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VIA EMAIL AND U.S. MAIL

Ms. Amanda L. Minks
Water Resources Management Specialist
Wisconsin Department of Natural Resources
P.O. Box 7921
Madison WI 53707-7921

RE: Comments on WET Guidance

Dear Ms. Minks:

Thank you for the opportunity to submit comments on proposed updates to the Whole Effluent Toxicity (WET) Program Guidance Document. We are writing on behalf of the Municipal Environmental Group – Wastewater Division (MEG), which is an association of over 100 municipalities throughout the state of Wisconsin who own and operate wastewater treatment facilities. We have the following comments with the proposed WET guidance document.

1. Representative Samples

DNR provides a process in Chapter 1.3 at pages 3-6 for establishing that a sample is representative. However, there should be greater clarity and flexibility in this procedure for determining how to address laboratory errors or instances of biological interference

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that may result in unrepresentative samples. Given that one WET failure can result in a limit, DNR must ensure that any samples relied upon are representative and are not the product of laboratory error or other biological interference.

2. Responses to Limit Violations

Because under the revised rules one WET failure will, in many cases, result in the institution of a WET limit, it is important that the WET guidance document outlines reasonable and rational responses to WET limit violations. For example, triggering a TRE based on one test failure does not provide facilities with a rationally-based procedure to appropriately address WET test failures or limit violations. A facility that has a single limit violation lacks the necessary information regarding the scope or cause of the failure to know how to effectively design and implement a TRE. This process could also result in significant expense for a facility. As DNR noted in its EIA, cost estimates for TRE implementation range from at least \$5,000-\$10,000 for acute and \$15,000-\$20,000 for chronic. This level of expense should only be imposed where a TRE is a necessary and appropriate remedy for WET limit violations.

For the most part, the WET guidance provides reasonable standards by which DNR staff can evaluate which response actions are reasonable given the particulars of the WET failure or limit violation, including when to require a TRE. In Chapter 1.3, the guidance acknowledges that

In order to complete a successful TRE, toxicity has to be present in the effluent often enough so that sample manipulations can be done to characterize the toxicity and/or steps can be taken to trace the source of the toxicity ... In cases where data is limited or where toxicity has appeared infrequently, a TRE may not be recommended (the WET Checklist will not recommend a TRE, as shown in column 4). In these cases, the WET Checklist often recommends more frequent monitoring instead, in order to determine whether toxicity reappears over time.

This is generally a reasonable response approach. However, it is important to consider both frequency and magnitude when determining whether to implement a TRE. This is because effluents that demonstrate marginal sub-lethal toxicity often present significant challenges with respect to identifying causative agents. Table 1 of the Chapter 1.3 addresses the frequency of failures and how different frequencies should be treated as far as response actions, but it does not directly address the issue of failure magnitude. This table should be revised to include language stating that effluents must have a minimum toxicity of 1.4 TUc before a TRE will be implemented.

3. Permit Language Regarding WET Limits

Although the WET guidance generally provides a reasonable standard for assessing when to implement a TRE, the permit language that this guidance mandates does not provide this same flexibility. In Chapter 1.14 at page 3, the guidance appears to require a TRE in all cases after one retest shows a positive result. The proposed language requires that within 60 days of the completion of a retest, the permittee “shall submit” to DNR a written report detailing “A description of actions the permittee has taken or will take to remove toxicity and to prevent the recurrence of toxicity” and “A description of toxicity reduction evaluation (TRE) investigations that have been or will be done to identify potential sources of toxicity.”

It is unreasonable to require a permittee to take action to remove toxicity without a full understanding of the magnitude, duration, and frequency of documented toxicity issues. The language above, along with the rest of the permit language in Section 2.2.3 of Chapter 1.14 of the WET guidance, should be revised to better align with the more flexible and reasonable procedures outlined in the rest of the guidance document for handling WET test failures, and particularly the response procedures in Table 1 of Chapter 1.3. At a minimum, the language mandated in permits must include a first step that allows the permittee to fully document the magnitude, duration, and frequency of its toxicity issues through retesting.

Very truly yours,



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