To: Stocks, Adrian G - DNR[Adrian.Stocks@wisconsin.gov]
Cc: Wester, Barbara[wester.barbara@epa.gov]; Colletti, John[colletti.john@epa.gov]; Pepin, Rob[pepin.robert@epa.gov]; White, Quintin[white.quintin@epa.gov]; DelRosario, Ross[delrosario.rosauro@epa.gov]; Compton, Mark[compton.mark@epa.gov]; Newport, Robert[newport.bob@epa.gov]
From: Pierard, Kevin
Sent: Wed 12/23/2015 2:14:12 PM
Subject: Comments on Rule packs.
WT-11-12 Draft Rule bn.pdf

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Adrian – as promised I am forwarding the following additional comments here, please let us know if you have any questions or would like to set up a call.

Issue 10 (effluent limits/pollutants in intake water):

The language currently included in WT-31-10 draft rule, section 4, NR 106.06(6)(c)(2) is inconsistent with the water quality based NPDES permitting requirements of the CWA and federal regulations. EPA believes this problem could be resolved if the following correction is adopted:

(c) 1. If no TMDL has been developed and the conditions in par. (b) are not met, an effluent limitation shall be included in the permit if the department determines that the discharge has a reasonable potential to cause or contribute to an excursion from the applicable water quality criterion or secondary value for the substance. The limitation shall be included in the permit in accordance with the any of the following that applies:

1. For discharges within the Great Lakes system, the effluent limitation for that substance shall be equal to the most stringent applicable water quality criterion or secondary value.

2. For discharges outside of the Great Lakes system:

a. When all of the intake source of the wastewater is from the same waterbody as the receiving water of the discharge, the effluent limitation for that substance shall equal the representative background concentration of that substance in the receiving water if the conditions in NR 106.06(6)(b)(3) – (5) are met.

Issue 71 (bcc/mixing zone phase out):

We are not sure if the provisions included in WT-31-10, Section 2, NR.106.06(2), including those relating to expanded existing discharges, are consistent with federal program requirements. we recommend having a further discussion with WDNR.

In regard to your message below concerning the comments made in our December 18 letter you accurately reflect our conversation from yesterday morning. Except for the minor changes noted I think we are in general agreement with the state's responses to our concerns.

Comment 1: agree

Comment 2: Generally agree. The document attached to this e-mail contains some comments and clarifications in the comment field for your consideration.

Comment 3a: Generally agree. We suggest the following language: *(d) The permittee demonstrates that the constituents of the pollutant in the effluent are* ***substantially*** *similar to the constituents of the pollutant in the intake water.*

Comment 3b: Agree, but we still need a copy of the document that contains this language.

Comment 4: Agree

Comment 5a: Agree

Comment 5b: Agree

Comment 6: Agree

From: Stocks, Adrian G - DNR [mailto:Adrian.Stocks@wisconsin.gov]
Sent: Tuesday, December 22, 2015 2:48 PM
To: Pierard, Kevin <pierard.kevin@epa.gov>
Cc: Colletti, John <colletti.john@epa.gov>; White, Quintin <white.quintin@epa.gov>; Wester, Barbara <wester.barbara@epa.gov>; Compton, Mark <compton.mark@epa.gov>; Pepin, Rob <pepin.robert@epa.gov>
Subject: RE: Comments on Rule packs.

Kevin,

I am writing this in response to the comments that EPA provided on the proposed rule packages #3 and #4 to address some of the 75 issues identified in the LAR.

I would request that the EPA respond confirming that the proposed solutions or added language, as discussed on the conference call this morning and outlined below, will satisfy EPA's identified concerns with the draft rule language.

This would give the Department confidence that the issues addressed in these two rule packages will be satisfactorily resolved upon eventual administrative code adoption.

I understand the EPA will still review final promulgated rules before formally considering specific LAR issues resolved.

I copied EPA's comments and WDNR's resolution.

Comment **Resolution**

Number

1- Mercury RP (RP 3) 106.145(2) is being repealing in the board order. See Section 9 of the board order for details. We believe this addresses the concern.

2- TMDLs (RP 3) 106.06(2)(br) discusses BCCs in the Great Lakes system. Specific mention to TMDLs can be found at 106.06(2)(br)3.b. Additional TMDL procedures are found in rule package 4, specifically in NR 212 subchapter III. The changes to rule package 4 seek to address key implementation concerns as well as EPA's disapproval of the TMDL program within the Great Lakes Basin. Section 212.76 contains overall TMDL implementation procedures, and the mixing zone provisions are specifically contained in 212.76(3). The Department believes these sections address EPA's comment.

3a- 40 CFR 11.45 (g) (2) (RP 4) The department believes the proposed language in the board order is consistent with 122.45(g). Again, the rule language that is currently proposed is (underlining used to add emphasis):

(d) The permittee demonstrates that the constituents of the pollutant in the effluent are similar to the constituents of the pollutant in the intake water. The permittee shall also demonstrate that the intake water is drawn from the same waterbody as defined in s. NR 106.03 (11m) from into which the discharge is made.

Does EPA concur that this language addresses their concern or are edits needed? If the latter, any additional clarification would be very helpful.

3b- 40 CFR 11.45 (g) (3) (RP 4) The department believes the proposed language in the board order is consistent with 122.45(g). This rule language that is currently proposed is:

(6) *Maximum intake water credit. If intake credit is granted pursuant to sub. (5), that intake credit cannot exceed the maximum value equal to the influent value, and shall be no greater than the value necessary to comply with the applicable permit effluent limitation. Additional monitoring may be included in the permits to determine eligibility for credits and compliance with the applicable limits.*

Does EPA concur that this language addresses their concern or are edits needed? If the latter, any additional clarification would be very helpful.

4- Add examples of specific pollutants (RP 4) A note was added to the board order to address EPA's request for an example. This note reads:

Note: *An example of a different time period for expressing limits for a specific pollutant or parameter is phosphorus limitations as specified in s. NR 217.14.*

5a- 40 CFR 122.45(b)(2)(iii)(B) (RP 4) Thank you for bringing this issue to our attention. The language at 205.066(3) has been modified to the following to be fully consistent with the federal regs (highlighting has been used to indicate the revised language).

(3) *Exceedance of production limits. The permittee shall comply with the limitations, standards, and prohibitions calculated under s. NR 205.065 (4) (b) unless the permittee has notified the department in writing of an anticipated*

exceedance of the estimated alternative design flow used to calculate limits, in which case the permittee may comply with an alternative design flow, not to exceed the production level specified in the notice. Written notifications must be submitted to the department at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit and shall specify the anticipated level, period during which the permittee expects to operate at the alternate level, and the reasons for the anticipated production level increase. Notice of increased discharge must be submitted to the department for all exceedances not covered in previous notifications.

Does EPA concur that this language addresses their concern or are further edits needed? If the latter, any additional clarification would be very helpful.

5b- 40 CFR 122.45(b)(2)(ii)(B)(3) (RP 4) The department believes this issue is addressed at 205.066(2), which reads:

(2) *Production limit documentation. If limits are calculated under s. NR 205.065 (4) (a) or (b) the permittee shall submit with the DMR the level of production that actually occurred during each month limits are effective.*

Does EPA concur that this language addresses their concern or are edits needed? If the latter, any additional clarification would be very helpful.

6- 122.45(i) The department agrees that the requirements of 40 CFR 122.45(i) are not found in rule packages 3 or 4. This is because these requirements are being addressed in rule package 5. Rule package 5 is not as far along in the rulemaking process, so this issue will be addressed at a later time.

Thanks,

Adrian

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Adrian Stocks
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From: Pierard, Kevin [mailto:pierard.kevin@epa.gov]
Sent: Friday, December 18, 2015 4:29 PM

To: Stocks, Adrian G - DNR
Cc: Colletti, John; White, Quintin; Wester, Barbara; Compton, Mark; Pepin, Rob
Subject: RE: Comments on Rule packs.

Adrian – please find EPA's comments attached. Let us know if you have any questions.

From: Stocks, Adrian G - DNR [mailto:Adrian.Stocks@wisconsin.gov]
Sent: Friday, December 18, 2015 10:19 AM
To: Pierard, Kevin <pierard.kevin@epa.gov>
Subject: Comments on Rule packs.

Hi Kevin,

Just wanted to check in on any comments on Rule Pack 3 &4.

Today is the end of the comment period and we're really trying to get the final board order to the Natural Resources Board for adoption in January.

Our staff is going to work over the weekend to have it all finalized by Monday so we can meet the deadlines.

If you guys have any comments, we would sure appreciate receiving them today.

Thanks very much.

Adrian

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