To: Nyffeler, Robin T - DNR[Robin.Nyffeler@wisconsin.gov]; Knutson, Jason R - DNR[Jason.Knutson@wisconsin.gov]; Stocks, Adrian G - DNR[Adrian.Stocks@wisconsin.gov]; Gayan, Sharon L - DNR[Sharon.Gayan@wisconsin.gov]; Heilman, Cheryl W - DNR[Cheryl.Heilman@wisconsin.gov]
Cc: Pierard, Kevin[pierard.kevin@epa.gov]; Ireland, Scott[ireland.scott@epa.gov]; Wester, Barbara[wester.barbara@epa.gov]; Stillman, Sarah[Stillman.Sarah@epa.gov]; Ackerman, Mark[ackerman.mark@epa.gov]; Compton, Mark[compton.mark@epa.gov]; Unger, LouAnn[unger.louann@epa.gov]; Pepin, Rob[pepin.robert@epa.gov]
From: Bauer, Candice
Sent: Wed 6/14/2017 11:28:48 PM
Subject: RE: Proposed comments on RP to send to WDNR

All-

First, EPA was able to meet today to discuss WDNR's revisions to NR 207.12(3) (issue number 9 in your list from my email below, which inadvertantly referenced NR 207.13(3)). EPA agrees that the state's revisions to this section are appropriate and consistent with federal requirements, including the incorporation of language from NR 217.13(8)(c) into NR 207.12(3)(a)(2).

Second, can you please let us know if you believe that changes to Table 1 at NR 200.065 (issue number 4 from below, which inadvertently referenced NR 200.06) can be made within the scope of this rulemaking? If you are able to make corrections to the Table at this time, EPA suggests that we discuss appropriate changes more fully.

Again, feel free to contact me with any questions!

Candice

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Candice R. Bauer, Ph.D.

Chief, Section 2

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From: Bauer, Candice
Sent: Wednesday, June 14, 2017 9:09 AM
To: 'Nyffeler, Robin T - DNR' <Robin.Nyffeler@wisconsin.gov>; Knutson, Jason R - DNR <Jason.Knutson@wisconsin.gov>; Stocks, Adrian G - DNR <Adrian.Stocks@wisconsin.gov>; Gayan, Sharon L - DNR <Sharon.Gayan@wisconsin.gov>; Heilman, Cheryl W - DNR <Cheryl.Heilman@wisconsin.gov>
Cc: Pierard, Kevin <pierard.kevin@epa.gov>; Ireland, Scott <ireland.scott@epa.gov>; Wester, Barbara <wester.barbara@epa.gov>; Stillman, Sarah <Stillman.Sarah@epa.gov>; Ackerman, Mark <ackerman.mark@epa.gov>; Compton, Mark <compton.mark@epa.gov>; Unger, LouAnn <unger.louann@epa.gov>; Pepin, Rob <pepin.robert@epa.gov>
Subject: RE: Proposed comments on RP to send to WDNR

Hi Jason and others…

Thank you for your continued work to address issues raised in EPA's legal authority review for Wisconsin, including your work to propose revisions to Wisconsin's NPDES regulations per Rule Package 5 (RP5) as transmitted to EPA in your May 31, 2017, email. After review of these proposed changes, we believe that WDNR has successfully addressed many of the comments provided in EPA's February 28, 2017, letter.

However, we have the following comments for your consideration as a follow-up to our May 31st phone call:

1- WDNR has updated Wis. Admin. Code NR § 200.21 to provisionally address this issue. EPA understands that further revision to the corresponding Wisconsin statute will also be needed to completely address EPA's previous comments.

2- Wisconsin added Wis. Admin. Code NR § 205.067(b) to address two EPA comments. EPA generally approves of the new language but suggests the following change to Wis. Admin. Code NR § 205.067(b):

•□□□□□□□□ (b) If the department determines a more stringent limitation is necessary to comply with water quality standards in a reissued permit, a more stringent water quality based effluent limitation shall ~~may~~ be included in the permit for the pollutant. Also, the department may include a less stringent limitation provided water quality standards, including antidegradation, as

well as antibacksliding requirements in ch. NR 207 are met.

3- EPA suggested that WDNR remove the Wis. Admin. Code NR § 205.067(6) exception and then note the regulatory reference of the more detailed procedures. EPA notes that since WDNR did not make this change, the procedures at Wis. Admin. Code NR § 205.067(1-4) may require revision in the future if they are determined in to be inconsistent with federal requirements.

4- To the extent that Wisconsin is unable to make the recommended modifications to Wis. Admin Code NR § 200.065 Table 1, EPA will continue to monitor and work with WDNR to ensure future rule changes address this item.

5- Regarding Wis. Admin. Code NR § 200.07(5)(Note), this change looks good to EPA.

6- Regarding Wis. Admin. Code NR § 207.11(2), EPA notes that the correct term is "best available technology economically achievable" (CWA section 301(b)(2)(a)), not "best available technology currently available".

7- Regarding Wis. Admin. Code NR § 207.12(2)(Note), this change looks appropriate to EPA.

8- Regarding the term "previous permit," Wisconsin's interpretation is consistent with federal program requirements at CWA section 402(o).

9- Regarding the use of the terms "attainment" and "nonattainment" waters in Wisc. Admin. Code NR § 207.12(3) , EPA appreciates the changes made by WDNR. EPA continues to evaluate the consistency of these changes with federal requirements and will follow-up with you as soon as possible on this issue separately.

10- Stakeholders asserted that Wisconsin rules are not clear as to whether increased loadings may be discharged by a facility into an impaired waterbody when the increased loadings being proposed are for pollutant(s) for which the water is impaired. It is our understanding that WDNR intends to respond to this issue in a way that is similar to the approach presented in WDNR's phosphorus rules. Based upon our understanding of WDNR's approach, this appears to be consistent with federal requirements.

11- Stakeholders commented that to receive less stringent WQBEL, an entity should have to satisfy 1 or more of the 6 exceptions at CWA section 402(o)(2) OR antidegradation. This comment is based upon the stakeholder's understanding of EPA's Permit Writers Manual (Chapter 7, 2010). WDNR suggested in our call that facility must address antidegradation in all cases. EPA concurs with WDNR's interpretation as consistent with Federal regulations that if an entity satisfies 1 or more of the CWA section 402(o)(2) exceptions, the entity must still address antidegradation to receive a less stringent WQBEL.

12- Stakeholders suggested that mistaken information cannot be used to justify relaxation of a WQBEL and cites EPA's permit writer manual. WDNR would like to know if EPA is aware of such a provision. The relevant provision is 402(o)(2)(B)(ii). While technical mistakes can be a

rationale for relaxing a limit under 402(o)(2) for the types of limits specified in 402(o)(1), the fact that 402(o)(2)(B)(ii) on technical mistakes provides that this exception can be used only in the case of limits established under 402(a)(1)(B), which does NOT include WQBELS, means that technical mistakes cannot be used as a basis for modifying a WQBEL.

13- EPA recommended changes to Wisc. Admin. Code NR § 220.15 regarding discharges to surface waters of the state. However, WDNR did not accept the recommendation. Given that the state currently lacks a definition for "surface waters of the state" but does have a definition of "waters of the state," we recommend that the term "waters of the state excluding groundwater" be added throughout this section (not only in the equation) in order to ensure consistency with federal requirements.

I hope that I covered the areas where you requested EPA's input in this email. If not, please do not hesitate to contact me with any additional questions. Thanks again for all your hard work!

Candice

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