UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 18 2015

REPLY TO THE ATTENTION OF:
WN-16J

Adrian Stocks, Chief
Permits Section-Water Quality Bureau
Wisconsin Department of Natural Resources
101 S. Webster
Madison, Wisconsin 53707

Re: WDNR Draft Rule Packages 3 and 4

Dear Mr. Stocks:

Thank you for the opportunity to review draft Rule Packages 3 and 4 that were forwarded to EPA by email on November 25, 2015. The draft Rule Packages are meant to address some of the 75 issues contained in EPA's July 18, 2011 letter to Secretary Cathy Stepp. Specifically, draft Rule Package 3 is meant to address issues 8, 10, 17 and 71 and draft Rule Package 4 is meant to address issues 2, 28, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 70 and 74. We reviewed the documents and offer the following comments. We may have additional comments of which we will send to you by December 22, 2015.

Draft Rule Package 3

- NR 106.145(2) appears to require a minimum data set of 12 data points over 24 months before a determination of reasonable potential can be made for mercury. This is inconsistent with 40 CFR 122.44(d)(1).

- The Rule appears to lack TMDL implementation language consistent with 40 CFR 132.

Draft Rule Package 4

- Section 77 (Issue 2)

  - Though NR 205.065(4) is consistent with some of the requirements in 40 CFR 122.45(g), to be fully consistent NR 205.065(4) should also include the requirements found in 40 CFR 122.45(g)(2) and (3) unless the state can show why these are not necessary.

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- NR 205.065(5) states:
  *Water quality based effluent limitations shall also be expressed in accordance with this subsection except if the Department determines it is impracticable, or if the Department determines that different time periods for expressing limitations is needed to ensure compliance with the applicable water quality standard and different time periods are established in another rule provision for a specific pollutant.*
  Since our review is focused on these draft rules, please provide examples of existing rule provisions for specific pollutants that have alternative time periods.

- NR 205.066(3) is meant to be consistent with 40 CFR 122.45(b)(2)(ii)(B), however we do not feel it is fully consistent. We believe the first sentence in NR 205.066(3) is consistent with 40 CFR 122.45(b)(2)(ii)(B)(2). The second sentence, however, of NR 205.066(3) is not consistent and should be revised to more closely mirror 40 CFR 122.45(b)(2)(ii)(B)(1). Also, corresponding language to 40 CFR 122.45(b)(2)(ii)(B)(3) is not included in Section 205.066(3). That omission should be explained.

- Neither NR 205.065 nor NR 205.066 contains requirements found in 40 CFR 122.45(i) regarding disposal of pollutants into wells, into POTWs, or by land application. Again, since this is a focused review, please identify where in your rules this is covered.

Thank you for your continuing effort in resolving the issues identified in the July 18 letter. Questions concerning these comments may be addressed to John Colletti of my staff, at (312) 886-6106.

Sincerely,

Kevin M. Pierard
Chief, NPDES Programs Branch

cc: Susan Sylvester, WDNR