




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 65

FROM: Kevin Pierard, Chief 
NPDES Permits Branch

TO: File

Issue 65 (Draft Permit Preparation)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 65 stated the following:

Federal regulations require the preparation of a draft permit where a state determines to proceed to permit issuance following receipt of a complete permit application. Wisconsin appears to lack provisions equivalent to 40 C.F.R. § 124.6, which provides the informational and procedural requirements for preparation of a draft permit. The State must document where it has the equivalent authority required by 40 C.F.R. § 124.6. If corrective rulemaking is required to address this deficiency, the State must explain in its response to this letter what timetable the State will follow to address this deficiency.

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 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. These revisions included informational and procedural requirements for preparation of a draft permit and these were subsequently codified into regulations. EPA's regulations relating to this provision that are applicable to the states, per 40 C.F.R. § 123.25(26) are those found at 40 C.F.R. §§ 124.6(a), (c), (d), and (e).

In response to EPA's comment 65, the State promulgated regulations now found at Wis. Admin. Code NR 200.11, providing for draft permits. The State regulations mirror federal requirements, and also include an analogue to 40 C.F.R. 124.6(b). The State's revisions provide:

NR 200.11(1)(1) (1) Once an application is complete, the department shall tentatively decide whether to prepare a draft permit or to deny the application.

NR 200.11(2) (2) If the department tentatively decides to deny the permit application, the department shall issue a notice of intent to deny. A notice of intent to deny the permit application shall follow the same procedures as any draft permit prepared under this section. If the department's final decision is that the tentative decision to deny the permit application was incorrect, the department shall withdraw the notice of intent to deny and proceed to prepare a draft permit under sub. (4).

NR 200.11(3) (3) If the department tentatively decides to issue a WPDES permit, a draft permit shall be prepared under sub. (4).

NR 200.11(4) (4) A draft permit shall contain terms and conditions required pursuant to ch. 283, Stats., and all rules promulgated pursuant to ch. 283, Stats.

NR 200.11(5) (5) All draft permits prepared by the department under this section shall be accompanied by a fact sheet if required under ch. NR 201. The department shall provide public notice of the draft permit and fact sheet, and opportunity for a public hearing under ch. NR 203 and ch. 283, Stats.

As evident above, the State's new regulatory provision is an adequate analogue to the federal regulation.

Conclusion

Based on EPA's review of Wisconsin's provisions above, EPA concludes that Issue 65 is resolved.

Additional Notes

We note that Wisconsin currently places all the requirements enumerated in 40 C.F.R. § 124.6(d) into an umbrella citation to its Wis. Stat. 283. We encourage the State to consider updating this rule to provide a crosswalk between the individual federal requirements and the specific State provisions in Chapter 283.