



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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

AUG 29 2018

REPLY TO THE ATTENTION OF

WN-15J

### MEMORANDUM

**SUBJECT:** Wisconsin Legal Authority Review - Review and Recommendation of Resolution for Issue 61

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

**TO:** File

### Issue 61 (Application Requirements)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 61 stated the following:

Wisconsin appears to lack rules that establish permit application requirements for the following categories of dischargers: existing manufacturing, commercial, mining, and silvicultural dischargers (40 C.F.R. § 122.21(g)); aquatic animal production facilities (40 C.F.R. § 122.21(i)(2)); new sources and new discharges (40 C.F.R. § 122.21(k)); and facilities with cooling water intake structures (40 C.F.R. § 122.21(r)). Wisconsin must document where permit application requirements for these categories of discharges are set out. If corrective rulemaking is required to address a deficiency, the State must explain in its response to this letter what timetable the State will follow.

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

To address Issue 61, WDNR created Wis. Admin. Code NR § 200.07(5). In explaining its rule change to address Issue 61, the State noted:

This rule package requires submittal of federally required application materials for permittees belonging to the following industrial categories: existing manufacturing, commercial, mining,

and silvicultural dischargers; aquatic animal production facilities; and new sources and new dischargers. This proposed change codifies existing practice.<sup>1</sup>

The changes made by the State are generally summarized in the table below.

**Table 1. Comparison of Federal and Wisconsin Permit Application Requirements**

Federal Provisions	Wisconsin Provisions
<p>40 C.F.R. § 122.21(g) sets forth the application requirements for applicants for existing manufacturing, commercial, mining, and silvicultural dischargers.</p> <p>40 C.F.R. § 122.21(i)(2) sets forth the application requirements for concentrated aquatic animal production facilities, specifically requiring:</p> <ul style="list-style-type: none"> <li>(i) The maximum daily and average monthly flow from each outfall.</li> <li>(ii) The number of ponds, raceways, and similar structures.</li> <li>(iii) The name of the receiving water and the source of intake water.</li> <li>(iv) For each species of aquatic animals, the total yearly and maximum harvestable weight.</li> <li>(v) The calendar month of maximum feeding and the total mass of food fed during that month.</li> </ul> <p>40 C.F.R. § 122.21(k) sets forth the application requirements for new sources and new discharges from manufacturing, commercial, mining and silvicultural discharges, with some exceptions.</p> <p>40 C.F.R. § 122.21(r) sets forth the application requirements for facilities with cooling water intake structures.</p>	<p>Wis. Admin. Code NR § 200.07(5) provides in pertinent part:</p> <p>(a) <i>Applications for new or existing manufacturing, commercial, mining, silvicultural, and non-contact cooling water dischargers, sewage sludge generators, and publicly owned treatment works.</i> In addition to any other information required under ch. 283, Stats., or other WPDES permit application regulations, an owner or operator of a facility applying for a WPDES permit shall submit the information specified in 40 CFR 122. 21(f) through (h), (j), (k) and (q) that is required for the applicant’s type of discharge. . . .</p> <p>(b) <i>Applications for discharges from aquatic animal production facilities.</i> In addition to any available monitoring data, owners or operators of aquatic animal production facilities shall include the all of following information in the permit application:</p> <ol style="list-style-type: none"> <li>1. The maximum daily and average monthly flow from each outfall.</li> <li>2. The number of ponds, raceways, and similar structures.</li> <li>3. The name of the receiving water and the source of intake water.</li> <li>4. For each species of aquatic animal, the total yearly and maximum harvestable weight.</li> <li>5. The calendar month of maximum feeding and the total mass of food fed during that month.</li> </ol> <p><b>Note.</b> . . Application requirements for facilities with cooling water intake structures may be found in 40 CFR 122.21(r).</p>

<sup>1</sup> Memorandum from Cathy Stepp, Secretary, to Natural Resources Board, “Background memo on Board Order WT-12-12, relating to 10 of EPA’s 75 concerns regarding the WPDES Program,” June 27, 2017, in Wis. Nat. Res. Bd., Agenda Item No. 2.A.1, July 10, 2017.

Issue 61 states that Wisconsin regulations lacked the permit application requirements of 40 C.F.R §122.21(g), (i)(2), (k), and (r). As can be seen in Table 1, Wisconsin incorporated by reference the application requirements of 40 C.F.R § 122.21(g) and (k). Regarding the application requirements for concentrated aquatic animal production facilities at 40 C.F.R § 122.21(i)(2), Wis. Admin. Code NR § 200.07(5)(b) includes those requirements nearly verbatim. Finally, the Wis. Admin. Code NR § 200.07(5)(Note) directs the reader to the application requirements for facilities with cooling water intake structures found at 40 C.F.R. § 122.21(r), and for which the State is currently developing rules as part of resolving Issue 4 (Cooling Water Intake).

## **Rule Package 5, Public Notice, Hearing, and Comment**

WDNR published a public hearing notice on proposed revisions to Wis. Admin. Code chapters NR 106, 200, 205, 207, 210, 220, 221, 225, 228, 231, 236, 239, 240, 245, 247, 250, 258, 261, 268, 269, 275, 276, 277, 280, 281, 284, 286, 290, 294, 295, and 296 on January 9, 2017 in the Wisconsin Administrative Register. 733A2 Wis. Admin. Reg. CR 17-002 (January 9, 2017). The public comment period was open through March 1, 2017, and public hearings were held in Green Bay, Wisconsin on February 6, 2017 and Madison, Wisconsin on February 7, 2017. Wis. Nat. Res. Bd., Agenda Item No. 2.A.1, July 10, 2017, Correspondence/Memorandum Attachment to Order WT-12-12. At the Green Bay hearing no one appeared in person. *Id.* Two members of the public attended the Madison hearing without providing oral comments. *Id.* Four entities, other than the Wisconsin Legislative Council Rules Clearing House, provided written comments: US EPA, Wisconsin Manufacturers & Commerce, WE Energies, and Midwest Environmental Advocates. Wis. Nat. Res. Bd., Agenda Item No. 2.A.1, July 10, 2017, Response to Comments on Rule Package 5, Attachment to Order WT-12-12. WDNR responded to the written comments in a written response summary, which adequately explained why certain rule changes were made in response to the comments received, and why other comments did not warrant changes. *Id.* After Wisconsin completed rulemaking, the revised regulations were published in the Wisconsin Administrative Register on April 30, 2018. 748B Wis. Admin. Reg. CR 17-002 (April 30, 2018).

## **Conclusion**

As explained above, Wisconsin's revised rules address the concerns raised in EPA's issue 61, which is resolved.