



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 19

FROM: Candice Bauer, Chief 
NPDES Permits Branch Section 2

TO: File

Issue 19 (Aquatic Production Facility)

In EPA's July 11, 2011 letter to the Wisconsin Department of Natural Resources (WDNR), Issue 19 stated the following:

The federal rule at 40 C.F.R. § 122.24 pertains to concentrated aquatic animal production facilities. EPA did not find an equivalent Wisconsin statutory or code provision. The response to this letter must include the State's plan, with a schedule and milestones, for promulgating a rule equivalent to 40 C.F.R. § 122.24.

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 2011, Wisconsin enacted Act 207, which added a section to Wis. Stat. § 283.31(5m) that provided for the missing authority:

Permits for Certain Concentrated Aquatic Animal Production Facilities. The department shall include in permits issued under this section for concentrated aquatic animal production facilities described in 40 CFR 451.10 requirements that are based on, and are not more stringent than, the requirements in 40 C.F.R. 451.11.

2011 Wisconsin Act 207. That provision was modified in 2017, to provide in pertinent part:¹

~~PERMITS FOR CERTAIN CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES.~~ The department shall include the requirements of 40 CFR 451.11 in permits issued under this section for concentrated aquatic animal production facilities described in 40 CFR 451.10 ~~requirements that are based on, and are not more stringent than, the requirements in 40 CFR 451.11.~~ The department may not include additional conditions in a permit for a fish farm except as necessary for the farm to meet the applicable limitations, standards, and other provisions described in sub. (3) (a) to (f). Any conditions included in a permit issued under this section for a fish farm shall be limited to site-specific best management practices to the greatest extent allowed under federal law.

2017 Wisconsin Act 21.² The requirements described in Wis. Stat. §§ 283.31(3)(a) to (f) include:

The department may issue a permit under this section for the discharge of any pollutant, or combination of pollutants, other than those prohibited under sub. (2), upon condition that such discharges will meet all the following, whenever applicable, subject to sub. (5m):

- (a) Effluent limitations.
- (b) Standards of performance for new sources.
- (c) Effluent standards, effluents prohibitions and pretreatment standards.
- (d) Any more stringent limitations, including those:
 - 1. Necessary to meet federal or state water quality standards, or schedules of compliance established by the department; or
 - 2. Necessary to comply with any applicable federal law or regulation; or
 - 3. Necessary to avoid exceeding total maximum daily loads established pursuant to a continuing planning process developed under s. 283.83.
- (e) Any more stringent legally applicable requirements necessary to comply with an approved area wide waste treatment management plan.
- (f) Groundwater protection standards established under ch. 160.

Analysis

The statutory changes made by the State at Wis. Stat. § 283.31(5m) provide the necessary requirements to address Issue 19. Wis. Stat. § 283.31(5m) provides that federal requirements applicable to this sector pursuant to 40 C.F.R. § 122.24 are provided for in Wis. Stat. § 283.31(3)(a)-(f). In addition, Wis. Stat. § 283.31(5m) includes reference to additional federal requirements applicable to certain aquatic animal production facilities at 40 C.F.R. § 451.11. For purposes of resolving Issue 19, EPA has reviewed only those changes to the State's statutes that address the issue identified by EPA.

¹ Language added to Wis. Stat. § 283.31(5m) is underlined, and language removed is ~~struck-out~~.

² These legislative changes were submitted to U.S. EPA by email from Adrian Stocks, WDNR, to Kevin Pierard and Candice Bauer, U.S. EPA (August 18, 2017) (on file with U.S. EPA).

Conclusion

Based on EPA's review of Wisconsin's provisions above, EPA concludes that Issue 19 is resolved.