




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 47

FROM: Kevin Pierard, Chief 
NPDES Permits Branch

TO: File

Issue 47 (Signatory to Permit)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 47 stated the following:

Wisconsin's regulations at Wis. Admin. Code NR § 205.07(1)(g) provide that the signatory to a permit can be a "person authorized by one of those officers or officials and who has responsibility for the overall operation of the facility or activity regulated by the permit." However, there is no requirement for how the authorization will be documented or any requirements that apply. While EPA's regulations at 40 C.F.R. § 122.22 do not require a demonstration that a corporate officer has the requisite authority to sign permit documents, Wisconsin's regulations appear to allow non-corporate officers to sign such documents without providing an accountable process for such delegation of authority. In its response to this letter, Wisconsin should explain how it will address the deficiency noted in this comment, either through corrective rulemaking or by citing existing, specific authority in a written explanation from the State's Attorney General.

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 regulation at issue, C.F.R. § 122.22, provides:

§ 122.22, Signatories to permit applications and reports (applicable to State programs, see § 123.25).

(a) *Applications*. All permit applications shall be signed as follows:

(1) *For a corporation*. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Note: EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in § 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under § 122.22(a)(1)(ii) rather than to specific individuals.

(2) *For a partnership or sole proprietorship*. By a general partner or the proprietor, respectively; or

(3) *For a municipality, State, Federal, or other public agency*. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

(b) All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(1) The authorization is made in writing by a person described in paragraph (a) of this section;

(2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company, (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,

(3) The written authorization is submitted to the Director.

(c) *Changes to authorization.* If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

(d) *Certification.* Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

The State's amended regulation is found at Wis. Admin. Code NR § 205.07(g):

(g) *Signatory requirement.*

1. All permit applications, reports, and other information requested by the department shall be signed by a responsible executive or municipal officer, manager, partner or proprietor as specified in s. 283.37 (3), Stats., or a duly authorized representative of the officer, manager, partner or proprietor that has been delegated signature authority pursuant to subd. 2. All applications and reports submitted to the department shall include the certification statement specified in subd. 3.

Note: Section 283.37 (3), Stats. states that an application form shall be signed by:

(a) In the case of a corporation, by a principal executive officer of at least the level of vice president or by the principal executive officer's authorized representative responsible for the overall operation of the point source for which a permit is sought.

(a) In the case of a limited liability company, by a member or manager.

(b) In the case of a partnership, by a general partner.

(c) In the case of a sole proprietorship, by the proprietor.

(d) In the case of publicly owned treatment works or a municipal separate storm sewer system by a principal executive officer, ranking elected official, or other duly authorized employee.

Note: Examples of permit documents that must be signed and certified by an officer, manager, partner or proprietor or their authorized representative include: permit applications under s. NR 200.07, variance applications under s. NR 200.23, submittals for other permit actions under s. NR 203.135, discharge monitoring reports under s. NR 205.07 (1) (r) 1., and compliance maintenance annual reports under s. NR 208.04. In addition, any other department forms with a signature block for the authorized representative shall comply with these signatory requirements.

2. An officer, manager, partner or proprietor in subd. 1. may only delegate signature authority to a duly authorized representative if that person has responsibility for the overall operation of the facility or activity regulated by the WPDES permit. To delegate signature authority, the officer, manager, partner, or proprietor shall:
 - a. Provide written permission to a duly authorized representative to submit specific documents on behalf of the officer, manager, partner, or proprietor for the permitted facility.
 - b. The delegated authorization shall specify either a named individual or an employment position that has the signature authority and responsibility.
 - c. The written permission must be submitted to the department prior to or together with the submittal of any required document. If there are any changes to this permission, a new written permission shall be submitted to the department.
3. Any person under subd. 1. or 2. signing a permit application, report or other form as required by the department shall provide the following certification statement: I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.
4. Upon written request to the department and subject to the department's approval, a permittee may submit information by electronic media or electronic transmission provided the officer or authorized representative signs and submits a certification statement in accordance with subd. 3.

As presented above, the revised state rule provides a framework for authorized signatures and a certification consistent with the federal regulation.

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 review of Wisconsin's corrections to its regulations, EPA concludes that Issue 47 is resolved.