Wisconsin Public Service

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Submitted Electronically

DNRAdministrativeRulesComments@wisconsin.gov

Mr. Jason Knutson
Wisconsin Department of Natural Resources

RE: Draft Rule Package WT-12-12 – Proposed WPDES Program Rule Changes

Dear Mr. Knutson:

Wisconsin Electric Power Company and Wisconsin Gas LLC (d.b.a. We Energies) and Wisconsin Public Service Corporation (WPS), subsidiaries of WEC Energy Group, Inc., submit these comments on the WT-12-12 rule package proposed by the Wisconsin Department of Natural Resources ("DNR") to change existing Wisconsin Pollution Discharge Elimination System ("WPDES") permit program rules.

We Energies and WPS serve more than 1.5 million electric customers in Wisconsin and Michigan's Upper Peninsula and 1.4 million natural gas customers in Wisconsin. Combined, the utilities operate electrical generating facilities holding 12 individual WPDES permits. DNR's WPDES program and associated administrative rules, including the proposed rule changes, apply to these permits.

Anti-backsliding Provisions – We have two comments on the anti-backsliding provisions in proposed section NR 207.12. First, we believe that revisions are needed to the proposed section NR 207.12(3) provision related to the application of anti-backsliding to a water quality based effluent limit ("WQBEL"). Under § 402(o)(1) of the Clean Water Act (33 USC § 1342(o)(1)) and applicable EPA policy, a discharger is entitled to receive a less stringent WQBEL if justified by the state's antidegradation policy <u>or</u> if justified by one of the exceptions in § 402(o)(2). EPA has long made clear that those two subsections of the CWA are independent grounds for exceptions to anti-backsliding:

> *EPA has consistently interpreted CWA section 402(o)(1) to allow relaxation of WQBELs and effluent limitations based on state standards if the relaxation is consistent with the provisions of CWA section 303(d)(4) or if one of the exceptions in CWA section 402(o)(2) is met. The two provisions constitute independent exceptions to the prohibition against relaxation of effluent limitations. If either is met, relaxation is permissible.*
> (NPDES Permit Writers' Manual, p.7-3, EPA 2010)

This policy applies to both "attainment" and "nonattainment" waters. It is not clear that proposed NR 207.12(3) properly implements these provisions of the CWA and EPA policy. To begin, NR 207.12(3)(a) requires that for discharges to "attainment waters," a discharger must satisfy both the antidegradation requirements and one of the tests in paragraphs 1-7. As provided in the CWA and EPA policy, the "and" at the end of paragraph (3)(a) should be changed to an "or." Adding to the confusion is paragraph NR 207.12(3)(c) that allows for receipt of a relaxed limit if authorized by the state's antidegradation rules. Paragraphs (3)(a) and (3)(c) need to be harmonized.

Our second comment pertains to addressing effluent limitations in cases of permittees that are located on nonattainment waters. Subsection NR 207.12(3)(b) is generally consistent with the CWA and would allow relaxation of a total maximum daily load ("TMDL") or other "waste load allocation" ("WLA") limit if DNR changed the "use designation" in accordance with EPA rules. However, ambiguity will arise in the application of the rule to waterbodies that are not meeting an applicable water quality criterion, but which have not been officially designated as being in nonattainment. In that case, it is not clear whether subsections (3)(a)-(c) [attainment] or subsection (3)(b) [nonattainment] would apply.

Furthermore, if subsection (3)(b) applies and there has not yet been a TMDL or other WLA assigned, it is unclear whether an effluent limit, including a variance based limit, could be relaxed in accordance with the provisions of that paragraph. One way to address this ambiguity would be to revise the initial sentence of subsection (3)(b) to read as follows (additional language to be added indicated in bold typeface): *"Any effluent limitation that is based upon a total maximum daily load, ~~or~~ wasteload allocation* ***or other effluent limitation*** *may also be made less stringent...."*

Both We Energies and WPS appreciate the opportunity to provide comments on the proposed rule package. If you have any questions or need additional information, please contact David Lee, Director – Water Quality at (414) 221-2158 or by email at David.Lee@we-energies.com.

Sincerely,

Bruce W. Ramme, Ph.D., P.E.

Copy: Ms. Sharon Gayan, DNR - Water Quality Bureau Director