



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


JAN 18 2017

REPLY TO THE ATTENTION OF:

WN-15J

**MEMORANDUM**

**SUBJECT:** Wisconsin Legal Authority Review - Review and Recommendation of Resolution for Issue 9

**FROM:** Kevin Pierard, Chief   
NPDES Permits Branch

**TO:** File

**Issue 9 (Analytical Methods)**

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 9 stated the following:

The Wisconsin rules at Wis. Admin. Code NR § 219 pertain to analytical methods.

- (a) Wis. Admin. Code NR § 219 allows use of solid waste methods in the WPDES and Wisconsin pretreatment programs. EPA has not approved solid waste methods for use in the NPDES or federal pretreatment programs. Wisconsin must amend Wis. Admin. Code NR § 219 to exclude solid waste methods from use in the Wisconsin programs, except when such methods have been approved by EPA as alternative test procedures under 40 C.F.R. § 136.5.
- (b) Wis. Admin. Code NR § 219 incorporates some of the methods that EPA has promulgated under 40 C.F.R. part 136. Does the chapter incorporate an EPA method only as of the date Wisconsin incorporated each such method into the chapter or are revisions to EPA methods prospectively incorporated?
- (c) Has Wisconsin amended the chapter to include new EPA methods? Please see the attached list of changes to 40 C.F.R. part 136 since 2000.

The response to this letter needs to include the State's plan, with a schedule and milestone, for correcting Wis. Admin. Code NR § 219 to address the deficiency in number 9 (a) and any deficiency identified through the State's analysis of 9(b) and (c) above.

Letter from Susan Hedman, Regional Administrator, U.S. EPA, to Cathy Stepp, Secretary, WDNR (July 11, 2011) (on file with U.S. EPA).

## Comparison between the Federal and State Provisions

40 C.F.R. part 136 describes the procedures (except as noted in 40 C.F.R. §§ 136.4, 136.5 and 136.6) to perform the measurements relating to permitting for an approved NPDES program under section 402 of the Clean Water Act. Analogously, Wis. Admin. Code NR chapter 219 establishes the analytical test methods, preservation procedures, requirements for laboratories, and procedures applicable to effluent limitations for discharges from point sources as authorized by Wis. Stat. §§ 299.11 and 283.55 (1). To align the Federal analytical methods rules with Wisconsin's, the Wisconsin Natural Resources Board adopted the following Orders:

- Repeal Wis. Admin. Code NR § 219.04, Table BM;
- renumber Wis. Admin. Code NR §§ 219.05 and 219.06;
- amend Wis. Admin. Code NR §§ 157.21 (approval of alternate test procedures), 219.02 (1)(intro.) and (2), 219.04 (1), (2), (4)(Note) and 233.40 (2) (Test Methods for Pesticide Pollutants);
- repeal and recreate Wis. Admin. Code NR §§ 219.04 Tables A, B, C, D, E, EM, ES and F and to create Wis. Admin. Code NR § 219.04 Tables G and H, relating to analytical methods used for Wisconsin Pollutant Discharge Elimination System (WPDES) compliance.

Wis. Nat. Res. Bd., Board Order SS-14-12, Apr. 9, 2016 (signed Apr. 3, 2015). The result of these Orders was to make Wisconsin's analytical methods rules the same as or more stringent than their current Federal counterparts, as outlined below:

- Wis. Admin. Code NR § 219.04, Table A (10 parameters) corresponds with current 40 C.F.R. part 136 Table IA—List of Approved Biological Methods for Wastewater and Sewage Sludge (12 parameters);<sup>1</sup>
- Wis. Admin. Code NR § 219.04, Table B (76 parameters) corresponds with current 40 C.F.R. part 136 Table IB—List of Approved Inorganic Test Procedures (76 parameters);
- Wis. Admin. Code NR § 219.04, Table C (133 parameters) corresponds with current 40 C.F.R. part 136 Table IC—List of Approved Test Procedures for Non-Pesticide Organic Compounds (120 parameters);
- Wis. Admin. Code NR § 219.04, Table D (70 parameters) corresponds with current 40 C.F.R. part 136 Table ID—List of Approved Test Procedures for Pesticides (70 parameters);
- Wis. Admin. Code NR § 219.04, Table E (5 parameters) corresponds with current 40 C.F.R. part 136 Table IE—List of Approved Radiologic Test Procedures (5 parameters);
- Wis. Admin. Code NR § 219.04, Table ES (32 parameters) corresponds with current 40 C.F.R. part 136 Table IF—List of Approved Methods for Pharmaceutical Pollutants (32 parameters);
- Wis. Admin. Code NR § 219.04, Table F corresponds with current 40 C.F.R. part 136 Table II—Required Containers, Preservation Techniques, and Holding Times;

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<sup>1</sup>Note: Acute and chronic toxicity testing for Atlantic Ocean and Gulf of Mexico estuarine and marine organisms are omitted as they are not applicable to Wisconsin's exclusively freshwaters.

- Wis. Admin. Code NR § 219.04, Table EM List of Approved Analytical Methods for Sludge (20 parameters) and the chemical methods in 40 C.F.R. part 136 are not approved specifically for use in sludge/biosolids.

## Rule Package 7, Public Notice, Hearing, and Comment

The WDNR published a public hearing notice on proposed revisions to Wis. Admin. Code chapters NR 157, 219, and 233 on January 14, 2014 in the Wisconsin Administrative Register. 699 Wis. Admin. Register 31 (January 14, 2014). The public comment period was open from January 15 through January 27, 2014, and public hearings were held in the Wisconsin cities of Madison, La Crosse, and Green Bay on January 27, 2014. Wis. Nat. Res. Bd., Agenda Item No. 3.A.1 at 2, Mar. 14, 2014, Correspondence/Memorandum, Attachment to Order SS-14-12. At the January 27, 2014 public hearings, no one appeared in person. Id. One citizen and the Wisconsin Legislative Council Rules Clearing House provided written comments. Wis. Nat. Res. Bd., Agenda Item No. 3.A.1 at 1, Mar. 14, 2014, Response to Comments, Attachment to Order SS-14-12. WDNR responded to the written comments in a written response summary, which adequately explained the reasons why certain rule changes were made in response to comments received and why other comments did not warrant changes. Id.

## Conclusion

Based on EPA's above review of Wisconsin's corrections to its regulations, EPA concludes that Issue 9 is resolved.