



June 6, 2025

Ms. Tera Fong, Director, Water Division
U.S. EPA, Region 5
77 W. Jackson Blvd W-15J
Chicago, IL 60604

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

Dear Ms. Fong:

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 in preparation for the MDV request.

Wisconsin currently has an approved phosphorus MDV that was granted on February 6, 2017, for a ten-year period. The Department is seeking a reauthorization of the phosphorus MDV for an additional ten years. The MDV reauthorization process is defined in Wis. Stat. § 283.16(3).

The substantive requirements of the phosphorus MDV are established by State Statutes, the State's Updated Economic Determination (Attachment 1), the MDV 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 updated economic determination 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 requiring compliance with the Wisconsin phosphorus water quality standard. To be eligible for coverage under the phosphorus MDV, a permittee must demonstrate that the economic determination applies to their facility (Wis. Stat. § 283.16(4)(a)1.). To make this demonstration, the permittee must satisfy the eligibility criteria outlined in Chapter 3 of the Updated Economic Determination. 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 effluent limitation without a major facility upgrade, they must agree to comply with the interim effluent limitations specified in Wis. Stat. § 283.16, and they must participate in a watershed project as described in pages 18-21 of the MDV Justification Document.

The state of Wisconsin has complied with the procedural requirements of Wis. Stat. § 283.16(3) when updating the MDV's justification documentation. Specifically, Wis. Stat. § 283.16(3) requires that DOA prepare a report that evaluates if the original determination (issued by DOA in 2015) remains accurate. To this end, DOA partnered with the Department to assess the current status of phosphorus effluent limits and compliance for all Wisconsin Pollutant Discharge Elimination System (WPDES) permittees statewide. While preparing the report, DOA and the Department consulted with WPDES permit holders subject to phosphorus effluent limits, as well as

other interested parties. A scoping report was issued on October 10, 2023, with a 52-day public comment period. DOA and the Department held listening sessions on November 10 and 11, 2023 (in Madison and Stevens Point, respectively). After receiving public input, DOA completed an updated economic determination report. DOA provided public notice of its preliminary updated economic determination through an electronic notification and posting on a dedicated webpage¹. A 30-day written comment period was provided. After considering public comments, DOA submitted a final determination notice to the legislative reference bureau for publication in the Wisconsin Administrative Register on December 23, 2024.

In accordance with 40 CFR § 131.20(b), the Department provided a public notice, comment period, and an informational hearing on the draft variance package. The public notice was published more than 45 days prior to the informational hearing. The hearing and written comment period covered the entire MDV package, including the Department's justification document, guidance document, nonpoint source reductions evaluation, and forms. Public notice of the hearing for the entire variance package was published on February 3, 2025, on the Department's Hearings and Meetings Calendar webpage² and in the Wisconsin State Journal.

In addition, the Department sent notice of the hearing and public comment period to interested stakeholders using the Water Guidance and Policy GovDelivery listserv. The public hearing on the MDV package was held on March 21, 2025, at 101 South Webster Street, Madison, WI 53703-3474, Room G09. The public comment period ended on March 28, 2025. In total, 17 public comments were received and considered by the Department. Minor changes to the MDV Policy Document and Nonpoint Reductions Evaluation were made in response to comments. These changes are summarized in the Department's Public Comments Response Document. In accordance with Wis. Stat. § 283.16(3)(g) and 40 CFR § 131.21, the Department is now seeking approval from EPA for renewal of the variance.

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.

Sincerely,



Cheryl Heilman
Chief Legal Counsel

CC: Alixandra Burke – LS/8
 Katherine Hanson – LS/8
 Adrian Stocks – WQ/3
 Kari Fleming – WQ/3

¹ – *The Department of Administration's dedicated webpage can be found at the following URL:*
<https://doa.wi.gov/Pages/StatewideMDV.aspx>

² – *The Department's Hearings and Meetings Calendar webpage can be found at the following URL:*
<https://dnr.wisconsin.gov/calendar>