

Staff have reviewed comments received on the draft guidance entitled “DNR’s Recommendations for PMPs and SRMs for Arsenic, Chloride, Copper, and Mercury Variances”, in June 2014. The Department greatly appreciates all of the feedback and comments that were submitted.

Various editorial changes and clarifications were made based on suggestions from commenters. The most significant changes made in response to comments include clarification of EPA’s role in the review of Pollutant Minimization Program (PMP) plans and Source Reduction Measures (SRM). It is the Department’s job to review all variance documentation submitted by the permittee including the PMPs and/or SRMs. EPA then reviews the Department’s final decision to grant or deny the variance as a whole.

Other comments received during the public notice period expressed interest in pollutant-specific examples of PMP or SRM strategies. Examples will be developed and shared either on the Department’s variance web page or through an alternate platform such as webinars. These examples will be updated as additional information is gathered about successful pollutant reduction measures.

The Department has made changes to the draft guidance document to clarify that while PMP and/or SRM plans are required in all permits containing variances, the specific activities and action dates do not necessarily need to be included in the permit. The permit can simply make reference to the Department-approved PMP or SRM plan. This is necessary to give the permittee the flexibility to change pollutant minimization efforts based on successes or failures of past efforts to target the most effective pollutant reductions in the future.

This document is intended solely as guidance, and does not contain any mandatory requirements except where requirements found in statute or administrative rule are referenced. The Department intends to update this guidance as experience is gained in PMP and SRM implementation and as other program needs dictate. If you have future questions or comments regarding this guidance document, or suggestions for additional variance implementation topics that are in need of Department guidance, please contact:

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Attachment – EPA’s comments on WDNR’s April 15, 2014 Draft Recommendations for PMPs and SRMs for Arsenic, Chloride, Copper, and Mercury Variances

General comments

Comment 1. Attorneys for both EPA and WDNR should the document to ensure that it provides a description of variances and their relationship to permits that is consistent with State and Federal statutes and regulations.

Comment 2. Wisconsin’s variance statute at 283.15 has explicit PMP/SRM requirements that apply to all variances and that must be satisfied for Wisconsin to issue a variance that is consistent with the Wisconsin Statutes. How these requirements are satisfied should be clear in the record that accompanies and public notice of a proposed decision to grant a variance. Some of the language included in the document (pp. 3, 7) notes EPA’s involvement in the PMP/SRM and variance approval process and measures by which EPA will evaluate variances and PMPs/SRMs. Although this language may have been carried over from correspondence with EPA and/or earlier versions of the document, it creates the appearance that consideration of the PMP/SRM is a Federal requirement, and not also a state requirement. A greater emphasis on how the guidance satisfies the requirements of Wisconsin law, as well as the Clean Water Act and Federal regulations would provide a more accurate understanding of the legal underpinnings and requirements to Wisconsin stakeholders.

Comment 3. Will WDNR provide examples of pollutant minimization strategies and/or source reduction measures that are more specific to individual pollutants?

Comment 4. Permittees sometimes appear to blend pollutant minimization plans or source reduction plans with the specific PMP or SRM activities to be implemented under the umbrella of the general plan itself. Similarly, for some mercury variances, the mercury PMP is also the first mercury PMP annual report. Asking permittees to separate the overall variance pollutant minimization plan and the individual activities and annual reports taking place under the overall plan would help to clarify the overall direction that the permittee is taking to reduce the variance pollutant load in wastewater. Similarly, separating the annual report template to distinguish more explicitly between the general elements of the overall, long-term effort to minimize variance pollutant load and the specific and short-term activities that will be implemented to reduce variance pollutant load will make it easier to identify permittees’ accomplishments year to year.

One way to modify the format of the annual report template would be to have a top section of the form summarize the pollutant reduction plan (*i.e.*, itemize the key elements of the plan) and the rest of the form provide space to describe the specific activities to be implemented over the variance period.

Comment 5. One important component in variance submittals is an analysis of alternatives available to reduce the discharge of the variance pollutant. It is important that this analysis clearly demonstrate that the permittee will implement all feasible strategies for reducing the variance pollutant load to the greatest degree possible (or until the water quality-based effluent limit is achieved), over the course of the variance period. Where this analysis indicates that specific pollutant reduction strategies are not economically or technically feasible, it is important to document the basis of this conclusion in the record.

Comment 6. Where permittees are required to collect monitoring data during the variance period (*e.g.*, where a wastewater treatment facility must sample individual contributors’ waste streams), the specific monitoring requirements (number of samples required, monitoring schedule, waste streams sampled, etc.) should be included in the record for the variance decision.

Comment 7. PMP/SRM activities submitted to EPA as part of the record for the variance become part of the approved WQS and, consistent with the Federal regulations at 40 CFR 122.44(d)(1)(ii) must be included in the permit that implements the variance in the same way that at WQBEL is required to implement a water quality standard.

Comment 9. Certain situations occasionally arise in which no path to compliance with the unvaried water quality criterion is apparent (*e.g.*, in the case of wastewater treatment facilities that service homes with copper plumbing, where copper is leaching from plumbing and all conceivable pollutant minimization and source reduction measures have been implemented and end-of-pipe treatment is infeasible). In such situations, WDNR should: (1) document ongoing, regular maintenance of controls in place to minimize variance pollutant load; (2) ensure that regular monitoring occurs, to demonstrate consistent effluent quality, and; (3) ensure that permittees engage in regular (once a permit cycle) reassessment of variance pollutant control options. The reassessment should focus on whether new technologies have become available and/or whether barriers to existing technologies (including cost and potential financial and/or environmental impacts) have changed in a way that would make it possible to meet the unvaried water quality standard.

Specific comments

Comment 10. Page 3, paragraph 1: Please consider the following language:

This guidance provides the Department's recommendations for writing Pollutant Minimization Program (PMP) plans and Source Reduction Measures (SRM) which are requirements required components of variances from water quality standards in Wisconsin and are implemented through conditions in Wisconsin Pollutant Discharge Elimination System (WPDES) permits which contain, or propose to contain, implement a variance to water quality standards to comply with the requirements of Wisconsin Statutes at 283.15(5)(c)(2). The Department will review the proposed PMP or SRMs; however the Environmental Protection Agency (EPA) still has to approve the final plan before a variance limit can be included in the WPDES permit will also consider the PMP and or SRMs to be part of the revised water quality standard in its review of any variance submitted to EPA for review and approval.

Comment 11. Page 3, paragraph 2: Please consider the following language:

...[V]ariations to WQS are permissible where it is demonstrated that the applicable WQS are not presently attainable due to one of the six factors identified in Wis. Stat. 283.15(4)(a)(1). An approved variance applies for the term established by the secretary, but not to exceed 5 years (s. 283.15(5)(b), Wis. Stats). A facility can apply for a reissued variance, but this requires reconsideration of ~~the non-attainable~~ WQS to account for new information, science, and/or technology that may render attainable uses that were previously determined to be unattainable. Pollutant-specific variance provisions can be found in NR 106 and NR 217, Wis. Adm. Code. EPA reviews variances pursuant to 40 CFR 132 Appendix F and 40 CFR 131.21.

Comment 12. Page 3, paragraph 3: Please consider changing, "...to ensure that permittees come closer to compliance..." to "...to ensure that reasonable progress be made toward attaining the water quality standards..."

Comment 13. Page 3, paragraph 3: Please consider the following language: "Accurate and thorough documentation in the permittee's PMP and annual reports, including improvement efforts over the term of the variance and documentation of the unattainability of the unvaried WQS, is vital to compiling a complete administrative record for a decision by WDNR to grant a variance."

Comment 14. Page 3, paragraph 4: This is an excellent paragraph that succinctly sums up the entire PMP/SRM process.

Comment 15. Page 4, Step 1: Please consider adding the following language under the “Interim steps” heading: “Where applicable, gather and review pretreatment data from industrial users and industrial user local limits for the variance pollutant.”

Comment 16. Page 4, Step 1: Is it appropriate to add sludge monitoring to the interim steps already included? For some pollutants (*i.e.*, mercury and other persistent pollutants), sludge data are extremely useful in assessing the overall effectiveness of PMP efforts.

Comment 17. Page 4, Step 1 references conveyance system monitoring. It may be helpful to consider incorporating language from EPA’s 2004 guidance into the PMP/SRM guidance.

EPA’s guidance is available at the following URL:
http://www.epa.gov/r5water/npdestek/pdfs/2004mercury_pmp_guidance.pdf.

Comment 18. Page 4, Step 2: Would it be helpful to include another interim step for prioritizing or establishing an implementation strategy (*i.e.*, identify control strategies and determine how/when/in what order they will be applied). Step 3 would then start the actual application of the strategies.

Comment 19. Page 5, Step 3: Please consider including a “facility chemical management program plan” as an appropriate Output of this Step.

Comment 20. Page 5, Step 3: This step contemplates implementing, and then evaluating, one variance pollutant control strategy at a time. There may be reasons for doing this, but a permittee may also appropriately choose to implement several variance pollutant control strategies at once. Please consider clarifying to indicate that control strategies need not be implemented and evaluated one at a time.

Comment 21. Page 6, Step 4: Please consider the following language:

Clearly articulate which variance pollutant sources have been addressed, which strategies have been applied, and the results of having implemented the strategies. Also articulate any pollutant sources or strategies proposed in Step 3 that will not be addressed and explain why. An assessment of a given control strategy should be conducted before determining that it is not feasible.



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Submitted Electronically

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RE: Proposed Guidance “DNR’s Recommendations for PMPs and SRMs for Arsenic, Chloride, Copper and Mercury Variances”

Dear Ms. Singletary:

Wisconsin Electric Power Company, doing business as We Energies, submits these comments in response to the Wisconsin Department of Natural Resources (DNR or Department) proposed and above-referenced guidance document. This guidance document will impact requirements of the Wisconsin Pollutant Discharge Elimination System (WPDES) wastewater permits issued at our electrical generation facilities.

We Energies is an investor-owned electric and gas utility that serves more than 1.1 million electric customers in Wisconsin and Michigan’s Upper Peninsula and 1.1 million natural gas customers in Wisconsin. We Energies holds seven individual WPDES permits issued by the DNR and may be affected by the proposed rule revisions.

Our concern about this guidance is that it would require that pollutant minimization plans (“PMPs”) and source reduction measures (“SRMs”) be approved by U.S. Environmental Protection Agency (EPA) Region V staff before a variance-based effluent limitation can be included in a WPDES permit. However, approving the actual PMP/SMS plans appears to be within the boundaries of DNR’s WPDES permitting authority. Requiring EPA approval of PMPs/SRMs seems duplicative and inefficient since approval of the variance already considers the potential for pollutant minimization and reduction measures, and already occurs through a joint DNR-EPA process.

EPA’s role in the variance process is to consider the information presented in the variance application regarding the facility, sources, source reduction opportunities, and justification for the variance to determine whether the variance should be granted and, if so, what the effluent limitation should be. The information provided in the application is detailed enough for that purpose.

The variance approval process is not the time to focus on the specific steps that the applicant will take to work toward a lower effluent limitation; rather, the detailed planning and execution should

take place in the process of fulfilling a compliance schedule after the permit is issued. Conditions should be included in the WPDES permit to require the facility owner to submit a detailed SRM or PMP for DNR approval. DNR staff is responsible for tracking compliance with the permit conditions, including those related to the variance. Detailed SRM and PMP documents then undergo review and approval the DNR wastewater engineering staff along with the facility owner's staff.

Our recommendation is that this guidance be revised to 1) reflect the requirement that source reduction measures be addressed in general as part of the variance application process; and 2) that the SRMs and PMPs are approved only by the DNR as part of the details of implementing the WPDES permit requirements. Such plans are much too detailed to involve EPA regional staff review.

Thank you for the opportunity to comment on this proposed guidance. We hope that you will consider these comments on what appears to be an inefficient and duplicative regulatory step in implementing the state's delegated WPDES permitting authority. If you should have any questions or require further information regarding these comments, please contact Dave Lee, Manager Water Quality, at 414-221-2158, or by e-mail at david.lee@we-energies.com.

Sincerely,



Bruce W. Ramme, Ph.D., P.E.
Vice President – Environmental

Copy: Mr. Tom Mugan, WDNR - Water Division Administrator
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