



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 18

FROM: Kevin Pierard, Chief *[Signature]*
NPDES Permits Branch

TO: File

Issue 18 (Permit Application Signatures)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 18 stated the following:

The federal rule a[t] 40 C.F.R. § 122.22(d) requires that anyone signing a permit application of a report required under 40 C.F.R. § 122.22(a) or (b) certify that the information: is accurate and complete, was gathered by qualified persons, and was properly gathered and evaluated. [footnote with text of certification omitted.] Wisconsin's rule at Wis. Admin. Code NR § 205.07(1)(g), while including that signatories make a certification that the information they are submitting is "true, accurate, and complete," does not require inclusion of the information quality certification language set out in § 122.22(d). The response to this letter must include the State's plans with a schedule for promulgating a rule equivalent to 40 C.F.R. § 122.22(d).

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 provision at 40 C.F.R. § 122.22(d) [applicable to state programs, see 40 C.F.R. § 123.25] requires in pertinent part that:

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 direction 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 rule amendment at Wis. Admin. Code NR § 205.07(1)(g)(3) provides:

Any person . . . 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.

As evident above, the certification described in the State's regulation is consistent with the federal certification at 40 C.F.R. § 122.22(d).

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 above review of the Wisconsin's corrections to its regulations, EPA concludes that Issue 18 is resolved.