



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

REPLY TO THE ATTENTION OF:
WQ-16J

FEB 06 2017

Cathy Stepp, Secretary
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison, Wisconsin 53707-7921

Dear Secretary Stepp:

In a March 29, 2016 letter to the U.S. Environmental Protection Agency, the Wisconsin Department of Natural Resources (WDNR) requested that EPA approve Wisconsin's Multi-Discharger Variance (MDV) for Total Phosphorus in accordance with Section 303(c) of the Clean Water Act (CWA). WDNR listed in its March 29, 2016 letter all of the documents that it was submitting in support of its request for EPA approval of the MDV. On March 31, 2016, WDNR posted its March 29, 2016 letter and Wisconsin's supporting documents at <http://dnr.wi.gov/topic/surfaceWater/phosphorus/statewideVariance.html>. EPA received a hard copy of the letter on April 1, 2016.

Water quality standards (WQS) requirements of CWA Sections 101(a)(2) and 303(c)(2) are implemented through federal regulations contained in 40 CFR Part 131. 40 CFR 131.21 requires EPA to review and approve or disapprove state-adopted WQS. In making this determination, EPA must consider relevant requirements specified at 40 CFR 131.5(a), 131.6, and 131.14. 40 CFR 131.14 includes specific requirements pertaining to variances that EPA must consider in accordance with 40 CFR 131.5(a)(4) when deciding whether to approve or disapprove state-adopted variances.

EPA has determined that the MDV is consistent with all relevant requirements of the CWA and 40 CFR Parts 131.5, 131.6 and 131.14, and so EPA is approving the MDV. Specifically, EPA is approving the following provisions that establish the terms and conditions of the MDV:

- The following sections in Wis. Stat. § 283.16, as amended by 2015 Wis. Act 205: Wis. Stat. §§ 283.16(1) (definitions); 283.16(3m) and 4(d) (highest attainable condition review); 283.16(4)(a)(1)-(3) (statutory eligibility criteria); 283.16(6) (statutory variance provisions); 283.16(7) (more stringent effluent limitations); 283.16(8) and 8(m) (payments to counties and projects and plans); and 283.16(9) (federal requirements).

- Technology based effluent limitations for phosphorus established under Wis. Stat. § 283.11(3)(am) in NR 217.04 (which are referenced in the MDV statute at Wis. Stat. § 283.16(6)(am)).
- Cost share requirements applicable to municipalities under Wis. Stat. § 281.16(3)(e) and (4) (which are referenced in the MDV statute at Wis. Stat. § 283.16(8)(b)); and, for entities that construct a project or implement a plan to reduce nonpoint sources of phosphorus in accordance with Wis. Stat. § 283.16(6)(b)(2) or (3), the nonpoint source performance standards and prohibitions in NR 151 prescribed under Wis. Stat. § 281.16(2) and (3) (which are referenced in the MDV statute at Wis. Stat. § 283.16(8m)).
- Section 5 of the *Final Determination* and Appendix I to the *Final Determination*, which set forth the categories of facilities potentially eligible for the variance and the determination economic impact eligibility criteria for the variance.
- WDNR's representation on page 14 of the *Justification* that the term of the MDV is 10 years following the date of EPA approval ("Presuming EPA approves the 10 year MDV term, the Department recognizes that the MDV will terminate at the end of the approved 10 year period, unless the Department submits and receives approval for an extension.").
- The aspects of pages 31-32, 49, and 56-57 of the *Implementation Guidance* clarifying that permittees that choose to implement watershed plans either directly or in collaboration with third parties under Wis. Stat. § 283.16(6)(b)(2) or (3) will be required as a condition of their NPDES permits to achieve specified offset load reductions on an annual basis.

EPA is also approving the following provisions from Wis. Stat. § 227.01 and Wis. Stat. § 283.16, as amended by 2015 Wis. Act 205, pertaining to state adoption, review, renewal and submission to EPA of the MDV: Wis. Stat. § 227.01(13)(yt); Wis. Stat. § 283.16(2); Wis. Stat. § 283.16(2m); Wis. Stat. § 283.16(3); Wis. Stat. § 283.16(4)(a); and Wis. Stat. § 283.16(9).

EPA is not taking action on any other aspect of the documents that WDNR submitted to EPA in support of its request for approval of the MDV because nothing other than the specific provisions listed above that EPA is specifically approving constitute new or revised WQS. Specifically, EPA is not acting on: (1) Wis. Stat. §§ 283.16(4)(am), (b), (c), (e) & (f), as amended by 2015 Wis. Act 205; (2) any of the provisions in the *Final Determination* other than Section 5 of the *Final Determination* and Appendix I to the *Final Determination*; or (3) any of the other documents submitted to EPA by WDNR except for WDNR's representation on page 14 of the *Justification* that the term of the MDV is 10 years following the date of EPA approval.

If your staff has any questions regarding this approval, please contact David Pfeifer of my staff at (312) 353-9024 or at pfeifer.david@epa.gov.

Sincerely,



Christopher Korleski
Director, Water Division

Enclosures

cc: Amanda Minks, WDNR (electronically)