



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 21

FROM: Kevin Pierard, Chief 
NPDES Permits Branch

TO: File

Issue 21 (Fact Sheets, Specific Conditions)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 21 stated the following:

The federal rule at 40 C.F.R. § 124.56 contains a description of elements to be included in fact sheets, including where explanations of specific permit conditions are required. Wisconsin's rules do not appear to have an equivalent provision. The response to this letter must identify the required rule provisions or include the State's plan, with a schedule and milestones, for promulgating a rule equivalent to 40 C.F.R. § 124.56.

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

The federal rule provision, 40 C.F.R. § 124.56, regarding the specific conditions that should be enumerated in fact sheets provides:

§ 124.56 Fact sheets. (*Applicable to State programs, see § 123.25 (NPDES).*) In addition to meeting the requirements of § 124.8, NPDES fact sheets shall contain the following:

(a) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions or standards for sewage sludge use or disposal, including a citation to the applicable effluent limitation guideline, performance standard, or standard for sewage sludge use or disposal as required by § 122.44 and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed.

(b)(1) When the draft permit contains any of the following conditions, an explanation of the reasons that such conditions are applicable:

- (i) Limitations to control toxic pollutants under § 122.44(e) of this chapter;
- (ii) Limitations on internal waste streams under § 122.45(i) of this chapter;
- (iii) Limitations on indicator pollutants under § 125.3(g) of this chapter;
- (iv) Limitations set on a case-by-case basis under § 125.3 (c)(2) or (c)(3) of this chapter, or pursuant to Section 405(d)(4) of the CWA;
- (v) Limitations to meet the criteria for permit issuance under § 122.4(i) of this chapter, or
- (vi) Waivers from monitoring requirements granted under § 122.44(a) of this chapter.

(2) For every permit to be issued to a treatment works owned by a person other than a State or municipality, an explanation of the Director's decision on regulation of users under § 122.44(m).

(c) When appropriate, a sketch or detailed description of the location of the discharge or regulated activity described in the application; and

(d) For EPA-issued NPDES permits, the requirements of any State certification under § 124.53.

(e) For permits that include a sewage sludge land application plan under 40 CFR 501.15(a)(2)(ix), a brief description of how each of the required elements of the land application plan are addressed in the permit.

The corrected state rule is found at Wis. Admin. Code NR § 201:

NR 201.01 Purpose. The purpose of this chapter is to identify when the department shall prepare a fact sheet for a draft Wisconsin Pollutant Discharge Elimination System (WPDES) permit, and what information shall be included in the fact sheet. The fact sheet describes the discharge to be permitted with a brief explanation of the draft permit's effluent limits, monitoring requirements, and other conditions. The department shall send a copy of the fact sheet to the applicant and any interested person upon request.

NR 201.02 Applicability. The department shall prepare a fact sheet for each discharge for which it proposes to issue a WPDES individual permit under s. 283.31, Stats., a storm water permit under s. 283.33, Stats., or a general permit under s. 283.35, Stats. A fact sheet does not need to be prepared for each facility that is granted coverage under a general permit that covers a specific category of discharge.

NR 201.03 Contents of permit fact sheet. The fact sheet shall include all of the following information if applicable:

- (1) The name and address of the applicant and facility location where the discharge occurs.
- (2) A statement as to whether the discharge is in existence or is a proposed new discharge or new source.
- (3) Justification for any waivers from permit application requirements that were granted.
- (4) A brief description of the type of facility and activity resulting in the discharge that is described in the permit application and is subject to the permit requirements.
- (5) A sketch or detailed description of the discharge outfall location with respect to the receiving water, surface water, or groundwater as applicable.

(6) A description of the type and quantity of discharges regulated under the permit shall include all of the following:

(a) Information about the wastewater sources and by-product solids, biosolids, or sludges.

(b) Treatment processes, storage facilities, and outfalls.

(c) The average daily discharge concentration and mass loading where appropriate of any pollutants subject to effluent limitations.

(d) The average daily flow in gallons or millions of gallons per day for continuous flows or the volume and frequency of batch discharges.

(e) The average monthly effluent temperatures for thermal discharge outfalls that may be subject to temperature limitations.

(7) If the tentative determination is to issue a permit all of the following shall be included:

(a) An explanation of the derivation of proposed effluent limitations for those pollutants proposed to be limited including: toxic pollutants, internal waste streams, and indicator pollutants. Include the calculation of any water quality based effluent limitations, technology based limitations, best professional judgment limitations established on a case-by-case basis, and limitations that are established for new sources or new discharges.

(b) Justification for any waivers granted from monitoring any pollutants contained in technology based effluent limit guidelines because the pollutant is not present or is only present at the background level due to the water intake without any increase of the pollutant from the activities of the discharger.

(c) A brief discussion and rationale of any proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations. For schedules to achieve compliance with water quality based effluent limitations, a brief description of treatment technologies or control strategies that may be available to achieve compliance.

(d) A brief summary of and basis for any proposed permit conditions including supporting regulatory or statutory references, which will have a significant impact on the discharge described in the application.

(e) An explanation of the limitations, conditions or standards included in the permit regarding by-product solids, biosolids, or sludges, and a description of the land application plan or other means of disposal.

(8) A brief description of the uses for which the receiving waters have been classified and of the applicable water quality standards and effluent limitations.

(9) A statement of the tentative determination to issue or deny a permit.

(10) A description of the procedures for reaching a final decision on the draft permit including all of the following:

(a) The beginning and ending date of the 30 day period for submitting written comments.

(b) The address where comments will be received.

(c) Procedures for requesting a public hearing and a statement on the nature of such hearings.

(d) Any other procedures for public participation in the final determination.

(e) Name and contact information of the person from whom to obtain additional information.

(11) For every permit issued to a privately owned treatment works an explanation of any conditions expressly applicable to any user of the treatment works, as a limited co-permittee, that may be necessary in the permit to ensure compliance. If separate permits are issued to the treatment works and to its users, an explanation of the department's decision to issue the permits and what conditions are applicable to the treatment works and users.

(12) Any of the following supplemental information shall also be attached to the fact sheet to provide supporting information for permit limits, conditions, or other requirements when applicable to the permitted discharge:

- (a) Substantial compliance determination for an existing discharger.
- (b) Water quality based effluent limits recommendation with limits calculations.
- (c) Water quality variance or alternative effluent limit.
- (d) Water intake evaluation for determining compliance with s. 283.31(6), stats.
- (e) Groundwater evaluation of land treatment systems, land application systems, and storage facilities that have an associated monitoring well system.

(f) The assumptions and information used by the department to calculate any mixing zones for the discharge.

(13) If any of the specified fact sheet contents in this section are included in the public notice of the permit, that information may be omitted from the fact sheet. The items identified in subs.

(9) and (10) are typically included in the public notice.

EPA's analysis of Wisconsin's provision is summarized in the following table:

Federal Provision	State Analogue	Comments
Requirements found at 40 C.F.R. § 124.8		
124.56, incorporates 124.8 requirements, outlined below.		
(1) type of facility or activity	Wis. Admin. Code NR § 201.03(4)	
(2) type of pollutants proposed to be discharged	Wis. Admin. Code NR § 201.03(6)	
(4) basis	Wis. Admin. Code NR § 201.03(7)(d)	
(5) justification for variances	Wis. Admin. Code NR § 201.03(12)(c)	
(6) procedural requirements for public participation at (i) – (iii)	Wis. Admin. Code NR § 201.03(10)	
(7) contact for more information	Wis. Admin. Code NR § 201.03(10)(e)	
(8) information relevant to § 123.56	See discussion in Section 124.56 of the Table.	
(9) justification for waivers	Wis. Admin. Code NR § 201.03(7)(b)	
Requirements found at 40 C.F.R. § 124.56		
124.56(a) (Calculations and explanations of limitations and applicable standards under § 122.44.)	Wis. Admin. Code NR § 201.03(12)	
124.56(b)(1)(i) (Limitations to control toxic pollutants under 122.33(e))	Wis. Admin. Code NR § 201.03(7)(a)	
124.56(b)(1)(ii) (Limitations on internal waste streams under 122.44(i))	Wis. Admin. Code NR § 201.03(7)(a)	

124.56(b)(1)(iii) (Limitations on indicator pollutants under 125.3(g))	Wis. Admin. Code NR § 201.03(7)(a)	
124.56(b)(1)(iv) (Limitations set on a case-by-case basis under 125.3(c)(2) or (c)(3) or pursuant to Section 405(d)(4) of the CWA.)	Wis. Admin. Code NR § 201.03(7)(a) and (e)	See also WDNR redlined response, Email from Robin Nyffeler to Quintin White, September 19, 2016, enclosing "Questions/Comments for WDNR Regarding Selected WILAR Issues 09.06.2016"
124.56(b)(1)(v) (Limitations to meet criteria for permit issuance under 122.4(i))	Wis. Admin. Code NR §§ 201.03(7)(a) and 201.03(12)(b)	See also WDNR redlined response, Email from Robin Nyffeler to Quintin White, September 19, 2016, enclosing "Questions/Comments for WDNR Regarding Selected WILAR Issues 09.06.2016"
124.56(b)(1)(vi) (Waivers from monitoring requirements granted under 122.44(a))	Wis. Admin. Code NR § 201.03(7)(b)	
124.56(c) (Where appropriate, sketch or detailed description of discharge)	Wis. Admin. Code NR § 201.03(5)	
124.56(e) (Where applicable, brief description of land application requirements included in the permit.)	Wis. Admin. Code NR § 201.03(12)(e)	

As outlined above, Wisconsin's revisions provide for the inclusion of the special conditions listed in 40 C.F.R. § 124.56.

Rule Package 6, Public Notice, Hearing, and Comment

The WDNR published a public hearing notice on proposed revisions to Wis. Admin. Code chapters NR 200, 201, 203, and 205 on March 31, 2014 in the Wisconsin Administrative Register. 699 Wis. Admin. Reg. 37 (March 31, 2014). The public comment period was open from April 1 through May 12, 2014, and a public hearing was held in Madison, Wisconsin on May 1, 2014. Wis. Nat. Res. Bd., Agenda Item No. 3.A.1 at 2, Jan. 8, 2015, Correspondence/Memorandum Attachment to Order WT-13-12. At the May 1, 2014 public hearing, no one appeared in person. Id. Two entities, other than the Wisconsin Legislative Council Rules Clearing House, provided written comments: Stafford Rosenbaum Attorneys and Wisconsin Electric Power Company. Wis. Nat. Res. Bd., Agenda Item No. 3.A.1 at 2, Jan. 8, 2015,

Response to Comments on Rule Package 6, Attachment to Order WT-13-12. WDNR responded to the written comments in a written response summary, which adequately explained the reasons for accepting all changes suggested by the written comments. *Id.*

Conclusion

Based on EPA's above review of Wisconsin's corrections to its regulations, we conclude that Issue 21 is resolved.