



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

DEC 21 2017

REPLY TO THE ATTENTION OF:

WN-15J

MEMORANDUM

**SUBJECT:** Wisconsin Legal Authority Review - Review and Recommendation of Resolution for Issue 53

**FROM:** Candice Bauer, Chief  
NPDES Permits Branch Section 2

A handwritten signature in black ink, appearing to read "Candice Bauer", written over the printed name.

**TO:** File

### Issue 53 (Storm Water Latitude and Longitude)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 53 stated the following:

Wis. Admin. Code NR § 216.21(3)(e)(2) does not require that the facility submit its latitude and longitude when certifying 'no exposure'. This information is required under 40 C.F.R. § 122.26(g)(4)(ii). In its response to this letter, Wisconsin must 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

Discharges composed entirely of storm water are not storm water discharges associated with industrial activity if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt and/or runoff, and the discharger satisfies the conditions set forth at 40 C.F.R. §§ 122.26(g)(1)-(4). One of these conditions is to submit a no exposure certification to the NPDES permitting authority, which provides information, including facility latitude and longitude information as follows:

The no exposure [certification] must require the submission of the following information, at a minimum, to aid the NPDES permitting authority in determining if the facility qualifies for the no exposure exclusion:

(ii) The facility name and address, the county name and the latitude and the longitude where the facility is located;

Emphasis added, 40 C.F.R. § 122.26(g)(4)(ii). Notably, Wisconsin's regulations for no exposure certification do not require storm water permittees to provide the facility latitude and longitude information as shown below:

The "no exposure" certification shall include all of the following information, at a minimum, to aid the department in determining if the facility qualifies for the "no exposure" exclusion:

...

(2) The facility name, address and the county name where the facility is located.

Wis. Admin. Code NR § 216.21(3)(e)(2). However, under Wis. Stat. § 283.37, WDNR has broad authority to request information from permittees or applicants:

(5) The department may require the applicant to submit information in addition to that supplied on the permit application.

(6) Subsection . . . (5) do[es] not apply to an owner or operator of a point source eligible for coverage under a general permit under s. 283.35 and the rules promulgated by the department under that section. The department may require the owner or operator to submit information regarding any discharge.

WDNR exercises its authority to request facilities to provide latitude and longitude information when submitting their no exposure certification form to the State—WDNR Form 3400-188 (R 12/14). Thus, WDNR's current practice ensures that a permittee or applicant facility's latitude and longitude information is provided to aid WDNR in determining if the facility qualifies for the no exposure exclusion in accordance with the federal regulations at 40 C.F.R. § 122.26(g)(4)(ii).

In addition to its federally consistent practice of requesting facility latitude and longitude information, Wisconsin has committed to modifying Wis. Admin. Code NR § 216.21(3)(e)(2) to add the federal latitude and longitude requirement. Email from Christopher Korleski, EPA, to James Zellmer and Mark Aquino, WDNR (September 29, 2017) (on file with U.S. EPA). Wisconsin's rulemaking will further ensure that permittees will be required to provide location information consistent with the mandatory federal requirement at 40 C.F.R. § 122.26(g)(4)(ii).

In the meantime, WDNR recently added the following note to its regulations at Wis. Admin. Code NR § 216.21(3)(b)3:

Note: The department's no exposure certification form, Form 3400-188, requests necessary information to be consistent with federal requirements and U.S. EPA NPDES Form 3510-11, including the latitude and longitude of the facility. U.S. EPA has published a guidance document entitled Guidance Manual for Conditional Exclusion from Storm Water Permitting Based On "No

Exposure" of Industrial Activities to Storm Water, EPA 833-B-00-001, dated June 2000. This guidance is available from the U.S. EPA website at <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities>. The department no exposure certification form is available from the department website at <http://dnr.wi.gov/topic/stormwater/industrial/forms.html>.

Email from James Zellmer, WDNR, to Christopher Korleski, et al, EPA, December 8, 2017 (on file with U.S. EPA).

## Conclusion

Based on EPA's review of Wisconsin's statutes, regulations, forms, and rulemaking commitments, EPA concludes that Issue 53 is resolved.

## Additional Notes

1. As discussed above, Wisconsin has committed to modifying its rules to add the latitude and longitude requirement to Wis. Admin. Code NR § 216.21(3)(e)(2).
2. EPA recommends that WDNR revise its Form 3400-188 to include a reference to Wis. Stat. § 283.37(6), in addition to Wis. Admin. Code Chapter NR 216, so that any permittee or permit applicant understand the basis of WDNR's authority to request information not currently listed at Wis. Admin. Code NR § 216.21(3)(e)(2).