



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
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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 16

**FROM:** Kevin Pierard, Chief   
NPDES Permits Branch

**TO:** File

**Issue 16 (Pretreatment)**

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 16 stated the following:

The federal rule at 40 C.F.R. Part 403 establishes requirements for pretreatment of nondomestic discharges to publicly-owned treatment works (POTWs). EPA revised this rule and related NPDES provisions at 40 C.F.R. §§ 122.21(j)(6)(ii), 40 C.F.R. § 122.44(j)(1), and 40 C.F.R. § 122.62(a)(7), in 2005. Some of the revisions make the federal program less stringent than it used to be. Wisconsin can choose to incorporate these revisions into its pretreatment program. However, some of the revisions make the federal program more stringent than the predecessor rule.... Under 40 C.F.R. § 123.62, Wisconsin was required to adopt the more stringent provisions by November 2006, but the State has not done this. Wisconsin must adopt the more stringent provisions into its code. The response to this letter needs to include the State's plan, with a schedule and milestones, for promulgating a rule equivalent to 40 C.F.R. Part 403.

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**

In 2005, EPA updated the federal pretreatment regulations at 40 C.F.R. part 403, which resulted in 13 modified rules that are more stringent than their previous iterations. In response to EPA's regulatory changes, WDNR published a public hearing notice on proposed revisions to Wis. Admin. Code chapter

NR 211 on February 14, 2013 in the Wisconsin Administrative Register. See section titled Rule Package 2, Public Notice, Hearing, and Comment below for more details. In the following table, the more stringent federal pretreatment rules are described and compared to their revised Wisconsin counterparts:

Description of Federal Provision Modifications	Revised Wisconsin Provisions
<p>(1) Modified 40 C.F.R. § 403.7(h) provides updates to the requirements that POTWs must meet to adjust credits for combined sewer overflows.</p>	<p>Wis. Admin. Code NR § 211.13(2)(b) provides:</p> <p>The POTW is complying with all WPDES permit requirements and any additional requirements in any order or decree issued pursuant to the Federal Water Pollution Control Act, (33 U.S. Code section 1251 <i>et seq.</i>), (Clean Water Act), affecting combined sewer outflows. These requirements include, but are not limited to, any requirements contained in EPA's Combined Sewer Overflow Control Policy.</p>
<p>(2) Modified 40 C.F.R. § 403.8(f)(1)(iii)(B)(6) provides regulations that require POTWs to incorporate slug control requirements into their significant industrial user's (SIU) control mechanisms.</p>	<p>Wis. Admin. Code NR § 211.235(1)(am)(8) provides:</p> <p>Control the discharge from each significant industrial user through individual control mechanisms. . .The control mechanism shall contain or contain by reference the following. . .</p> <p>8. Requirements to control slug discharges, if determined by the control authority to be necessary.</p>
<p>(3) Modified 40 C.F.R. § 403.8(f)(2)(vi) provides specifically that POTWs must evaluate their SIUs for the need for a slug control program or other actions at least one time.</p>	<p>Wis. Admin. Code NR § 211.235(4)(a) provides:</p> <p>Evaluate whether each significant industrial user needs a plan or other action to control slug discharges. For industrial users identified as significant prior to March 3, 2014, this evaluation shall have been conducted by February 1, 2015. Additional significant industrial users shall be evaluated within 1 year of being designated as significant industrial users.</p>

<p>(4) Modified 40 C.F.R. § 403.8(f)(2)(vi) provides regulations that require SIUs to notify the POTW immediately of changes that occur at the facility affecting the potential for a slug discharge.</p>	<p>Wis. Admin. Code NR § 211.15(6) provides:</p> <p>... Industrial users shall immediately notify the POTW of any discharge that could cause problems at the POTW, such as any slug loading in violation of s. NR 211.10 (2) or of any changes at the facility affecting the potential for a slug discharge and the need for a slug control plan as required by s. NR 211.235 (4) (a).</p>
<p>(5) Modified 40 C.F.R. § 403.8(f)(2)(viii)(A-C) provides language that expands the types of Standards and Requirements to be considered when determining whether an SIU's violations constitute significant noncompliance.</p>	<p>Wis. Admin. Code NR § 211.23(1)(j) provides:</p> <p>(j) Annually publish a list of the industrial users that were in significant noncompliance with the applicable pretreatment standards and requirements at any time during the previous 12 months. The list shall be published in a newspaper of general circulation that provides meaningful public notice in the area served by the POTW. . .</p> <p>Additionally, Wis. Admin. Code NR § 211.23(1)(j)(6) provides:</p> <p>6. The industrial user has failed to provide within 45 days of a deadline a required report containing all required monitoring results and other information, such as a baseline monitoring report, 90 day compliance report, periodic self-monitoring report or report on compliance with a compliance schedule.</p>
<p>(6) Modified 40 C.F.R. § 403.12(b), (e), and (h) provides language that requires SIUs to submit documentation to determine compliance with Best Management Practice (BMP) based standards.</p>	<p>Wis. Admin. Code NR § 211.15(4)(a) provides:</p> <p>... In cases where the pretreatment standard requires compliance with best management practices the user shall submit documentation needed to determine the compliance status of the user. These reports shall be submitted during June and December unless otherwise specified by the control authority. . .</p>

	<p>Additionally, Wis. Admin. Code NR § 211.15(1)(e) provides:</p> <p>Within 180 days after the effective date of a categorical pretreatment standard as published in the federal register, or 180 days after the final decision in a request for category determination industrial users subject to that standard which are not new sources and which are currently discharging or scheduled to discharge into a POTW shall submit to the control authority a report containing the information listed in pars. (a) to (g). At least 90 days before the commencement of discharge, new sources and sources that become industrial users subsequent to the promulgation of an applicable categorical pretreatment standard shall submit a report to the control authority which at a minimum contains the information listed in pars. (a) to (e). . .(e). . .In cases where the standard requires compliance with a best management practice or pollution prevention alternative, the user shall submit documentation as required by the control authority or the applicable standard to determine compliance.</p>
<p>(7) Modified 40 C.F.R. § 403.8(f)(1)(iii)(B)(3) provides that SIU control mechanisms must contain BMPs required by a Pretreatment Standard, local limits, state or local law.</p>	<p>Wis. Admin. Code NR § 211.235(1)(am)(3) provides:</p> <p>Control the discharge from each significant industrial user through individual control mechanisms...The control mechanism shall contain or contain by reference the following. . .3. Effluent limits, including best management practices, based on prohibited discharge standards, categorical pretreatment standards, local limits and state and local law. . .</p>

<p>(8) Modified 40 C.F.R. § 403.12(o) provides language that clarifies that a POTW and SIU must maintain BMP compliance documentation as part of their record-keeping requirements.</p>	<p>Wis. Admin. Code NR § 211.15(8)(b) and (c) provides:</p> <p>(b) Any industrial user subject to the reporting requirements established in this section shall maintain records of all information resulting from all monitoring activities.</p> <p>(c) Any industrial user subject to the reporting requirements established in this section shall retain for a minimum of 3 years all records of monitoring activities and results, whether or not such monitoring activities are required by this section...</p> <p>Additionally, Wis. Admin. Code NR § 211.25(3)(c) provides:</p> <p>Records and results from all monitoring activities, whether required by this section or not, shall be retained for a minimum of 3 years.</p>
<p>(9) Modified 40 C.F.R. § 403.12(g)(2) provides that Control Authorities that perform sampling for SIUs must perform follow-up sampling within 30 days on an exceedance.</p>	<p>Wis. Admin. Code NR § 211.15(7) provides:</p> <p>...The industrial user shall repeat the sampling and analysis and submit the results of the repeat analysis to the control authority within 30 days after becoming aware of the violation, unless the control authority regularly performs sampling at the industrial user at least once per month or performed sampling at the industrial user between the time of the industrial user's initial sampling and the time when the industrial user received the results of the initial sample. Where the control authority has performed the original sampling and analysis in lieu of the industrial user as allowed in sub. (9), the control authority shall perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis.</p>

<p>(10) Modified 40 C.F.R. § 403.12(g)(3), (4), and (6) provides requirements that periodic compliance reports comply with sampling requirements in 40 C.F.R. § 403.12, requires the Control Authority to specify the number of grab samples for SIU reports, and requires all non-categorical SIUs to report all monitoring results.</p>	<p>Wis. Admin. Code NR § 211.15(5) provides:</p> <p>(5) Significant industrial users which are not subject to categorical pretreatment standards and which discharge to a POTW with a pretreatment program shall submit reports to the control authority at least twice per year. At a minimum, these reports shall describe the flow rate and concentration of pollutants in wastewater discharges, and shall be based on sampling and analysis performed in the period covered by the report. Sampling shall be conducted at the appropriate sampling location and shall be representative of conditions during the reporting period. If a user monitors any regulated pollutant more frequently than required by the control authority using procedures prescribed in sub. (8), the results of this monitoring shall be included in the report. . .</p> <p>Additionally, Wis. Admin. Code NR § 211.15(1)(e)(1) provides:</p> <p>. . .A minimum of 4 grab samples per day shall be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organics. . .</p>
<p>(11) Modified 40 C.F.R. § 403.12(g)(3) provides requirements for non-categorical SIUs to provide representative samples in their periodic monitoring reports.</p>	<p>Wis. Admin. Code NR § 211.15(5) provides:</p> <p>(5) Significant industrial users which are not subject to categorical pretreatment standards and which discharge to a POTW with a pretreatment program shall submit reports to the control authority at least twice per year. Sampling shall be conducted at the appropriate sampling location and shall be representative of conditions during the reporting period.</p>

<p>(12) Modified 40 C.F.R. § 403.12(j) provides requirements for Industrial Users to notify their Control Authority of changed discharges, and the POTW when it is not the Control Authority.</p>	<p>Wis. Admin. Code NR § 211.15(6) provides:</p> <p>(6) The industrial user shall notify the control authority, and the POTW if the POTW is not the control authority, in advance of any substantial change in the volume or character of the pollutants in the discharge, including changes in listed or characteristic hazardous wastes for which the industrial user has submitted initial notification according to s. NR 11.17. . .</p>
<p>(13) Modified 40 C.F.R § 403.12(m) provides requirements that a POTW executive officer or ranking elected official authorize in writing a “duly authorized employee” to sign POTW reports. The rule also requires that the written authorization must be submitted to the Approval Authority prior to or together with the POTW report submitted.</p>	<p>Wis. Admin. Code NR § 211.25(2) provides:</p> <p>(2) Documents submitted in accordance with this section shall be signed by a principal executive officer, ranking elected official, or a duly authorized employee if the employee is responsible for the overall operation of the POTW or the pretreatment program. This authorization shall be made in writing by the principal executive officer or ranking elected official and submitted to the department prior to or together with the report being submitted.</p>

In addition to other changes to Wis. Admin. Code NR chapter 211, WDNR modified its pretreatment regulations, where necessary, to be consistent with the federal provisions outlined above. See also letter from Kevin Pierard, EPA, to Michael Lemcke, WDNR, April 2, 2013, enclosing comments on proposed general pretreatment program administrative rule revision; and email from Jodie Opie, EPA, to Robert Liska, WDNR, July 31, 2013.

## Rule Package 2, Public Notice, Hearing, and Comment

The WDNR published a public hearing notice on proposed revisions to Wis. Admin. Code chapter NR 211 on February 14, 2013 in the Wisconsin Administrative Register. 686A Wis. Admin. Register 17 (February 14, 2013). The public comment period was open from February 15 through March 29, 2013 and a public hearing was held in Madison, Wisconsin on March 19, 2013. Wis. Nat. Res. Bd., Agenda Item No. 3.A.1 at 1, July 17, 2013, Response to Comments, Attachment to Order WT-28-10. At the March 19, 2013 public hearing, no one appeared in person. *Id.* However, EPA Region 5, the Milwaukee Metropolitan Sewage District, and the Legislative Council Rules Clearinghouse provided written comments. *Id.* See also letter from Kevin Pierard, EPA, to Michael Lemcke, WDNR, April 2, 2013. WDNR responded to the verbal and written comments in a written response summary, which adequately explained the reasons

why certain rule changes were made in response to comments received and why other comments did not warrant changes. *Id.* See also email from Jodie Opie, EPA, to Robert Liska, WDNR, July 31, 2013.

## **Conclusion**

Based on EPA's review of the Wisconsin's revised regulations at Wis. Admin. Code NR chapter 211, which became effective on February 1, 2014, EPA concludes that Issue 16 is resolved.