



March 22, 2016

Ms. Tinka Hyde, Director, Water Division
U.S. EPA, Region 5
77 W. Jackson Blvd
Chicago, IL 60604

Subject: Certification Statement for Approval of a Multi-Discharger Variance to Wisconsin's Phosphorus Water Quality Standards Under Wis. Stat. § 283.16

Dear Ms. Hyde:

The Wisconsin Department of Natural Resources (hereafter "Department") is seeking approval from the United States Environmental Protection Agency (hereafter "USEPA") for a multi-discharger variance (MDV) to the state's water quality standards for phosphorus pursuant to Wis. Stat. § 283.16. The purpose of this letter is to provide you with Wisconsin's certification statement for the phosphorus MDV that is required pursuant to 40 CFR §§ 131.21 and 131.6(e). The certification statement will generally describe the substantive requirements of the MDV and the procedures Wisconsin followed for the MDV.

The substantive requirements of the phosphorus MDV are established by state statutes, the state's Economic Impacts Determination (Attachment 1), the Multi-Discharger Justification document (Attachment 3) and the Department's Guidance Documents and Forms (Attachments 5 & 6). For categories of dischargers in specified counties that meet the eligibility requirements delineated in the economic report prepared by the Wisconsin Department of Administration (hereinafter "DOA"), the Department has made a determination that there will be substantial and widespread social and economic impacts that will occur as a result of compliance with the Wisconsin phosphorus water quality standard. To be eligible for coverage under the phosphorus MDV, a permittee must demonstrate that the economic impacts determination applies to their facility (Wis. Stat. § 283.16(4)(a)1). To make this demonstration, the permittee must satisfy the eligibility criteria established in section 5 of the Economic Impacts Determination (Attachment 1; The eligibility criteria are also included in pages 8-10 of the Variance Justification Document – Attachment 3). These eligibility criteria consist of primary economic screeners and secondary economic indicators. If a permittee fails to satisfy the requisite eligibility economic criteria for an applicable category, they may not receive coverage under the phosphorus MDV. In addition, to receive MDV coverage, a permittee must certify that they cannot achieve compliance with the phosphorus water quality based limitation without a major facility upgrade, and they must agree to comply with the interim limitations specified in Wis. Stat. § 283.16, and they must participate in a watershed project as described in pages 17-20 of the Variance Justification Document (Attachment 3).

The state complied with the procedural requirements of Wis. Stat. § 283.16(2)(c) for the phosphorus MDV determination. Specifically, DOA provided public notice of its preliminary economic impacts determination through an electronic notification system. The preliminary economic determination was prepared in consultation with the Department, and notice of the preliminary determination was published on May 5, 2015, on <http://doa.wi.gov/Divisions/Intergovernmental-Relations/Phosphorus/>. A 30 day written comment period was provided. In addition, a public hearing was held on May 12, 2015, at the Stoney Creek Hotel & Conference Center in Wausau, WI. After considering public comments, DOA submitted a final determination notice to the legislative reference bureau for publication in the Wisconsin Administrative Register. Notice of DOA's final

determination was published in the Wisconsin Administrative Register on October 19, 2015 (see Wis. Stat. § 283.16(2)(e)).

On August 21, 2015, USEPA promulgated new requirements and procedures for establishing and revising water quality standards (80 Federal Register 51020-51050 (August 21, 2015); 40 CFR § 131.14 and 40 CFR § 131.20(b)). With regard to public participation procedures, 40 CFR § 131.14 specifically requires that variances comply with the public participation procedures in 40 CFR § 131.20(b) and 40 CFR part 25. Due to this procedural requirement and comments submitted during the public comment period under Wis. Stat. § 283.16(2)(c), the Department provided a second public notice, comment period and informational hearing. The second notice was published more than 45 days prior to the informational hearing. The hearing and extended written comment period was for the entire MDV package, including the substantial and widespread adverse economic impact determination and analyses, the Department's justification document, guidance document and forms. Public notice of the hearing for the entire variance package was published on October 22, 2015, on the Department's phosphorus statewide variance website and in the following newspapers:

- Appleton Post-Crescent
- Eau Claire Leader-Telegram
- Fond du Lac Reporter
- Green Bay Press-Gazette
- La Crosse Tribune
- Wisconsin State Journal
- Manitowoc Herald- Times Reporter
- Marshfield News- Herald
- Milwaukee Journal Sentinel
- Oshkosh Northwestern
- Rhinelander Northwoods River News
- Stevens Point Journal
- Superior Telegram
- Wausau Daily Herald
- Wisconsin Rapids Daily Tribune

In addition, the Department sent notice of the hearing and public comment period to interested stakeholders using the phosphorus GovDelivery listserv as well as WPDES permit notification listserv. The public hearing on the MDV package was held on December 9, 2015, at the Chula Vista Resort in the Wisconsin Dells. The public comment period ended on December 16, 2015.

Revisions to Wis. Stat. § 283.16 were recently enacted by the Wisconsin State Legislature and signed by the Governor. The statutory revisions took effect on March 3, 2016 (see 2015 Wisconsin Act 205). These statutory changes satisfy the federal requirements in 40 CFR § 131.14. Revisions were also made to Wis. Stat. § 227.01(13) to clarify that the state's economic determination, application, guidance and eligibility requirements do not have to be promulgated by rule. All statutory revisions followed Wisconsin's required legislative process, including committee hearings.

In conclusion, based on the procedures delineated in this letter and the substantive requirements contained in the attached submittal, I hereby certify that the MDV was duly established in accordance with Wis. Stat. § 283.16 and other applicable state laws.

If you have any questions regarding the variance approval, please contact Robin Nyffeler at (608) 266-0024.

Sincerely,



Quinn Williams
Chief Legal Counsel

DATED IN MADISON: 3/22/16

CC: Robin Nyffeler – LS/8
Adrian Stocks – WQ/3