

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE EPA REGION V ADMINISTRATOR
CHICAGO, IL

IN THE MATTER OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES'
PROPOSED WISCONSIN POLLUTANT DISCHARGE
ELIMINATION SYSTEM PERMITS FOR SEVEN
CONCENTRATED ANIMAL FEEDING OPERATIONS

**ADMINISTRATIVE PETITION FOR EPA REGION V
OBJECTION TO AND MODIFICATION OF
PROPOSED WPDES PERMITS FOR CAFOS IN WISCONSIN**

INTRODUCTION

1. Wisconsin's Environmental Decade, Sierra Club – John Muir Chapter, River Alliance of Wisconsin, and WISPIRG, bring this administrative petition before the Environmental Protection Agency's Region V Administrator pursuant to authority found in 40 C.F.R. 123.44. Together, these organizations represent almost 50,000 citizens of Wisconsin.
2. Wisconsin's Environmental Decade (hereafter WED) is a non-profit corporation with its principal offices at 122 State St., Suite 200, Madison, Wisconsin, 53703. WED is the largest statewide environmental organization in Wisconsin, with approximately 20,000 members dedicated to preserving, protecting and improving the quality of life in Wisconsin through the enactment of progressive policies, the enforcement of laws and the active participation of people.
3. Sierra Club, John Muir Chapter, is the Wisconsin chapter of Sierra Club, a national environmental organization incorporated in the state of California. The Sierra Club is organized to explore, enjoy and protect the nation's scenic and environmental resources. The Sierra Club is located at 222 S Hamilton St. #1, Madison, Wisconsin, 53703-3201. With roughly 10,000 members in Wisconsin, the Sierra Club has a substantial interest in protecting water quality and land resources.
4. The River Alliance of Wisconsin is a coalition of environmental organizations and individuals concerned about river and watershed protection in Wisconsin.

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- The River Alliance is a non-profit corporation located at 122 State St., Suite 200, Madison, Wisconsin, 53703. Their mission is to build a statewide grassroots effort to protect, enhance, and restore Wisconsin's rivers and watersheds for their ecological, recreational, aesthetic and cultural values. The River Alliance of Wisconsin has over 1,400 individual and business members and more than three dozen affiliated organizations.
5. Wisconsin Public Interest Research Group (WISPIRG) is a non-profit, non-partisan, public interest advocacy group with approximately 15,000 members across Wisconsin. WISPIRG uses research, education, grassroots organizing, and advocacy to protect the environment, protect consumers and promote democracy. WISPIRG's main office is at 1121 University Avenue, Madison, Wisconsin 53715.
 6. All of these organizations' members are adversely impacted by pollution caused by Concentrated Animal Feeding Operations (hereafter CAFOs) in Wisconsin. This pollution could be reduced if CAFOs in Wisconsin were required to comply with the federal Clean Water Act (hereafter CWA).
 7. The Wisconsin's Department of Natural Resources (hereafter WDNR) is authorized by the EPA to issue water discharge permits through its Wisconsin Pollutant Discharge Elimination System (hereafter WPDES) program.
 8. A state, such as Wisconsin, that is authorized to administer the NPDES program must follow guidelines established in 40 C.F.R. 123 and 122. "All State Programs . . . must be administered in conformance with each [of the sections of the Code of Federal Regulations enumerated]." 40 C.F.R. 123.25(a). The state programs must comply with, among others, 40 C.F.R. 122.4, 122.44, and 122.47(a).
 9. Under 40 C.F.R. 123.44, the Regional Administrator has the authority and responsibility to object to any permits issued by a state agency that do not meet federal requirements.
 10. The Regional Administrator has up to 90 days from receipt of a proposed permit to object to such permit. See 40 C.F.R. 123.44(a)(1).
 11. The Regional Administrator should object to a proposed permit when it:

"fails to apply, or ensure compliance with, any applicable requirement of this part; Note: For example, the Regional Administrator may object to a permit not requiring the achievement of required effluent limitations by applicable statutory deadlines."

- 40 C.F.R. 123.44 (c)(1).
12. WDNR has been issuing WPDES permits to CAFOs and is currently proposing to issue seven WPDES permits to CAFOs that violate federal law in at least four ways:
- 1) In violation of 40 C.F.R. 123.25(a), 40 C.F.R. 122.4(a), and 40 C.F.R. 122.44(a), the WPDES permits do not contain the effluent limit or standard of performance required by 40 C.F.R. 412;
 - 2) In violation of 40 C.F.R. 122.44(d) and 122.44(k), six WPDES permits do not contain additional effluent limits necessary to meet water quality standards;
 - 3) In violation of 40 C.F.R. 122.47(a), the WPDES permits contain compliance schedules to meet the standard of performance for new CAFOs; and
 - 4) In violation of 40 C.F.R. 122.41(j), 122.41(k), and 122.41(l), the WPDES permits do not contain adequate monitoring, reporting, and certification requirements.
13. Petitioners request that the Regional Administrator exercise his authority under 40 C.F.R. 123.44 and object to all of Wisconsin's proposed WPDES permits for failing to meet the federal requirements of the CWA and its regulations. The proposed WPDES permits are attached as exhibits 1 - 7.

FIRST ISSUE:

The DNR has Violated and Continues to Violate 40 C.F.R. 123.25(a), 40 C.F.R. 122.4(a), and 40 C.F.R. 122.44(a), by Failing to Include the Standard of Performance for New CAFOs in Seven Proposed WPDES Permits.

14. All state programs must be operated in accordance with certain federal laws, including, but not limited to, 40 C.F.R. 122.4 and 122.44. See 40 C.F.R. 123.25.
15. The state cannot issue a permit that contains conditions that "do not provide for compliance with the applicable requirements of the CWA, or regulations promulgated under the CWA." 40 C.F.R. 122.4(a). The state must include in the permits technology-based effluent limitations and standards of performance applicable to new sources. See 40 C.F.R. 122.44(a).
16. In accordance with Section 301 of the Clean Water Act, among other sections, the EPA created effluent limitations and new source standards of performance for

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- feedlots based on best available technology economically achievable to control pollution. See 40 C.F.R. 412.
17. The effluent limit or standard of performance prohibits discharges from the feedlot except in the case of a chronic or catastrophic rainfall event that causes an overflow from a properly designed facility. See 40 C.F.R. 412.12(b), 412.13(b), 412.15(b).
 18. The effluent limit or standard of performance concurrently requires all feedlot managers/owners to design, install, operate, and maintain a properly designed facility. See 40 C.F.R. 412.12(b), 412.13(b), 412.15(b).
 19. A properly designed facility is one that is designed, installed, operated, and maintained to contain all process waste water plus runoff from a 25-year, 24-hour rainfall event. See id.
 20. This design standard is applicable to the entire feedlot and encompasses the runoff from the barns, cowyards, and manure storage facilities, as well as the fields where the CAFO operator spreads animal waste. See 40 C.F.R. 412.
 21. In order to comply with the standard of performance for new sources, the WPDES permit must contain a prohibition against any and all discharges from the facility except in the case of an overflow caused by a chronic or catastrophic rainfall event. See 40 C.F.R. 412.15.
 22. The WPDES permit must require the facility to operate and maintain permanent runoff controls and manure storage facilities sufficient to contain all process waste water plus runoff from a 25-year, 24-hour rainfall event. See 40 C.F.R. 412.15.
 23. The WPDES permit must also require the CAFO operator to land apply waste in places and in amounts that will prevent any and all discharges to water, except discharges during chronic or catastrophic rainfall events. See 40 C.F.R. 412.15 and EPA Draft Guidance Manual and Example NPDES Permit for Concentrated Animal Feeding Operations at 3-8.
 24. The WDNR has issued seven proposed WPDES permits that do not contain these prohibitions and do not ensure that the facility is properly designed, installed, and maintained from the first day the facility is legally permitted to operate as a point source of pollution. (See Proposed WPDES permits, Exhibits 1- 7).
 25. Rather than following the clear federal language requiring that there “shall be no discharge of process waste water pollutants to navigable waters,” 40 C.F.R.

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- 412.15(a), the WPDES permits merely direct the permittee to “control” runoff “to prevent negative impacts to groundwater, wetlands, or surface water.” (WPDES Permit Nos. WI-0059382-1 at 4, Exhibit 1; WI-0059099-1 at 5, Exhibit 2; ; WI-0059072-1 at 3, Exhibit 3; WI-0059218-1 at 6, Exhibit 4; WI-0059536-01-0 at 6, Exhibit 5 (fails to apply runoff controls to entire facility); WI-0059374-1 at 7, Exhibit 6; WI-0059439-1, Exhibit 7 (contains no runoff control section)).
26. Likewise, the permits also merely require manure storage structures to be operated and maintained “to minimize leakage and negative impacts to groundwater, wetlands and surface water.” (WPDES Permit Nos. WI-0059382-1 at 3, Exhibit 1; WI-0059099-1 at 3, Exhibit 2; WI-0059072-1 at 2, Exhibit 3; WI-0059218-1 at 3, Exhibit 4; WI-0059536-01-0 at 1, Exhibit 5; WI-0059374-1 at 4, Exhibit 6, WI-0059439-1 at 3, Exhibit 7).
 27. The use of the words “control” and “minimize” are not clear prohibitions of all discharges from the facility as required by 40 C.F.R. 412.
 28. Although there is a general list of prohibitions on page one of every permit, it is not clear that these apply to the subsequent sections of the permits that focus on manure storage and runoff controls.
 29. Moreover, the WPDES permits do not contain Best Management Practices regarding land application of animal waste that are stringent enough to ensure that the facility will meet the no discharge standard of performance.
 30. Although the permits prohibit surface applied manure from running off “the intended site at any time,” the permits do not contain Best Management Practices that ensure compliance with the technology-based standard of performance. See e.g. WPDES Permit No. WI-0059439-1, at 6, para.12, Exhibit 7.
 31. For instance, the permits allow manure to be spread in 10-year floodplains, within 200 feet of streams, rivers or lakes, and within 200 feet upgradient of sinkholes, cracked bedrock and wells, as long as it is incorporated within 72 hours. See e.g. WPDES Permit No. WI-0059439-1, at 5, Exhibit 7.
 32. The permits also allow spreading of animal waste on frozen ground in all but a few limited circumstances. See WPDES Permit No. WI-0059439-1, at 6, Exhibit 7.
 33. The permits only restrict the amount of manure spread on fields to meet the nitrogen needs of crops rather than the phosphorous needs. See WPDES Permit No. WI-0059439-1, at 6, Exhibit 7. This does not ensure that there are no discharges of phosphorous into waters of the state.

34. The proposed WPDES permits fail to meet the minimum requirements of 40 C.F.R. 412.

SECOND ISSUE:

The WDNR has Violated and Continues to Violate 40 C.F.R. 122.44(d) and 122.44(k), by Failing to Include Additional Effluent Limits Necessary to Meet Water Quality Standards in six Proposed WPDES Permits.

35. The state agency should include in the WPDES permits additional effluent limitations when necessary to meet state water quality standards. See 40 C.F.R. 122.44(d).
36. Six facilities are located in 303(d) listed impaired watersheds. (See Exhibits 1-6 and 303(d) list for Wisconsin.) For facilities located in these watersheds, the DNR should include more stringent water quality-based effluent requirements because the technology-based limit is not sufficient to meet the water quality standards. This is true even when the impairment is not caused by nutrients. The agency should consider the impacts of chemical mixtures. In these watersheds it is not sufficient protection to allow discharges during chronic or catastrophic events. The DNR should prohibit all discharges from these facilities without an exception for chronic rainfall events. Accordingly, the DNR should include Best Management Practices in the permits that are reasonably necessary to meet water quality standards. See 40 C.F.R. 122.44(k).

THIRD ISSUE:

WDNR Violated 40 C.F.R. 122.47(a) by Using a Compliance Schedule to Meet the Standard of Performance.

37. All new CAFO sources must meet the design, installation, and operation standard contained in 40 C.F.R. 412.15 from the facility's first day of operation under the WPDES permit. See 40 C.F.R. 122.47(a).
38. A permitting agency can only use compliance schedules in NPDES or WPDES permits in very limited situations. "The first NPDES permit issued to a new source or a new discharger **shall** contain a schedule of compliance **only when** necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised **after** commencement of construction but less than three years before commencement of the relevant discharge." 40 C.F.R. 122.47(a)(2) (emphasis added).

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39. The federal standards of performance contained in 40 C.F.R. 412 were issued in 1974, over three decades before the facilities in question commenced construction of their CAFO point sources.
40. In violation of 40 C.F.R. 122.47(a), the WDNR inserted a compliance schedule into the proposed WPDES permits for five new CAFO point sources. These compliance schedules allow the facilities from nine months to almost five years before they must comply with the standard of performance required by 40 C.F.R. 412.15. (See e.g. WPDES Permit Nos. WI-0059099-1 at 5, Exhibit 2 (nine months); WI-0059218-1 at 4, Exhibit 4 (almost five years from 3/31/99, the proposed permit issuance date).
41. The DNR used a compliance schedule for manure storage pits in four proposed permits. (See WI-0059099-1 at 3, Exhibit 2; WI-0059218-1 at 3-4, Exhibit 4; WI-0059536-01-0 at 5, Exhibit 5; WI-0059374-1 at 4-6, Exhibit 6).
42. The DNR used a compliance schedule for runoff controls in five proposed permits. (See, WI-0059099-1 at 5, Exhibit 2; WI-0059072-1 at 3, Exhibit 3; WI-0059218-1 at 6, Exhibit 4; WI-0059536-01-0 at 6, Exhibit 5; WI-0059374-1 at 7-9, Exhibit 6).
43. The DNR's use of compliance schedules for new sources violates federal law. See 40 C.F.R. 122.47(a)(2).
44. All WPDES permits for new CAFO point sources must require immediate compliance with the federal standard of performance from the day the facility receives the permit to legally operate a point source. See 40 C.F.R. 122.47(a)(2). Before the WDNR issues a WPDES permit to a new source CAFO, it must ensure that the CAFO is a properly designed facility that has installed permanent runoff controls and manure pits that meet 40 C.F.R. 412.15. The WPDES permit must then require that the facility maintain and operate permanent runoff controls and manure pits adequate to contain all process waste water plus rainfall from a 25-year, 24-hour rainfall event.

FOURTH ISSUE:

WDNR Violated and Continues to Violate 40 C.F.R. 122.41(j), 122.41(k), and 122.41(l), by Failing to Require Adequate Monitoring, Reporting, and Certification.

45. Wisconsin's DNR must include appropriate monitoring, reporting, and certification requirements in the WPDES permits they issue to CAFOs.
46. Monitoring must be designed to be representative of the operations of the CAFO and must include specific and detailed information about the monitoring process.

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- See 40 C.F.R. 122.44(j). Monitoring results must then be reported on a Discharge Monitoring Report (DMR). See 40 C.F.R. 122.41(l)(4)(i). The permittee must also report any noncompliance that may endanger health or the environment, including any violations of the effluent limitation, within 24 hours of the violation. See 40 C.F.R. 122.41(l)(6)(ii)(B).
47. Currently, the minimal monitoring and reporting that the WDNR requires CAFOs to undertake is not reported in a DMR format and is not easily available to the public like DMRs for other regulated industries.
 48. Moreover, the monitoring and reporting requirements in the proposed WPDES permits are not representative of the actual environmental impacts of CAFO operations.
 49. The WPDES permits must include monitoring and reporting requirements that, at a minimum, require the permittee to provide a description, identify the time and duration of the event, the cause of the event, and an analysis of the discharge. See EPA Draft Guidance Manual, at 3.4.
 50. The proposed WPDES permits do not contain these reporting requirements for discharges. Rather the permits merely require spill reporting in accordance with Wis. Admin. Code, § NR 158 or NR 706. See e.g. WPDES Permit No. WI-0059382-1, at 13, para. 35, Exhibit 1 and WI-0059439-1, at 8, para. 25, Exhibit 7. However, Wis. Admin. Code, § NR 706 only applies to spills of hazardous substances from underground storage tanks. The permits must be modified to require reporting of any noncompliance within 24 hours. This report should include a description of the noncompliance and its cause, the period of noncompliance (exact dates and times) and steps being taken to reduce, eliminate and prevent a recurrence of the noncompliance.
 51. The proposed WPDES permits should require initial sampling of waste and wastewater to determine available nutrient content (nitrogen and phosphorous). See EPA Draft Guidance Manual, at F-16. However, the permits do not require CAFOs to submit their first nutrient content sampling results until one year after the proposed permit issuance date. See WPDES Permit Nos. WI-0059382-1, at 2, Exhibit 1 through Permit No. WI-0059439-1, at 2, Exhibit 7.
 52. The proposed WPDES permits do not require the permittees to conduct an initial sample of land application soils to determine nitrogen and phosphorous content nor do they require sampling of soils one a year thereafter. See EPA Draft Guidance Manual, at F-15. Instead, the proposed WPDES permits only require soil survey maps of proposed fields. See WPDES Permit No. WI-0059382-1, at 7, para. 1(c), Exhibit 1, through Permit No. WI-0059439-1, at 4, para. 1(c),

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- Exhibit 7. Moreover, the proposed permits only require soil sampling once every four years, rather than annually. See WPDES Permit No. WI-0059382-1, at 9, para. 9(a), Exhibit 1, through Permit No. WI-0059439-1, at 6, para. 10(a), Exhibit 7.
53. The WPDES permits should include requirements for weekly monitoring of the lagoon or manure storage structure, including inspection of freeboard and structural integrity. See EPA Draft Guidance Manual, at F-15. However, none of the proposed WPDES permits require this monitoring. Instead, they require an annual inspection for cracks, corrosion, and/or rodent damage. See WPDES Permit No. WI-0059382-1, at 3, Exhibit 1, through Permit No. WI-0059439-1, at 3, Exhibit 7.
54. The proposed WPDES permits should require the permittee to keep a daily record of precipitation. See EPA Draft Guidance Manual, at F-16. However, none of the proposed permits require this monitoring.
55. The WPDES permits must be modified to clearly state the monitoring and notification requirements for discharges from the facility, including discharges from any fields where manure has been applied.
56. In violation of 40 C.F.R. 122.41(k), none of the proposed WPDES permits require certification by the person signing any documents required by the permit. The permits also fail to notify the permittee of the fines and imprisonment to which he or she will be subjected for making false statements.
57. Petitioners ask the EPA Administrator to object to all of the proposed WPDES permits for the reasons outlined above and instruct the WDNR on their legal duties under the federal CWA and its accompanying regulations.

Respectfully Submitted,

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