



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Water Quality Trading/Clean Water Act: Wisconsin Submits Phosphorous Variance Provisions to U.S. Environmental Protection Agency (Region 5)

Arkansas Environmental, Energy, and Water Law Blog

04/07/2016

The Wisconsin Department of Natural Resources (“WDNR”) submitted a March 29th Request for Approval of Wisconsin’s phosphorous multi-discharger variance determination provision to the Region 5 Office of the United States Environmental Protection Agency (“EPA”).

WDNR in a letter to EPA states in part:

In accordance with Wis. Stat. s. 283.16 and 40 CFR 131.14, the Department requests that the United States Environmental Protection Agency Region V (“U.S.EPA”) approve Wisconsin’s phosphorous multi-discharger variance (MDV) determination. The water quality standard for which the Department is seeking a variance is contained in s. NR 102.06 Wis. Adm. Code.

The Wisconsin multi-discharger variance extends the timeline for complying with low-level phosphorous limits. The State of Wisconsin had previously enacted legislation and WDNR had promulgated regulations providing an opportunity under certain circumstances to address phosphorous discharges through water quality trading.

Water quality trading allows facilities to discharge wastewater to a waterbody to meet regulatory obligations by purchasing equivalent or larger pollution reductions from another source such as unregulated non-point sources. The rationale for such trading is based on the fact that dischargers in a watershed can face very different costs to control the same pollutant. Trading programs in theory allow facilities facing higher pollution costs to meet their regulatory obligations by purchasing environmentally equivalent (or superior) pollution reduction from another source at lower costs, thus achieving the same water quality improvement at a lower cost.

The 90th Arkansas General Assembly provided the Arkansas Pollution Control and Ecology Commission and Arkansas Department of Environmental Quality the authority to promulgate a water quality trading program.

A link to WDNR’s submission to Region V Office of EPA can be found here

ftp://dnrftp01.wi.gov/geodata/water_division/phosphorus/mdv/MDV_Cover_Letter.pdf.