

December 15, 2021

*VIA EMAIL*

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Department of Natural Resources  
Attn: Meghan Williams – WY/3  
P.O. Box 7921  
Madison, WI 53707

**RE: Comments of the Municipal Environmental Group – Wastewater Division  
Board Order WY-23-19**

Dear Ms. Williams:

We are submitting these comments on behalf of the Municipal Environmental Group–Wastewater Division (MEG Wastewater). MEG Wastewater is an organization of over 100 municipalities statewide who own and operate wastewater treatment plants. We represent facilities ranging in size from small sanitary districts to larger utilities. As you know, MEG has been an active participant in the various department forums on PFAS over the past several years. MEG appreciates this opportunity to comment on Board Order WY-23-19 for the revisions to chs. NR 102, 105, 106, and 219, which include establishing narrative criteria for PFOA and PFOS.

MEG is encouraged by and supports the framework the department implements in this draft rule package. Surface water standards are commonly established at state level, and it therefore makes sense to proceed with development of these rules at this time. MEG has advocated for non-numeric standards and a pollutant minimization/source reduction approach to the regulation of PFOS and PFOA. This is because PFOA and PFOS cannot be removed through conventional wastewater treatment processes. And, the treatment processes wastewater treatment plants would be required to implement to meet strict effluent limitations for PFOS and PFOA are neither economically feasible nor environmentally sound. The department’s establishment of narrative criteria and an associated numeric thresholds is an approach that should result in actual PFAS reductions and avoid the costly and time consuming process of obtaining variances from water quality standards. This approach addresses PFOS and PFOA pollution in a scientifically and environmentally sound, expedient, and cost-effective manner.

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With respect to the details of the proposed rule language, MEG provides the following comments for the department's consideration.

First, certain sections of the proposed rule require consideration of PFOS and PFOA in sludge and biosolids, which we do not believe is appropriate or necessary in this rule package. For example, proposed NR 106.99(1)(d) provides that PFAS minimization plans shall, "[w]here the permittee regularly monitors ... sludge, or biosolids for PFOS and PFOA," include "any changes in PFOS and PFOA concentrations over comparable historic data" in these media. Similarly, proposed NR 106.99(4) provides that the department "shall consider" the concentrations of PFOS and PFOA in "biosolids or sludge, if applicable," in reviewing the appropriate elements of a PFAS minimization plan. The proposed rule package establishes narrative criteria for surface waters and is not the appropriate mechanism for regulation regarding sludge or biosolids. Further, we understand that the department is working on guidance regarding biosolids management separately from this rule package. We request that these references to sludge and biosolids be removed from this rule language.

Second, it is still unclear how the proposed narrative standards and thresholds would apply to construction projects that involve pit trench dewatering. For instance, when will it be necessary to test for PFAS? If testing occurs and the water is under the applicable thresholds, could it be discharged to storm sewer and/or surface waters? Generally, municipal wastewater treatment plants accept contaminated groundwater from construction sites, and municipalities often undertake construction activities that require pit trench dewatering. If the water is over the applicable thresholds, would municipal treatment plants be allowed to accept it, or knowing that it contains PFAS over a threshold, would a PMP have to require treatment before discharge to a sanitary sewer? We would appreciate clarification from the department on these types of activities.

A similar question arises in the context of other known waste sources of PFAS such as landfill leachate. Will all such sources need to pretreat to the applicable thresholds before a municipal plant would be allowed to accept such waste? That is not the current practice with other contaminants, provided that the treatment plant can stay within its permit limits, and imposing that requirement here could result in substantial costs and practical issues. We would appreciate clarification from the department on this topic.

Finally, the proposed rules do not define the applicability of data for determining reasonable potential. MEG would appreciate clarification from the Department as to how data will be determined to be "representative" and what data will be included in the reasonable potential calculation. This is particularly relevant given the continued challenges with ensuring validity during PFAS sampling and analysis. MEG would also appreciate clarification from the department as to the parameters around which historic PFOS and PFOA sampling data will be used. Once a permittee has implemented a successful PFAS minimization plan as required under this rule, such that its discharge no longer creates a reasonable potential to exceed a PFOS or PFOA threshold, the permittee should be able to have that plan removed from its WPDES permit. If, however, historic PFAS sampling continues to be used in the reasonable potential calculation, the gains made in source reduction may not be adequately accounted for in determining permit requirements. MEG requests that the department clarify how historic PFAS sampling results will be used in the reasonable potential calculation for permittees that have implemented successful PFAS minimization plans.

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Thank you for consideration of these comments. MEG greatly appreciates the opportunity to participate in this process and welcomes further communication with the Department.

Sincerely,

STAFFORD ROSENBAUM LLP

A handwritten signature in black ink, appearing to read "Vanessa D. Wishart". The signature is written in a cursive, flowing style.

Vanessa D. Wishart

Paul G. Kent

VDW:mai