To: Colletti, John[colletti.john@epa.gov]; Knutson, Jason R - DNR[Jason.Knutson@wisconsin.gov]
Cc: Wester, Barbara[wester.barbara@epa.gov]; Heilman, Cheryl W - DNR[Cheryl.Heilman@wisconsin.gov]; White, Quintin[white.quintin@epa.gov]; Unger, LouAnn[unger.louann@epa.gov]; Compton, Mark[compton.mark@epa.gov]; Pierard, Kevin[pierard.kevin@epa.gov]
From: Nyffeler, Robin T - DNR
Sent: Tue 6/21/2016 5:00:19 PM
Subject: RE: Rule package 5

Oneun answered question is whether antibacksliding and antidegradation apply to relaxation of ELG based limitations or bmps. If it does, I would like to revise sub. (4) to make it clear that sub (4) applies to: the relaxation of ELG based limitations(including NSPS, etc.), bmps? and interim limitations. I would like to delete the word "condition" because that term isn't defined and isn't included in the CWA.

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Department clients visit our survey at http://intranet.dnr.state.wi.us/int/legal/ to evaluate how I did.

Robin T. Nyffeler

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From: Colletti, John [mailto:colletti.john@epa.gov]
Sent: Tuesday, June 21, 2016 11:42 AM
To: Nyffeler, Robin T - DNR; Knutson, Jason R - DNR
Cc: Wester, Barbara; Heilman, Cheryl W - DNR; White, Quintin; Unger, LouAnn; Compton, Mark; Pierard, Kevin
Subject: RE: Rule package 5

Robin and Jason,

In response to your questions regarding the following issues for draft Rule Package 5:

- NR 106.117(2)(b)- you requested clarification of the March 23, 1997 date: This is the final date for states to adopt the GLI into their standards and update their NPDES program. This date was important at the time since the Great Lakes Initiative was promulgated in 1995. At that time it was a future date and thus we agree that it need not be incorporated into the state's regulation at this time, provided the State's regulations define 'new' and 'existing' Great Lakes Dischargers somewhere. If they do, the date can be removed.

- NR 207.12- You requested clarification as to whether antidegradation applies to permits issued for dischargers to waters covered by TMDLs: Yes. 40 C.F.R. § 122.44(l)(2)(ii) states "In no event may such a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 applicable to such waters." Antidegradation requirements are part of water quality standards. See Memorandum from James R. Elder, Director, Office of Water Enforcement and Permits, to Water Management division Directors, "Interim Guidance on Implementation of section 402(0) Anti-backsliding Rules for Water Quality-Based Permits," (September 29, 1989), Attachment 2 [hereafter 1989 Elder memo]. Therefore, the following phrase should be deleted from the state's draft regulation at 207.12(1)(b): "except that antidegradation does not apply to the relaxation of a total maximum daily load limitation or a limitation based on a wasteload allocation in ch. NR 212 in accordance with sub. (3)(c). "

- NR 207.12(3)-State technology based standards: The phrase "water quality-based effluent limitation" is used in the 1989 Elder memo, unless otherwise specified, to refer to any effluent limitation established on the basis of CWA § 301(b)(1)(C) or § 303. Section § 301(b)(1)(C) is not limited to requirements established on the basis of § 303 water quality standards, but rather it also includes any other State treatment requirements more stringent than those required by the CWA. If the State's technology based standards are more stringent than those required by the CWA, then the language in draft NR 207.12(3) is appropriate.

- NR 207.12(4)- You requested clarification on why EPA inserted "Other Effluent Limitations" into the heading of this section: The State's draft regulation had this language. We combined it with the text of the section in the draft that was also marked as 207.12(4). 40 C.F.R. § 122.44(l)(1) states ". . . interim effluent limitations, standards or conditions . . . " If the state wants to remove "other effluent limits" from the title, it would be okay.

- NR 220.32(1)(c)-citation of 40 C.F.R. Part 124: The intent of this provision, as cited in 40 C.F.R. § 125.31(a)(3), is to ensure that the same procedural requirements that apply to permit issuance are followed when the permit issuing agency is establishing effluent limitations under a fundamentally different factors variance approach. If the State wants to cite their specific regulations that are consistent with the procedural requirements of 40 C.F.R. Part 124, that would be okay. If you have questions as to whether the state regulations cover all relevant NPDES portions of Part 124, please let us know.

Hopefully this clarifies our position on the above issues. Let me know if you have questions.

John

From: Nyffeler, Robin T - DNR [mailto:Robin.Nyffeler@wisconsin.gov]
Sent: Tuesday, June 21, 2016 9:07 AM
To: White, Quintin <white.quintin@epa.gov>; Colletti, John <colletti.john@epa.gov>
Cc: Wester, Barbara <wester.barbara@epa.gov>; Knutson, Jason R - DNR <Jason.Knutson@wisconsin.gov>; Heilman, Cheryl W - DNR <Cheryl.Heilman@wisconsin.gov>
Subject: Rule package 5

Hi Quintin and John,

You were going to send us some information on Rule package 5 by the end of the day yesterday. We didn't receive anything. Will you be able to send Jason something today? I will be out of the office tomorrow through June 30 so Jason will need to be the primary contact while I am

gone. We need to get the rule "finalized" this week so we can post a notice for solicitation of economic impacts and notify our Board of this next step.

Robin

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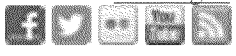

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