To: Korleski, Christopher[korleski.christopher@epa.gov]
Cc: Zellmer, James A - DNR[James.Zellmer@wisconsin.gov]; Holst, Linda[holst.linda@epa.gov]; Pierard, Kevin[pierard.kevin@epa.gov]; Ireland, Scott[ireland.scott@epa.gov]; Bauer, Candice[bauer.candice@epa.gov]
From: Stevens, Patrick K - DNR
Sent: Thur 8/10/2017 12:54:18 PM
Subject: RE: EPA's Perspective on WDNR LAR Issues and Prep for 9/13 Meeting

Thanks much for the follow-up Chris. We are meeting today in preparation for the upcoming meeting, so your email is very timely and helpful. Thanks again.

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From: Korleski, Christopher [mailto:korleski.christopher@epa.gov]
Sent: Wednesday, August 09, 2017 5:10 PM
To: Stevens, Patrick K - DNR <Patrick.Stevens@wisconsin.gov>
Cc: Zellmer, James A - DNR <James.Zellmer@wisconsin.gov>; Holst, Linda <holst.linda@epa.gov>; Pierard, Kevin <pierard.kevin@epa.gov>; Ireland, Scott <ireland.scott@epa.gov>; Bauer, Candice <bauer.candice@epa.gov>; Korleski, Christopher <korleski.christopher@epa.gov>
Subject: EPA's Perspective on WDNR LAR Issues and Prep for 9/13 Meeting

Hello Pat:

I have been following up with staff on the various issues you raised with me at the conclusion of

the State Directors' meeting on June 14th. This e-mail relates to some of the concerns you raised about the ongoing (and long-standing) discussions between WDNR and EPA about the pending petition for withdrawal - specifically, issues pertaining to Wisconsin's legal authority to fully implement the Clean Water Act.

I understand that on June 28, 2017 (while I was happily out on vacation) Secretary Stepp and Acting Regional Administrator Kaplan had a conference call wherein WDNR raised concerns regarding: 1) EPA's decision that some items in the Attorney General's (AG) statement would require further actions to resolve; and 2) EPA's identification of "new" issues related to WDNR's legal authority. At the conclusion of the teleconference, I understand that WDNR and EPA agreed:

•□□□□□□□ that EPA would set up a face-to-face meeting at the Water Director's level to discuss these issues;

•□□□□□□□ that, in preparation for this meeting, EPA would further review the AG's statement and work with WDNR legal staff to determine what issues can readily be resolved; and

•□□□□□□□ that WDNR would send to EPA a list of the new issues for further discussion.

In preparation for this meeting, I wanted to advise you of EPA's perspective on the legal authority review:

•□□□□□□□ Since the initial identification of 75 issues in 2011, the collaborative work of the WDNR and EPA staffs has resulted in **the full resolution and EPA approval of 21 issues.**

•□□□□□□□ EPA's expectation, pending final review - including review of WDNR's newly-provided responses to questions EPA sent to WDNR on June 16th, is that **21 additional issues**—from Rule Packages 3 and 4—will likely be resolved before December of 2017.

•□□□□□□□ Additionally, EPA has worked closely with WDNR staff in reviewing draft rules included in Rule Package 5 and is ready to expeditiously review the **10 issues** addressed in Rule Package 5 when Wisconsin completes its rulemaking process and submits the final rules to EPA.

•□□□□□□□ WDNR and EPA staff have, since the June 28 teleconference, resumed discussions of the legal authority issues pertaining to the 2012 Wisconsin AG Statement (with a focus on Issues 5, 12, 58, 59, 60, 63, 64, and 75 – which were addressed by the letter but which were not fully resolved). These issues were tabled last fall based on a mutual agreement among our respective staffs that review of Rule Packages 3, 4, and 5 would take precedence. We are optimistic that most of these issues are now on a path to resolution and we anticipate that our respective staffs will report out the status of these issues prior to our face-to-face meeting, including any issues that they are unable to resolve through staff discussions.

•□□□□□□□ We also anticipate that further discussion may also be needed on the following issues to ensure our agencies agree on a path forward:

o the statutory emergency exemption (Issue 69);

o aquatic production facilities (Issue 19 pertaining to submission and review of WDNR's completed actions to address this issue). (Note: EPA believes that all the state has to do is formally submit the statutory change they already made.);

o two issues where EPA believes statutory changes may be needed (Issues 3 and 50);

o issues where we believe WDNR will be scheduling future rulemaking but where EPA would like to understand the scope and timeline for such activities (cooling water - Issue 4 and stormwater-related issues - 24, 25, 52, 53, 55, 56, 57, and 67); and

o issues where further WDNR agency action, outside of rulemaking, is necessary (issues 23 and 26).

o Also, EPA would like to receive an update on WDNR's progress on issue 5 in light of Quinn Williams statement during our June 28th call that WDNR is committed to seeing a statutory change to address this issue consistent with a State Court decision.

•□□□□□□□ EPA believes that work can be completed by the two teams in advance of the face-to-face meeting to determine which issues are significant and require higher level discussion. This advance work would help assure an efficient meeting, focused on the highest priority items.

•□□□□□□□ EPA would also like to utilize a staff level discussion prior to the face-to-face meeting for discussion of the new issues mentioned by WDNR during the June 28th call that have apparently arisen outside the specific scope of the original 2011 letter. We have, however, not yet received the list of new issues which WDNR indicated it would provide to us as a follow-up to the June 28 call. We request that WDNR share those new issues that are of concern in writing and that our staffs discuss any such new issues prior to the face-to-face meeting to ensure that EPA understands these issues and our staffs have an opportunity to prioritize them prior to the meeting.

•□□□□□□□ As you know, EPA's team will be travelling to Madison for the face-to-face meeting on September 13th. At that meeting, I would like to discuss all remaining unresolved issues and their path to resolution, including the issues described above and any other significant issues that WDNR wishes to raise. Given the importance and the sizeable scope of this upcoming discussion effort and the commitment made by the parties during the June 28th call, it is unfortunate that you will not be able to attend. However, EPA will work with the attending members of the WDNR team to put this process on a path to completion.

I hope that this e-mail clarifies EPA's perception of the status of the legal authority review. I certainly would welcome getting a clear understanding of WDNR's perspective, especially if WDNR's understanding of the status of the legal authority review is different from that set forth above.

Finally, I will be communicating with you via separate e-mail on several of the other issues you raised during our brief talk on June 14th.

Thanks.

Chris

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Chris Korleski

Director, Water Division, Region 5

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