

WISCONSIN LEGAL AUTHORITY REVIEW STATUS 07.28.2016

Issue	Description	Status	Next Steps
RESOLVED ISSUES			
1	SSOs and Bypassing	Approved in EPA Adm. Hedman's 12.2014 letter	None
33	Real Time	Approved in EPA Dir. Hyde's 12.2012 letter	None
54	Storm W. – Def. Plan of Development	Approved in EPA Dir. Hyde's 12.2012 letter	None
68	Compliance Statutory Language	Approved in EPA Dir. Hyde's 12.2012 letter	None
72	Mixing Zone Language	Approved in EPA Dir. Hyde's 12.2012 letter	None
73	Submittal of Mixing Demo	Approved in EPA Dir. Hyde's 12.2012 letter	None
ISSUES IN-HOUSE EPA			
3	Permit Modifications	RP 6 submitted by WNDR for review, 3.10.2016	EPA review of RP 6
6	Thermal Limit Exclusion	WI Act 307 sub. by WDNR for review, 4.11.2016	EPA review of 2015 WI Act 307
9	Analytical Methods	RP 7 submitted by WNDR for review, 3.10.2016	EPA review of RP 7
16	Pretreatment	RP 2 submitted by WNDR for review, 3.10.2016	EPA review of RP 2
18	Permit Application Signatures	RP 6 submitted by WNDR for review, 3.10.2016	EPA review of RP 6
21	Fact Sheets, Specific Conditions	RP 6 submitted by WNDR for review, 3.10.2016	EPA review of RP 6
22	Draft Permits/Other Agencies	RP 6 submitted by WNDR for review, 3.10.2016	EPA review of RP 6
23	WisDot Storm W. Permitting	WI Act 307 sub. by WDNR for review, 4.11.2016	EPA review of 2015 WI Act 307
26	MS4, MOU Compliance	WI Act 307 sub. by WDNR for review, 4.11.2016	EPA review of 2015 WI Act 307
27	New Source Definition	WI Act 307 sub. by WDNR for review, 4.11.2016	EPA review of 2015 WI Act 307
45	Permits not Property Interest	RP 6 submitted by WNDR for review, 3.10.2016	EPA review of RP 6
47	Signatory to Permit	RP 6 submitted by WNDR for review, 3.10.2016	EPA review of RP 6
48	Permit Termination	RP 6 submitted by WNDR for review, 3.10.2016	EPA review of RP 6
49	Permit Change Notification	RP 6 submitted by WNDR for review, 3.10.2016	EPA review of RP 6
50	Permit Termination	RP 6 submitted by WNDR for review, 3.10.2016	EPA review of RP 6
51	Public Hearing Procedures	RP 6 submitted by WNDR for review, 3.10.2016	EPA review of RP 6
62	Permit Suspension	RP 6 submitted by WNDR for review, 3.10.2016	EPA review of RP 6
65	Draft Permit Preparation	RP 6 submitted by WNDR for review, 3.10.2016	EPA review of RP 6
66	Fact Sheets	RP 6 submitted by WNDR for review, 3.10.2016	EPA review of RP 6
ISSUES IN THE LATE STAGES OF THE WI RULEMAKING PROCESS			
2	Expression of Limits, 40 CFR 122.45	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
8	Hg Reasonable Potential	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
10	Pollutants in Intake Water	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
17	Noncontact Cooling Exempt	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
28	Acute Limits	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
30	Expression of Limits, Ammonia	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
31	Ammonia, Data/Demonstrations	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
32	Tier II Value Compliance	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
34	Expression of Limits, Acute/Chronic	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
35	Ammonia, WQBEL	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
36	Ammonia, Antidegradation	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
37	Ammonia, Compliance Schedule	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
38	Ammonia, Variance	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016

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39	Chlorides, Variance	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
40	Chlorides, WQBEL	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
41	Expression of Limits	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
42	Chlorides, WET	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
43	Chlorides, Public Water System	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
70	Alternative Limits	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
71	BCC Mixing Zone Phase Out	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016
74	WET Testing	Approved by the WI Legislature	Publication in the WI Administrative Register, 8.29.2016

ISSUES IN THE OPENING STAGES OF THE WI RULEMAKING PROCESS

4	Cooling Water Intake	(WY-19-14) language developed	WDNR advances rules to its Nat. Res. Bd. for approval
7	New Source Performance Standards	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
11	Generic Reasonable Potential	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
13	BMP Authority	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
14	Antibacksliding	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
15	General Compliance Schedule	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
20	Adjustment to Tech. Limits	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
29	Solid Waste Leachate	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
44	Point Source Definition	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
46	Expedited Variance	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval
61	Application Requirements	RP 5 language developed	WDNR advances rules to its Nat. Res. Bd. for approval

ISSUES PROVISIONALLY ADDRESSED BY WDNR'S IMPLEMENTATION, TO BE RESOLVED BY FUTURE RULEMAKING

52	Storm W.- Access Roads & Rail Lines	Roads and rails included in Tier 2 General Permit	Rule language development
53	Storm W.- Latitude and Longitude	WDNR modified form 3400-188	Rule language development
55	Storm W.- Illicit Discharge Definition	WDNR submittal, 06.23.2016	Rule language development
57	MS4, Management Program Changes	WDNR modified form 3400-195	Rule language development
67	MS4, Evaluation/Public Records	WDNR modified form 3400-195, and Wis. Stat. §19.35(1) submitted to EPA	Rule language development

ISSUES TO BE RESOLVED BY FUTURE RULE CHANGES, STATUTORY CHANGES, OR OTHER ACTIONS

5	Judicial Review	Issue 5's AGS resolution invalidated by Wis. Ct. App.	Statutory language development
12 ²	Downstream Water Impacts	EPA review concludes that further action is required	Rule or statutory language development
19 ²	Aquatic Production Facility	EPA review concludes that further action is required	Rule or statutory language development
24 ³	Storm W.- Com. /Fam./ Env.	2013 Wis. Act 20 submitted to EPA	Rule language development
25 ³	Storm W.- Authorized Local Program	EPA review concludes that rulemaking is required	Rule language development
56	MS4, Other Government Reliance	WDNR submitted form 3400-195	Further form changes & rule language development
58 ²	Waters of State Definition	EPA review concludes that further action is required	Rule or statutory language development
59 ²	Landfill Exclusion	EPA review concludes that further action is required	Rule or statutory language development
60 ²	Private Fuel Alcohol Production	EPA review concludes that further action is required	Rule or statutory language development
63 ²	False Statements	EPA review concludes that further action is required	Rule or statutory language development
64 ²	Public Participation Enforcement Cases	EPA review concludes that further action is required	Rule or statutory language development
69	Exempt Emergency Wis. Stat. § 283	WDNR and EPA discussions	Statutory language development or other action
75 ²	Adequate Enforcement Authority	EPA review concludes that further action is required	Rule or statutory language development

Notes:

¹Abbreviations: Adm.—Administrator, AGS – Attorney General Statement, BCC – bioaccumulative chemicals of concern, BMP – best management practices, CFR – Code of Federal Regulations, Com.— commercial, Def. – definition, Dir.—Director, Env.— environmental, EPA – Environmental Protection Agency, Fam. – family, Hg—Mercury, MOU – Memorandum of Understanding, MS4 – municipal separate storm sewer system, Nat. Res. Bd. – Natural Resources Board, RP – rule package, SSO – sanitary sewer overflow, Storm W. – storm water, WDNR – Wisconsin Department of Natural Resources, WET – Whole Effluent Toxicity, WI – Wisconsin, WisDot – Wisconsin Department of Transportation, Wis. Ct. App. – Wisconsin Court of Appeals, WQBEL – Water Quality Based Effluent Limits.

² EPA Director Hyde’s December 12, 2012 letter approved this issue’s resolution based on a statement by the Wisconsin Attorney General that cited Wisconsin’s existing, specific authority addressing the issue. However, subsequently the Wisconsin Court of Appeals invalidated the Attorney General Statement’s resolution of Issue 5 (Judicial Review), raising concern about the statement’s efficacy to resolve WI LAR issues generally (2014 WI App 61). Given the Wisconsin Court of Appeals’ ruling, EPA again reviewed this issue and determined that further action is now necessary to ensure that the issue is resolved.

³ EPA is reviewing Midwest Environmental Defense Center (MEDC) v. WDNR, Dane County Case No. 15-CV-2409. In the case, WDNR stipulated that it would not approve any “other environmental programs” under Wis. Admin. Code § NR 216.42(6) and “authorized local programs” under Wis. Admin. Code § NR 216.415(4). If warranted by the review, EPA will change the status of Issues 24 and/or 25 to provisionally addressed, requiring future rulemaking.