload allocation and is required to do so by s. NR 217.16(4).

EPA expressed a concern that the proposed rule at NR 217.16(3) appeared to allow the state to modify or reissue the permit to include a less stringent limit based on an approved TMDL. WDNR revised its rule to clarify that if a phosphorus WQBEL calculated under s. NR 217.13 has already taken effect in a permit, the Department may replace the limit with a less stringent TMDL-based limit only if allowed pursuant to antidegradation procedures in ch. NR 207. In a July 2011 letter, EPA told WDNR that Wisconsin's NPDES program does not have a provision that conforms to 40 C.F.R. § 122.44(l) (antibacksliding). This regulation is applicable to states under 40 C.F.R. § 123.25(a)(15). In an October 2011 reply letter, WDNR said that it will amend the Wisconsin Administrative Code or seek a statutory amendment to establish antibacksliding provisions for the Wisconsin NPDES program. Until Wisconsin establishes antibacksliding provisions, the Department cannot replace a limit calculated under s. NR 217.13 with a less stringent TMDL-based limit unless the replacement conforms to 40 C.F.R. § 122.44(l). EPA retains its authority to review and object to a permit that contains a limit which is less stringent than contained in the prior permit.³

³ EPA's approval does not extend to the note inserted at the end of s. NR 217.16(3).

Section NR 217.16 (2) provides that WDNR may include a schedule of compliance to achieve a TMDL-based limit, if the department determines a schedule of compliance is necessary. All of the compliance schedule provisions set out in s. NR 217.17, including the required findings that a schedule of compliance will lead to compliance with the WQBEL as soon as possible and that a compliance schedule is appropriate and necessary, apply to any compliance schedule developed under s. NR 217.16. EPA retains its authority to review and object to a permit if it contains a compliance schedule that is not in conformance with 40 C.F.R. § 122.47.

Based on the foregoing discussion, EPA approves s. NR 217.16 Wis. Adm. Code.

8. s. 217.17 Wis. Adm. Code: Schedules of compliance. This section sets out the conditions under which WDNR may provide a schedule of compliance for a WQBEL, and the criteria for WDNR making a determination as to whether a compliance schedule is appropriate. It also provides the terms and conditions for schedules of compliance. EPA reviewed this provision, within the context of current Wisconsin law, for consistency with the CWA section 502(17) and 40 C.F.R. § 122.47. Section 502(17) defines a schedule of compliance as “a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.” Wisconsin defines the term using identical language. *See* Wis. Stat. section 283.01(15) and s. NR 205.03(32) Wis. Adm. Code. Under 40 C.F.R. § 122.47, permits can include compliance schedules when appropriate, and must require compliance with the WQBEL as soon as possible. In granting a compliance schedule in a permit, WDNR must make a finding, supported by the administrative record and described in the fact sheet that a compliance schedule is appropriate and that the discharger cannot immediately comply with the WQBEL upon the effective date of the permit. Such finding should set out the basis for its determination that a compliance schedule is appropriate and that the discharger cannot immediately comply with the WQBEL. WDNR should not presume that a compliance schedule be based on the maximum time period allowed in s. NR 217.17(2). The permittee must establish the need for a compliance schedule and for how much time is necessary to achieve compliance. Where such schedules exceed one year, permits must set forth interim requirements and the dates for achievement of the interim requirements. 40 CFR § 122.47(a)(3).

Wis. Stats. section 283.01(15) and ss. NR 205.03(32) and 217.17 Wis. Adm. Code include provisions that conform to the CWA section 502(17) and 40 C.F.R. § 122.47. If a NPDES permit is issued with a compliance schedule that extends past the expiration date of a permit, then the permit must include the final effluent limitations and any interim or final requirements that apply after permit expiration must be enforceable. Interim and final requirements must be expressed in terms of actions or operations leading to compliance with the WQBEL. To the extent WDNR writes guidance implementing s. NR 217.17, WDNR should

ensure such guidance conforms to Wis. Stats. section 283.01(15), ss. NR 205.03(32) and 217.17, and 40 C.F.R. § 122.47.

Section NR 217.17(3)(f) provides that if a permittee chooses to use pollutant trading to achieve compliance with a WQBEL, then the terms and conditions related to the trade shall be incorporated into the permit. This section seems misplaced in s. NR 217.17. As previously noted, this provision does not contain any statements inconsistent with EPA's "Water Quality Trading Policy" (2003). Pollutant trading is allowed to meet a WQBEL. However, the details of the trade must be established prior to permit issuance and incorporated into the permit. If a permittee engages in pollutant trading to comply with a limit, it is not appropriate to allow a compliance schedule to give a discharger time to establish the terms of a trade. Trades must be established at the time of permit issuance or modification.

Based on the foregoing discussion, EPA approves s. NR 217.17 Wis. Adm. Code.

9. s. NR 217.18 Wis. Adm. Code: Watershed adaptive management option. Section NR 217.18 provides an option for permittees to request the issuance of an Adaptive Management NPDES permit as a means to achieve compliance with the water quality standard for the waterbody and the WQBEL. This option is based on the permittee implementing point source and nonpoint source net watershed-scale pollutant reductions that will result in certain Wisconsin waters achieving phosphorus water quality standards in s. NR 102.06 Wis. Adm. Code.

There are several key provisions to this option. Section NR 217.18(3)(e)(1) requires that the permit contain a final and enforceable WQBEL. Section NR 217.18(2)(d) requires the permittee to submit an adaptive management plan with the application for permit re-issuance, with said plan identifying specific actions to achieve the applicable phosphorus criteria through verifiable reductions of phosphorus from point and nonpoint sources. Such adaptive management actions with goals and measures must be included in the permit (s. NR 217.18(3)(b)) and the permit must include a statement that failure to implement any of the terms and conditions established under s. NR 217.18(3) is a violation of the permit. EPA will be reviewing permits issued under this option carefully.

Given that nonpoint sources may be significant contributors of phosphorus in surface water, the adaptive management approach with its focus on reducing nonpoint sources as well as point source loadings to meet the water quality criteria may be a workable solution for phosphorus pollution. This approach could result in achieving the phosphorus water quality criteria for the waterbody where the more traditional approach of relying solely on the permittee meeting its WQBEL may not.

EPA is approving s. NR 217.18 based on WDNR signing an addendum to the MOA with EPA, on April 30, 2012, agreeing to implement this provision in a manner that conforms to 40 C.F.R. §§ 122.44(d), 122.44(l), 122.47, and 122.62. More specifically, the initial permit issued

and all reissued or modified permits under the adaptive management provision will include the final WQBEL and identify the subset of adaptive management actions that offset the mass of phosphorus which corresponds to the difference between the interim effluent limitation and the WQBEL. Secondly, the initial adaptive management permits will include a complete compliance schedule that sets out all the actions in the approved adaptive management plan to achieve the phosphorus water quality criterion. The schedule can contain the interim effluent limitations, and must identify adaptive management actions that will result in verifiable pollution reductions that equate to the increment between the interim limit and the WQBEL. For all compliance schedules, WDNR needs to meet the requirements in Wis. Stats. section 283.01(15) and ss. 205.03(32) and NR 217.17 Wis. Adm. Code. In particular the record should support a determination that a compliance schedule is appropriate and necessary and will lead to compliance with the WQBEL and water quality standard as soon as possible.