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Phosphorus in Wisconsin: The Clean Waters, Healthy Economy Act

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On April 23, 2014, Wisconsin Governor Scott Walker signed the **Clean Waters, Healthy Economy Act** (Act) into law. This legislation establishes the basis for creating a multi-discharger variance for point sources struggling to meet Wisconsin's stringent numeric phosphorus water quality criteria. Although several conditions must be met before it is available to permit holders, this legislation could have significant impacts on Wisconsin agribusinesses that hold Wisconsin Pollution Discharge Elimination System (WPDES) permits, as well as agricultural produces that may be targeted for non-point source reductions of phosphorus. In addition, since the Environmental Protection Agency (EPA) has noted that it generally favors these multi-discharger permit approaches, Wisconsin's approach may be replicated in other areas of the country that are considering stricter water quality standards for nutrients like phosphorus and nitrogen.

What does the Act do?

Very simply, the Act sets in motion the collection of economic information to justify a multi-discharger variance based on a finding of adverse widespread social and economic impact. The Act requires the Department of Administration (DOA) to look at costs of compliance for categories of point source dischargers statewide. If the DOA finds that the "cost of compliance with water quality based effluent limitations for phosphorus by point sources that cannot achieve compliance without major facility upgrades" would cause substantial adverse social and economic impacts on a statewide basis, then the Department of Natural Resources (DNR) will seek approval from the EPA for a variance under 40 CFR Part 131. The Act also defines the criteria for qualifying for the variance and what a point source must do if it opts into the variance.

How would this multi-discharger variance work for permit holders?

Agribusinesses that hold WPDES permits may be eligible for the variance. To qualify, permit holders will need to:

1) Demonstrate the economic determination made by the DOA applies to the source;

2) Certify the permittee cannot achieve compliance without a major facility upgrade (defined to mean the addition of both new treatment equipment and a new treatment process); and

3) Agree to comply with the requirements of the variance.

Once DNR has confirmed these requirements have been met, the permittee may participate in the variance for up to four permit cycles as long as it meets the discharge limits established by the multi-permit variance and takes steps to reduce phosphorus contributions from other sources.

First, the permit must comply with decreasing phosphorus discharges. These concentrations begin at 0.8 mg/L in the first permit term and then drop to 0.6 mg/L and 0.5 mg/L in the third and fourth permit term, respectively. In the fourth permit for which the variance is available, the DNR will require the permittee to achieve – by the end of the term of that permit – the water quality based effluent limit for phosphorus that would apply without the variance.

Second, while complying with these reduced discharge limits, the permittee must also undertake some activity to reduce phosphorus contributions from other sources in its watershed. This concept borrows from Wisconsin's EPA-approved adaptive management program, and requires the permittee to:

1) Enter into a binding, written agreement with the DNR under which it implements a project or plan designed to reduce phosphorus contributions from other sources; or

2) Enter into a binding, written agreement that is approved by DNR with another person under which the other person implements a project or plan designed to phosphorus contributions from other sources; or

3) Make a payment to the counties of the watershed in which the permittee is located. These payments are calculated by multiplying $50/lb times the difference between what the permittee is currently discharging, and what the permittee would discharge if its effluent met a target limit. The target limit is either the limit set by a TMDL (total maximum daily load), if applicable, or 0.2mg/L if no TMDL is approved.

How might the Act affect producers as nonpoint sources?

Counties that receive money through this program must use at least 65% of the amounts received to fund cost-sharing for projects governed by 281.16(3)(e) or (4) (the state's nonpoint source program). These must be applied to projects that have been prioritized by their potential to "reduce the amount of phosphorus per acre entering the waters of the state, based on an assessment of land and land use practices in the county." Up to 35% can be used for staffing, or toward modeling or monitoring to evaluate the amount of phosphorus in waters for planning purposes. In Wisconsin, producers that are not currently meeting state performance standards may be asked to install certain practices when cost share dollars are available. The Act has the potential to increase the amount of cost share dollars available to county work in this area.

What's Next for the Act?

Before this program is available to permittees, a number of things must happen. First, the DOA must complete an economic study that demonstrates compliance with the phosphorus standard will have adverse and widespread social and economic impact. This study must also identify the categories of dischargers that will be eligible for the multi-discharger variance. Second, EPA must approve the variance before it may be implemented in Wisconsin. Finally, permittees would need to apply for the variance to alter any existing permit conditions that have been imposed to implement the phosphorus

standard. Look for further updates in 2015!

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