40 CFR 131.14	Wisconsin Total Phosphorus (TP) Multi Discharger Variance (MDV)
131.14 Water quality standards variances. States may adopt WQS variances, as defined in § 131.3(o). Such a WQS variance is subject to the provisions of this section and public participation requirements at § 131.20(b). A WQS variance is a water quality standard subject to EPA review and approval or disapproval.	Section 283.16(9), Wis. Stats., states that the department shall comply with 40 CFR 131.14 when implementing the variance (see 2015 Act 205 Attachment 7). Also, section 283.16(4)(a) states that applicants may be eligible for variance as long as U.S. EPA's approval of the variance in in effect. Therefore, the statute recognizes that the variance to the phosphorus water quality standard is time limited. In the Departments application materials, the state is initially requesting approval for a 10 year period for the variance (also see s. 283.16(3)(a), Wis. Stat., and page 10-14 of the variance justification document Attachment 3). The multi discharger variance determination was subject to public participation procedures that complied with 131.20 (see legal certification statement Attachment 8 for description of the public participation procedures). Also, applications that are approved for variance coverage are subject to the public participation procedures for WPDES permits (see s. 283.16(4)(e), Wis. Stat. and Section 5.03 of the MDV implementation guidance Attachment 5).
(a) Applicability:	
(1) A WQS variance may be adopted for a permittee(s) or water body/waterbody segment(s), but only applies to the permittee(s) or water body/waterbody segment(s) specified in the WQS variance.	The phosphorus MDV in s. 283.16 is a permittee based variance. Table 6 of the MDV justification document (page 23 of Attachment 3) provides the potentially eligible MDV areas in the state and Section 5 includes the eligibility provisions for permittees (see pages 8-10 of the variance justification document Attachment 3). Individual permittees are responsible to apply for the MDV pursuant to s. 283.16(4)(b), Wis. Stat. One requirement of this application will be a demonstration that the Final Economic Determination applies to the existing source (s. 283.16(4)(a)1, Wis. Stat.). Site-specific information will be required to make this determination, and will ensure that only those permittees that meet the primary and secondary indicators provided in Section 5 of the Final Economic Determination (Attachment 1) qualify for the MDV. See attached guidance document (Attachment 5) and implementation forms (Attachment 6).

Attachment 9

(2) Where a State adopts a WQS variance, the State must retain, in its standards, the underlying designated use and criterion addressed by the WQS variance, unless the State adopts and EPA approves a revision to the underlying designated use and criterion consistent with § 131.10 and § 131.11. All other applicable standards not specifically addressed by the WQS variance remain applicable.	Section 283.16 does not remove the designated use and phosphorus criteria for surface waters that are established in chapter NR 102. Therefore, all currently applicable designated uses will remain in effect for the duration of the MDV. The MDV only applies to phosphorus pursuant to ss. 283.16(2)(a) and 283.16(2)(em), Wis. Stats.
(3) A WQS variance, once adopted by the State and approved by EPA, shall be the applicable standard for purposes of the Act under 40 CFR 131.21(d)-(e), for the following limited purposes. An approved WQS variance applies for the purposes of developing NPDES permit limits and requirements under 301(b)(1)(C), where appropriate, consistent with paragraph (a)(1) of this section. States and other certifying entities may also use an approved WQS variance when issuing certifications under section 401 of the Act.	Section 283.16(6) and (7), Wis. Stat. provides the permitting provisions that shall be included in a WPDES permit that includes the MDV. Inclusion of numeric permit limitations is required pursuant to ss. 283.16(6)(a) and 283.16(7), Wis. Stat. Sections 2.02, 2.03 and 5.01 of the MDV Implementation Guidance also seeks to clarify these permitting requirements (Attachment 5).
(4) A State may not adopt WQS variances if the designated use and criterion addressed by the WQS variance can be achieved by implementing technology-based effluent limits required under sections 301(b) and 306 of the Act.	Wisconsin's technology-based effluent limitations for phosphorus are found in NR 217 Subchapter II, Wis. Code, and have been effective since 1992. In no case shall permit limitations based on the MDV be less restrictive than the technology based effluent limitations pursuant to s. 283.16(6)(am), Wis. Stat.
(b) Requirements for Submission to EPA:	
(1) A WQS variance must include:	
(i) Identification of the pollutant(s) or water quality parameter(s), and the water body/waterbody segment(s) to which the WQS variance applies. Discharger(s)-specific WQS variances must also identify the permittee(s) subject to the WQS variance.	The MDV only applies to phosphorus (see s. 283.16, Wis. Stats. Attachment 7). Table 6 of the MDV justification document (Attachment 3) provides the potentially eligible MDV areas in the state. Individual permittees are responsible to apply for the MDV pursuant to s. 283.16(4)(b), Wis. Stats. One requirement of this application will be a demonstration that the Final Economic Determination applies to the existing source (s. 283.16(4)(a)1, Wis. Stat.). Site-specific information will be required to make this determination,

	and will ensure that only those permittees that meet the primary and secondary indicators provided in Section 5 of the Final Determination qualify for the MDV (pages 8-10 of the variance justification document Attachment 3). Table 2 of the MDV Justification Document (Attachment 3) also provides the site-specific eligibility requirements for point source eligibility. The final economic determination concluded that achieving compliance with the phosphorus standard is not feasible because compliance with the standard will result in substantial and widespread economic impacts for categories of dischargers. The final economic determination (Attachment 1) documents that the factor in 40 CFR 131.10(g)(6) is met. Compliance with the phosphorus water quality standard would result in substantial and widespread economic and social impacts. In addition, the department has provided information showing that human caused conditions have resulted in phosphorus exceedances in surface waters in the state, and in the majority of watersheds, nonpoint sources are the primary contributor or a very significant contributor of phosphorus loads that prevent attainment of the standard (see page 10 of the variance justification document Attachment 3). This is a factor specified in 40 CFR 131.10(g)(3). The conditions of the MDV, which include projects to reduce nonpoint source pollution, can actually alleviate or "remedy" this type of phosphorus load that would otherwise not be remedied in a timely manner.
(ii) The requirements that apply throughout the term of the WQS variance. The requirements shall represent the highest attainable condition of the water body or waterbody segment applicable throughout the term of the WQS variance based on the documentation required in (b)(2) of this section. The requirements shall not result in any lowering of the currently attained ambient water quality, unless a WQS variance is necessary for restoration activities, consistent with paragraph (b)(2)(i)(A)(2) of this section. The State must specify the highest attainable condition of the water body or waterbody segment as a	Section 283.16(6) and (7), Wis. Stats., specify the requirements that apply during the term of the permit when MDV coverage is approved for a permittee. These statutory provisions require that the interim limitations reflect the highest attainable condition, and they will be reviewed every five years and at permit reissuance (s. 283.16(3m) and (7), Wis. Stats.). The numeric interim limitations, optimization requirements and watershed projects specified in s. 283.16(6), Wis. Stat., are the interim effluent conditions that reflect the greatest pollutant reduction achievable and satisfy the requirement in 40 CFR 131.14(b)(1)(ii)(A)**(2)**) because these conditions achieve both stepped point source reductions, and nonpoint source phosphorus reductions that would not otherwise be achieved in waterbodies. Nonpoint

quantifiable expression that is one of the following: (A) For discharger(s)-specific WQS variances: (1) The highest attainable interim criterion, or (2) The interim effluent condition that reflects the greatest pollutant reduction achievable, or (3) If no additional feasible pollutant control technology can be identified, the interim criterion or interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the State adopts the WQS variance, and the adoption and implementation of a Pollutant Minimization Program. (B) For WQS variances applicable to a water body or waterbody segment: (1) The highest attainable interim use and interim criterion, or (2) If no additional feasible pollutant control technology can be identified, the interim use and interim criterion that reflect the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the State adopts the WQS variance, and the adoption and implementation of a Pollutant Minimization Program.	sources contribute phosphorus to all surface waters in the state. In the vast majority of watersheds, nonpoint sources contribute most of the phosphorus load (see page 10 of the variance justification document Attachment 3). The required nonpoint source reductions that will be achieved as a condition of the variance, in combination with gradual point source reductions over time, will result in greater overall phosphorus reductions in a waterbody. Although only one of the provisions under 40 CFR 131.14(b)(1)(ii)(A) must be met, the Department believes that the optimization requirements, interim effluent limitations and nonpoint watershed project requirements established in s. 283.16(6) and (7) Stats., also satisfy the highest attainable condition requirement in 40 CFR 131.14(b)(1)(ii)(A)**(3).** Once the Department approves MDV coverage for a permittee, mandating installation of additional costly pollutant control technology during the term of the variance is not feasible. Installation of additional pollutant control technology (e.g. biological phosphorus removal or package plants) is not feasible during the term of the variance when the conditions of the variance also require interim limitations based on optimization and implementation of a nonpoint watershed project. Put another way, the watershed project costs will be significant for permitees and will result in significant nonpoint phosphorus load reductions in a waterbody, but it isn't feasible to also require, as a condition of the variance, that permittees install additional costly treatment plant control technologies to further reduce phosphorus loads. There would be no reason for any permittee to seek coverage for the variance if installation of additional pollutant control technologies was required. These capital expenditures on top of the costs for watershed projects would not be economically viable for a permittee. It could also be a wasted expenditure if a new technology is developed in the future that will actually achieve compliance with the final water quality based effluent limitation. It should be noted that many facilities have already optimized their existing treatment technology pursuant to s. NR 217.17(3)(b)1, Wis. Code. Both the numeric interim limitations and optimization requirement will ensure that permittees continue to operate at or above existing operating conditions

	throughout the MDV, and there will not be a lowering of water quality. The most up-to-date optimization guidance will be used when making these determinations. See Section 4.03 of the Phosphorus Implementation Guidance for details (Attachment 5). Details and guidance regarding the watershed plans are provided in Chapters 3 and 4 of the MDV Implementation Guidance (Attachment 5). In summary, all of these requirements, the interim effluent limitations and optimization requirement in s. 283.16(6) and (7), and the nonpoint source reduction projects in s. 283.16 (6)(b), represent the highest attainable condition.
(iii) A statement providing that the requirements of the WQS variance are either the highest attainable condition identified at the time of the adoption of the WQS variance, or the highest attainable condition later identified during any reevaluation consistent with (b)(1)(v) of this section, whichever is more stringent.	The DNR finds that interim limitations, watershed project, and optimization requirements represent highest attainable condition at this time. The justification for this determination is provided in the "Conditions to be Included in a WPDES Permit" section of the MDV Justification document (Attachment 3). The highest attainable condition will be reevaluated as specified in s. 283.16(3m) and (7). More restrictive limitations shall be included in the WPDES permit if necessary to reflect the highest attainable condition for the individual permittee or applicable statewide category of discharge (see s. 283.16, Wis. Stats. and 2015 Act 205 Attachment 7 and Section 2.02 of the Implementation Guidance Attachment 5).
(iv) The term of the WQS variance, expressed as an interval of time from the date of EPA approval or a specific date. The term of the WQS variance must only be as long as necessary to achieve the highest attainable condition and consistent with the demonstration provided in paragraph (b)(2) of this section. The State may adopt a subsequent WQS variance consistent with this section.	The DNR finds that a 10-year variance is appropriate given the time necessary to achieve the highest attainable condition. The MDV Justification document (Attachment 3) details the reasons for this timeline, siting several key factors including: - The important of reduction point source and nonpoint source loads to meet water quality goals; - Legacy phosphorus in receiving waters; - Polyphosphate additives in drinking water systems; - Phosphorus concentrations in groundwater; - Non-reactive phosphorus concentrations in effluent streams; and, - Cost of existing treatment options. The DNR may request subsequent WQS variances to extend this MDV

	consistent with s. 283.16(3)(a), Wis. Stat. (see pages 10-13 of the justification document Attachment 3).
(v) For a WQS variance with a term greater than five years, a specified frequency to reevaluate the highest attainable condition using all existing and readily available information and a provision specifying how the State intends to obtain public input on the reevaluation. Such reevaluations must occur no less frequently than every five years after EPA approval of the WQS variance and the results of such reevaluation must be submitted to EPA within 30 days of completion of the reevaluation.	The highest attainable condition determination will be reevaluated no later than every 5 years in accordance with s. 283.16(3m) and (7). The department must submit the results of this determination within 30 days of completion pursuant to s. 283.16(3m)(b), Wis. Stat. Section 283.16(3m)(a) specifies the public participation procedures for the highest attainable condition reevaluation and at each permit reissuance, the public participation procedures for WPDES permits provides further opportunities. Pursuant to s. 283.16(3m)(a) the department shall hold a public hearing in order to receive additional information and public comment and shall notify the public of this hearing at least 45 days prior to the hearing date. Public comment on individual permitting decisions will be solicited through the permit reissuance process. Section 5.03 of the MDV implementation guidance clarifies these public comment opportunities (Attachment 5).
(vi) A provision that the WQS variance will no longer be the applicable water quality standard for purposes of the Act if the State does not conduct a reevaluation consistent with the frequency specified in the WQS variance or the results are not submitted to EPA as required by (b)(1)(v) of this section.	Pursuant to s. 283.16(3m)(c), Wis. Stat., the MDV will cease to be available if the DNR fails to complete the highest attainable condition review within 5 years or submit the results of this review to EPA within 30 days of completion (2015 Act 205 Attachment 7).
(2) The supporting documentation must include:	
(i) Documentation demonstrating the need for a WQS variance. (A) For a WQS variance to a use specified in section 101(a)(2) of the Act or a sub-category of such a use, the State must demonstrate that attaining the designated use and criterion is not feasible throughout the term of the WQS variance because: (1) One of the factors listed in § 131.10(g) is met, or (2) Actions necessary to facilitate lake, wetland, or stream	As stated in the conclusion of the final determination (see Section 8 of the Final Determination Attachment 1), and pursuant to s. 283.16(2)(a), Wis. Stat., the DNR and DOA find that compliance with the phosphorus rule will cause a substantial and widespread social and economic impact to Wisconsin - 40 CFR 131.10(g)(6). Specifically, Sections 5 and 6 of the final determination (Attachment 1) provide the technical justification for this determination. Key supporting material that went into this determination include the "Addendum to Economic Impact Analysis" (April 24, 2015) and "Economic Impact Analysis" (April 24, 2015) (Attachment 2).

restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented. (B) For a WQS variance to a non-101(a)(2) use, the State must submit documentation justifying how its consideration of the use and value of the water for those uses listed in § 131.10(a) appropriately supports the WQS variance and term. A demonstration consistent with (b)(2)(i)(A) of this section may be used to satisfy this requirement.	In addition, the department has provided information showing that human caused conditions have resulted in phosphorus exceedances in surface waters in the state, and in the majority of watersheds, nonpoint sources are the primary contributor or a very significant contributor of phosphorus loads that prevent attainment of the standard (see page 10 of the variance justification document Attachment 3). This is a factor specified in 40 CFR 131.10(g)(3). The conditions of the MDV, which include projects to reduce nonpoint source pollution, can actually alleviate or "remedy" this type of phosphorus load that would otherwise not be remedied in a timely manner.
(ii) Documentation demonstrating that the term of the WQS variance is only as long as necessary to achieve the highest attainable condition. Such documentation must justify the term of the WQS variance by describing the pollutant control activities to achieve the highest attainable condition, including those activities identified through a Pollutant Minimization Program, which serve as milestones for the WQS variance.	As stated in the MDV Justification document, the highest attainable condition is the permit effluent limitations, optimization requirements, and watershed project to reduce nonpoint sources of phosphorus to Wisconsin's surface waters (s. 283.16(6), Wis. Stat). Several factors where considered when determining the appropriate timeline for the MDV including: - The important of reduction point source and nonpoint source loads to meet water quality goals; - Legacy phosphorus in receiving waters; - Polyphosphate additives in drinking water systems; - Phosphorus concentrations in groundwater; - Non-reactive phosphorus concentrations in effluent streams; and, - Cost of existing treatment options. - The DNR preserves the right the request subsequent WQS variances to extend this MDV Each of these factors is described in detail in the MDV Justification document (see pages 10-14 of Attachment 3). In addition to these factors, the Department finds that a 10-year timeline provides a reasonable timeline for permittees to achieve the highest attainable condition for a given waterbody (see "Permittee Actions during the MDV" in the MDV Justification document Attachment 3).
(iii) In addition to (i) and (ii) of this section, for a WQS variance that applies to a water body or waterbody segment: (A) Identification and documentation of any cost-effective	This provision does not apply.

and reasonable best management practices for nonpoint source controls related to the pollutant(s) or water quality parameter(s) and water body or waterbody segment(s) specified in the WQS variance that could be implemented to make progress towards attaining the underlying designated use and criterion. A State must provide public notice and comment for any such documentation. (B) Any subsequent WQS variance for a water body or waterbody segment must include documentation of whether and to what extent best management practices for nonpoint source controls were implemented to address the pollutant(s) or water quality parameter(s) subject to the WQS variance and the water quality progress achieved.	
(c) Implementing WQS variances in NPDES permits: A WQS variance serves as the applicable water quality standard for implementing NPDES permitting requirements pursuant to § 122.44(d) for the term of the WQS variance. Any limitations and requirements necessary to implement the WQS variance shall be included as enforceable conditions of the NPDES permit for the permittee(s) subject to the WQS variance.	Variance provisions specified in 283.16(6), Wis. Stat., shall be included in all WPDES permits that include the MDV variance procedures. Specific permit language is provided in Section 5.01 of the MDV Implementation Guidance (Attachment 5). Requirements regarding the watershed management projects will also be included in WPDES permits.
131.20(a)	**WI TP MDV**
§ 131.20(a) The State shall from time to time, but at least once every three years, hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Any water body segment with water quality standards that do not include the uses specified in section 101(a)(2) of the Act shall be re-examined every three years to determine if any new information has become available. If such new information indicates that the uses specified in section 101(a)(2) of the Act are attainable, the State shall revise its	DNR is required to review the MDV triennially to determine if revisions are appropriate based on technological improvements or economic changes over the course of time (ss. 281.15(6) and 283.16(2m), Wis. Stat.). This will be done through the DNR's Triennial Standards Review (TSR) process for water quality standards. This process includes public comment and a public hearing, and is discussed in more detail in Section 5.04 of the MDV Implementation Guidance (Attachment 5).

standards accordingly. Procedures States establish for identifying and reviewing water bodies for review should be incorporated into their Continuing Planning Process.	