

**SUBJECT:** Informational update on the Department's response to the US EPA letter dated July 18, 2011 regarding water program inconsistencies

**FOR:** JANUARY 2012 BOARD MEETING

**TO BE PRESENTED BY / TITLE:** Russ Rasmussen, Water Division, Deputy Administrator

**SUMMARY:**

Over the past several years, USEPA has been conducting an extensive review on Wisconsin's legal authority to administer the NPDES permit program. The review is part of a nationwide review of state programs with federally approved NPDES permit programs.

As part of its review, EPA Region V staff met with DNR staff on several occasions over the past few years to obtain additional information on Wisconsin's WPDES permit program. On July 18, 2011, after completing its initial review, the USEPA sent WDNR a letter indicating they found 75 potential inconsistencies. The Department responded in a letter dated October 14, 2011 with a proposed plan to address the inconsistencies. The Department proposed several different courses of action for various issues: rulemaking, legislative changes, an Attorney General's opinion or an Addendum to the Memorandum of Agreement with EPA to administer the NPDES permit program.

WDNR met with USEPA on December 15, 2011 to discuss the status of the 75 issues in their July 18, 2011 letter. EPA requested that WDNR provide a more detailed schedule for the rulemaking process and approvals required ( e.g. NRB approval and Governor's approval) by the middle of February. EPA in turn agreed to notify the Department regarding specific issues that may be resolved through an Addendum to the Memorandum of Agreement with USEPA. The Department is currently waiting for the Attorney General's Statement on several issues identified by USEPA. The response from the Attorney General's office will dictate whether additional rule making is required.

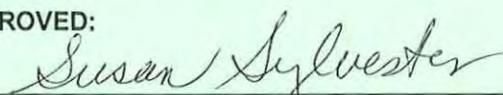
Wisconsin is and always has been at the forefront of administering the NPDES permit program. Department staff believe that many of the 75 issues are minor technical discrepancies or omissions in rule or statutory language that will have little to no bearing on administration of the program and no impact on water resources in the state. Many of the issues raised are permit processing issues. For other issues, the Department has already initiated the rule making process.

**RECOMMENDATION:** Informational Item

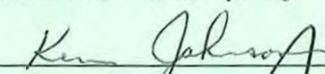
**LIST OF ATTACHED MATERIALS:**

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|--|---|------------------------------|----------|
| No <input checked="" type="checkbox"/> | Fiscal Estimate Required                              | Yes <input type="checkbox"/> | Attached |
| No <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes <input type="checkbox"/> | Attached |
| No <input checked="" type="checkbox"/> | Background Memo                                       | Yes <input type="checkbox"/> | Attached |

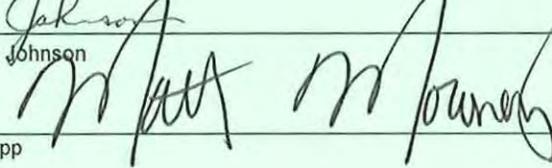
**APPROVED:**

  
Bureau Director, Susan Sylvester

1-17-12  
Date

  
Administrator, Ken Johnson

1-18-12  
Date

  
Secretary, Cathy Stepp

1/18/12  
Date

cc: NRB Liaison  
DNR Rules Coordinator