

TIER 1 GENERAL PERMIT TO DISCHARGE STORM WATER ASSOCIATED WITH INDUSTRIAL ACTIVITY

Fact Sheet – May, 2011 WPDES Permit No. WI-S067849-3

SUMMARY

Facilities engaged in the industrial activities listed in section NR 216.21(2), Wisconsin Administrative Code, must apply for and obtain a storm water discharge permit from the Wisconsin Department of Natural Resources. A storm water discharge permit requires permittees to develop and follow a storm water pollution prevention plan. The plan must be prepared in accordance with the requirements contained in s. NR 216.27, Wis. Adm. Code, including provisions for a site drainage map, implementation schedules for storm water pollutant control best management practices, annual plan and facility assessments, and both non-storm water and storm water discharge monitoring. This fact sheet provides information regarding the Tier 1 general permit for the discharge of storm water associated with industrial activity.

INTRODUCTION

DNR's Authority to Issue Permits

The Federal Water Pollution Control Act of 1972 (Public Law 92-500), also called the Clean Water Act, requires that all point sources discharging pollutants to waters of the U.S. obtain a wastewater discharge permit. These permits specify the conditions under which wastewaters can be discharged so that water quality standards for receiving waters are met. In 1974, the United States Environmental Protection Agency (USEPA) delegated the authority for issuing these permits in the State of Wisconsin to the Wisconsin Department of Natural Resources (DNR). The DNR exercises its permitting authority through the Wisconsin Pollutant Discharge Elimination System (WPDES), authorized under chapter 283, Wisconsin Statutes. Wastewater permits issued by the DNR must meet with the approval of the USEPA.

The DNR has the authority to issue two types of permits for the discharge of pollutants to waters of the state: 1) individual WPDES permits and 2) general WPDES permits. The DNR issues individual WPDES permits when the interaction between pollutant discharges and water quality is complex. These permits require careful scrutiny and must be tailored to the specific conditions of the facility with the discharge. The DNR issues general WPDES permits to broad classes of dischargers where environmental protection can be achieved through a set of general provisions that apply to all dischargers in an industrial category. This Tier 1 industrial storm water discharge permit is a general permit.

DNR's Existing Efforts to Control Industrial Storm Water Discharges

In 1987, Congress enacted amendments to the Clean Water Act, authorizing a national program of comprehensive storm water pollution control for municipal separate storm sewer systems, industries, and construction sites. The class of storm water discharges "associated with industrial activity" was identified as a high priority for permitting. Through a series of rule-making authorized by the 1987 amendments (40 C.F.R. §122.26), the USEPA has identified in final rules an extensive list of industries requiring a permit to discharge storm water, set forth permit application and notification requirements for industries requiring coverage under a general permit, and specified minimum monitoring and reporting requirements for storm water discharges associated with industrial activity.

Although the federal general storm water permit is not directly applicable to Wisconsin, provisions of the permit are being considered as Best Available Technology (BAT) and Best Conventional Technology (BCT) for storm

water management. Since the Clean Water Act amendments require that storm water discharges meet BAT/BCT, the federal permit had important implications for states like Wisconsin as they developed their own rules concerning storm water permitting.

Concurrent with the USEPA's actions, the DNR has conducted its own storm water permit program activities. In 1991, DNR mailed permit applications to approximately 20,000 industrial facilities in the state that could potentially be affected by the new storm water regulations. In 1993, ch. 147, Wis. Stats., (now ch. 283, Wis. Stats.) was amended to include storm water as a "point source" discharge and to require DNR to promulgate administrative rules for permitting the discharge of storm water. As a result, DNR created ch. NR 216, Wis. Adm. Code, for permitting storm water discharges associated with industrial activity, construction sites 5 acres or larger [now one acre or larger], and certain municipalities that own or operate municipal separate storm sewer systems. These rules set the framework for the DNR to create general permits for the discharge of storm water associated with industrial activity.

The Tier 1 general permit covers the industrial activity listed in s. NR 216.21(2)(a), Wis. Adm. Code, including a variety of "heavy" type industries, bulk storage facilities, and facilities engaged in salvage type operations. The Tier 2 general permit covers the industrial activity listed in s. NR 216.21(2)(b), Wis. Adm. Code, including a variety of "light" industries, certain transportation facilities, mining operations, steam electric generating facilities, cement product manufacturers, and asphalt paving mixtures. Under these administrative rules, DNR may allow permittees to change coverage from one tier general permit to another, depending upon conditions present at the facility that could contaminate storm water. Ultimately, if a permittee can demonstrate that storm water at the facility is not exposed to any industrial materials or activities listed in s. NR 216.21(3)(e)3., Wis. Adm. Code, a facility can certify to a condition of "no exposure" for storm water discharge.

WISCONSIN'S TIER 1 GENERAL STORM WATER PERMIT

Purpose and Nature of the Tier 1 General Permit

Chapter NR 216, Wis. Adm. Code, defines the conditions under which storm water associated with industrial activity can be discharged so that waters of the state (including surface waters, ground water, and wetlands) will be protected. This storm water permit is intended to meet the permitting requirements for storm water associated with industrial activity as established in ch. NR 216, Wis. Adm. Code, for a Tier 1 facility.

This general permit has been issued by the DNR and will be used to authorize and regulate storm water discharges from both new and existing eligible industrial facilities. For a facility seeking initial permit coverage, coverage under this permit will become effective at a facility beginning upon the Start Date specified by DNR in a cover letter to the facility. For a facility with existing permit coverage under a previously issued version of the Tier 1 general permit, coverage under this permit will become effective at the facility beginning upon the Issuance Date of the permit. This permit will not be used to provide initial permit coverage to a storm water discharge within Indian Country after September 30, 2001. Contact the DNR Central office at (608) 267-7694 for non-Indian discharges within Indian Country to determine if state permit coverage from the Department is required. Storm water discharges within Indian Country from non-tribal lands that have state coverage under this general storm water permit prior to September 30, 2001 may continue to be covered under this state general permit for purposes of state law.

In summary, this permit requires regulated industrial facilities to:

- 1) Identify and eliminate unpermitted non-storm water discharges from storm water outfalls;
- 2) Develop a Storm Water Pollution Prevention Plan that emphasizes "source area" controls, which are designed to prevent storm water from becoming contaminated;
- 3) Implement the Storm Water Pollution Prevention Plan and conduct visual site inspections to assure that the plan is working;
- 4) Determine if storm water runoff from the facility is discharged to an Outstanding Resource Water,

Exceptional Resource Water, impaired water, or an impaired water for which a federally approved Total Maximum Daily Load has been developed, and if so, modify the facility's Storm Water Pollution Prevention Plan accordingly to address water quality concerns;

- 5) Visually monitor storm water outfalls for the presence of contaminants during rainfall or runoff events;
- 6) Perform chemical monitoring for pollutants expected to remain in significant quantities in storm water following implementation of "source area" controls; and
- 7) Keep progress and monitoring results current and available for inspection by the DNR.

Several technical support documents have been prepared to assist industries in complying with the permit:

- The DNR has developed a document for industries entitled Industrial Storm Water Pollution Prevention Planning, dated September 1994. This document provides industries with guidance in preparing the required pollution prevention plans. This document (Document Sales stock #1723) is available online at: <http://dnr.wi.gov/runoff/stormwater/industrialforms.htm#swppp>
- The USEPA has developed a document for industries entitled Storm Water Pollution Prevention for Industrial Activities (EPA-832-R-92-006). This document includes guidance on selecting best management practices for controlling storm water pollutants from selected sites, and supplements other similar documents. It is available for a fee from the National Technical Information Service (703-487-4650) or the U.S. Government Printing Office (202-783-3238).
- The DNR has developed a document for industries entitled Wisconsin's Guidance for Industrial Storm Water Sampling, dated September 1994. This document provides industries with guidance in sample collection, preservation, and other aspects important to preparing for sampling. This document (Document Sales stock #1723) is available online at: <http://dnr.wi.gov/runoff/stormwater/industrialforms.htm#swppp>
- The DNR has developed technical standards for erosion control and storm water management at construction sites and for post-construction runoff management. The standards are available at <http://dnr.wi.gov/runoff/stormwater/techstds.htm>

Summary of Key Changes from the Previous Version of the Tier 1 Permit

This Tier 1 permit (Permit No. WI-S067849-3) replaces the previous version of the permit (Permit No. WI-S067849-2). Key changes to the permit include the following (numbering system used below corresponds with the sections in the general permit):

1.1 Initial Permit Coverage: The permit references the application process in ch. NR 216, Wis. Adm. Code, and states that the DNR will transmit a letter of permit coverage to a facility eligible for coverage under the general permit with instructions on where to download the permit from the DNR's website.

1.2 Continuation of Existing Permit Coverage: Facilities on record with the DNR as having general permit coverage as of the Issuance Date of this permit will automatically be covered under this permit. Facilities will be notified by the DNR of their continued coverage under this permit with instructions on where to download the permit from the DNR's Internet website. In the alternative, a hard copy of the permit will be mailed to the owner or operator of the facility upon request.

1.3 No Exposure Certification: Facilities that have been denied a Conditional No Exposure Certification or have had such certification revoked by the DNR shall apply for permit coverage within 14 working days of

being notified by the DNR of the denial or revocation.

1.4 Permit Coverage Transfers: This section provides more detail on the process for transferring permit coverage from one owner or operator of a facility to another under s. NR 216.31, Wis. Adm. Code.

2.5 Water Quality Standards: This permit specifies the conditions under which storm water may be discharged to waters of the state for the purpose of achieving water quality standards. For the term of this permit, compliance with water quality standards will be addressed by adherence to general narrative-type storm water discharge limitations and implementation of a storm water pollution prevention plan. This permit does not authorize storm water discharges that the Department, prior to authorization of coverage under this permit, determines will cause or have reasonable potential to cause or contribute to an excursion above any applicable water quality standard. Where such determinations have been made prior to authorization, the Department may notify the applicant that an individual permit application is necessary. However, the Department may authorize coverage under this permit where the storm water pollution prevention plan required under this permit will include appropriate controls and implementation procedures designed to bring the storm water discharge into compliance with water quality standards.

2.6 Outstanding and Exceptional Resource Waters: A facility covered under this permit may not establish a new storm water discharge of pollutants to an Outstanding Resource Water (ORW) or an Exceptional Resource Water (ERW) unless the storm water pollution prevention plan required under Section 3. of this permit is designed to prevent the discharge of pollutants to the ORW or ERW in excess of background levels within the water body. The following website can be used to determine whether a facility discharges storm water to an ORW or ERW: <http://dnr.wi.gov/org/water/wm/wqs/> ORWs and ERWs are also listed in ss. NR 102.10 and 102.11, Wis. Adm. Code.

“New storm water discharge” or “new discharge” means a storm water discharge that would first occur after the permittee’s start date of coverage under this permit to a surface water to which the facility did not previously discharge storm water, and does not include an increase in a storm water discharge to a surface water to which the facility discharged on or before coverage under this permit.

If the permittee has an existing storm water discharge to an ERW, it may not increase the discharge of pollutants if the increased discharge would result in a violation of water quality standards. If the permittee has an existing storm water discharge to an ORW, it may increase the discharge of pollutants provided that: 1) The pollutant concentration within the receiving water and under the influence of the existing discharge would not increase as compared to the level that existed prior to coverage under this permit; and 2) the increased discharge would not result in a violation of any water quality standard.

2.7 Impaired Water Bodies and Total Maximum Daily Load Requirements: *Impaired Waters.* If a facility discharges a pollutant of concern to a section 303(d) listed impaired water body, the pollutant levels in the discharge need to be reduced as much as possible as part of an overall state effort to reduce the pollutant loading to impaired water bodies. The 303(d) list of Wisconsin impaired water bodies may be identified by contacting the DNR or by searching for the 303(d) list on the DNR’s Internet site. The current link to the 303(d) list is: <http://dnr.wi.gov/org/water/wm/wqs/303d/> Contact the DNR or use the Internet link above to find an MS Excel spreadsheet list or county based maps showing Wisconsin 303(d) listed waters.

The permit requires that an annual check be conducted by February 15th each calendar year to determine whether the permittee discharges a pollutant of concern via storm water runoff to a section 303(d) listed impaired water body. If so, a written section needs to be added to the storm water pollution prevention plan, within 180 days of the annual check, that specifically identifies control measures and practices that collectively will be used to reduce, with the goal of eliminating, the levels of the pollutant of concern in the storm water discharge that contributes to the impairment of the water body. The pollution prevention plan shall also explain why these control measures and practices were chosen as opposed to other alternatives.

Federal regulation, 40 CFR 122.4, prohibits the issuance of a WPDES permit to a new source or new discharger that will contribute to a violation of a water quality standard in a 303(d) listed water. Also, an increased discharge of a pollutant of concern that would cause or contribute to a violation of a water quality standard in a 303(d) listed water is not allowed. Therefore, this general permit specifies that a permittee may not establish a new storm water discharge to an impaired water body or increase the discharge of a pollutant of concern to an impaired water body unless the new or increased discharge causes the receiving water to meet applicable water quality standards, or the new discharge is consistent with an EPA approved total maximum daily load (TMDL) allocation for the impaired water body. For a new facility requesting coverage under this general permit, the DNR will evaluate the proposed new pollutant discharge and receiving water to determine if the above requirement can be met. A variety of options may be available to ensure any proposed new discharge does not contribute to the receiving water's impairment such as on-site capture of the pollutant of concern, an alternate discharge location, storm water reuse opportunities, directing the discharge to a seepage area, enhanced treatment options so the discharge would meet the water quality standard, etc.

“New storm water discharge” or “new discharge” means a storm water discharge that would first occur after the permittee's start date of coverage under this permit to a surface water to which the facility did not previously discharge storm water, and does not include an increase in a storm water discharge to a surface water to which the facility discharged on or before coverage under this permit.

If an existing facility proposes an increase in a pollutant of concern discharge to an impaired water body, the process would start via notification to the DNR. Upon notification of the proposed increase, the permittee and the DNR would evaluate the proposed increased pollutant discharge amount and receiving water to determine if the above requirement can be met. A variety of options may be available to ensure any proposed increased pollutant discharge does not contribute to the receiving water's impairment such as on-site capture of the pollutant of concern, an alternate discharge location, storm water reuse opportunities, directing the discharge to a seepage area, enhanced treatment options so the discharge would meet the water quality standard, etc.

Total Maximum Daily Loads (TMDLs). This section of the permit requires that a permittee conduct an annual check by February 15th of each calendar year to determine whether its facility discharges storm water runoff to a water body that has an EPA approved TMDL allocation. If so, the permittee is required to assess whether the TMDL wasteload allocation for the facility's discharge is being met through the existing storm water pollution prevention plan controls or whether additional control measures are necessary. Within 180 days after the annual check to determine whether the facility's storm water discharge is included in an EPA approved TMDL and determining that any TMDL wasteload allocation for the facility's discharge is not being met, the permittee is required to amend the facility's SWPPP to include a plan to meet the requirements of the EPA approved TMDL wasteload allocation for the facility. The plan must include any feasible pollution prevention and storm water treatment improvements and specify any revisions or redesigns that will be implemented to increase the effectiveness of the permittee's storm water pollution prevention controls. The plan also must specify a time schedule consistent with the EPA approved TMDL or a TMDL Implementation Plan prepared by the Department for implementation of the improvements, revisions or redesigns necessary to meet the wasteload allocation for the facility. Under s. NR 216.27 (1), Wis. Adm. Code, the permittee must implement its SWPPP, and under s. NR 216.27 (4), Wis. Adm. Code, the permittee must further amend its SWPPP if the provisions of the SWPPP are ineffective in controlling storm water pollutants discharged to waters of the state, or upon written notice that the department finds the SWPPP to be ineffective in achieving the conditions of the storm water discharge permit applicable to the facility. In some situations, there may be TMDLs developed and approved where instead of a facility receiving a specific wasteload allocation, the wasteload allocation is lumped for a group or category of discharges. If this is the case, then compliance with this permit shall be deemed to be compliance with the TMDL.

2.8 Fish and Aquatic Life Waters: Under this permit, a permittee must determine whether its facility discharges storm water to a fish and aquatic life water as defined in s. NR 102.13, Wis. Adm. Code. Most

receiving waters are classified as a fish and aquatic life waters and this classification includes all surface waters of the state except ORW, ERW, Great Lakes system waters and variance waters identified within ss. NR 104.05 through 104.10, Wis. Adm. Code.

A permittee may not establish a new storm water discharge of pollutants to a fish and aquatic life water unless the storm water pollution prevention plan required under Section 3. of this permit is designed to prevent the significant lowering of water quality of any fish and aquatic life water. Significant lowering of water quality is defined within ch. NR 207, Wis. Adm. Code.

“New storm water discharge” or “new discharge” means a storm water discharge that would first occur after the permittee’s start date of coverage under this permit to a surface water to which the facility did not previously discharge storm water, and does not include an increase in a storm water discharge to a surface water to which the facility discharged on or before coverage under this permit.

If the permittee’s facility has an existing storm water discharge to a fish and aquatic life water, it may not increase the discharge of pollutants if the increased discharge would result in a violation of water quality standards.

3.3.2.7 Compliance with Runoff Management Performance Standards: Section NR 151.12 or s. 151.121, Wis. Adm. Code, specifies post-construction performance standards for new development and redevelopment. A newly constructed or redeveloped industrial facility that is required to meet the post-construction performance standards of s. NR 151.12 or s. NR 151.121, Wis. Adm. Code, must describe in its storm water pollution prevention plan the best management practices necessary to maintain compliance with the applicable performance standards in s. NR 151.12 or s. NR 151.121, Wis. Adm. Code. Furthermore, the best management practices installed to meet the performance standards in s. NR 151.12 or s. 151.121, Wis. Adm. Code, must be maintained to meet the treatment capability as originally designed.

3.3.2.10 Facility Monitoring: In addition to sampling for the residual pollutants identified in s. NR 216.27 (3) (j), Wis. Adm. Code, and Section 3.3.2.8 of the permit, Section 3.3.2.10.3 of the permit requires that the list of chemical parameters to test for shall include the pollutants identified in Part 8 of the U.S. Environmental Protection Agency’s 2008 Multi-Sector General Permit for Storm Water Discharges Associated with Industrial Activity (MSGP). The facility’s primary SIC code is to be used to determine the appropriate pollutants to test for from Part 8 of the MSGP. The US EPA’s MSGP is available at the following website: <http://cfpub1.epa.gov/npdes/stormwater/msgp.cfm> Part 8 of the MSGP is organized by industrial activity (sectors) that lists the testing parameters for each sector. Find the appropriate sector, then locate the parameter(s) in the table under the “Sector-Specific Benchmarks” that correspond to the facility’s SIC code.

3.4 Amending a SWPPP: Language has been added to this section of the permit to allow for an alternative timeframe to amend the storm water pollution prevention as specified by the DNR.

3.5 Storm Water Discharges to Outstanding and Exceptional Resource Waters: If the permittee’s industrial storm water will discharge to an outstanding resource water or exceptional resource water, the permittee is required to include a written section in the facility’s storm water pollution prevention plan that discusses and identifies the management practices and control measures the permittee will implement to prevent the discharge of any pollutant(s) in excess of the background level within the water body. The permittee’s plan must specifically identify the control measures and practices that will collectively be used to prevent the discharge of pollutants in excess of the background level within the water body. A list of outstanding resource waters and exceptional resource waters may be found on the Department’s Internet site at:

<http://dnr.wi.gov/org/water/wm/wqs/>

4.3.4 Monitoring Waivers: Section 4.3.4.2 grants an automatic waiver if the permittee indicates that there were no snow melt or runoff events large enough to conduct a quarterly visual inspection at an outfall. A waiver is automatically granted for a quarter where the permittee sufficiently documents and retains records demonstrating that there were no snow melt or runoff events large enough to conduct a quarterly visual inspection at the facility during that quarter. Documentation and records used to qualify for an automatic waiver must be submitted to the Department upon request.

5.1 Storm Water Pollution Prevention Plan Compliance and Reporting Requirements: Section 5.1.1 clarifies the timing for preparation of the Storm Water Pollution Prevention Plan. An owner or operator of a facility requiring coverage under this permit must prepare a Storm Water Pollution Prevention Plan prior to applying for permit coverage and submit a plan summary to the DNR when applying for coverage under this permit. The owner or operator of an existing facility that previously operated without required permit coverage and without a required plan must immediately develop a plan and submit a plan summary to the DNR, and implement the plan to achieve compliance with this permit in the shortest practicable time.

5.3 Discharges to Regulated Municipal Separate Storm Sewer Systems: An industrial facility covered under this permit may be located within a municipality covered under a municipal separate storm sewer system (MS4) permit issued pursuant to subchapter I of ch. NR 216, Wis. Adm. Code. A municipality covered under an MS4 permit is required to address the discharge of pollutants from its separate storm sewer system into waters of the state and has the authority and responsibility to regulate discharges into its separate storm sewer system. Under this section of the Tier 1 industrial storm water permit, an industrial facility covered by the permit and that discharges storm water and non-storm water to the permitted municipality's separate storm sewer system must provide information on these discharges to the municipal permittee upon request. Information that must be provided includes the area or sub-areas of the facility draining to the municipal separate storm sewer system, the nature of industrial activity and potential storm water contamination sources in the areas draining to the system, the nature and number of non-storm water discharges to the system, storm water best management practices employed at the facility and their effectiveness at pollutant removal, storm water monitoring data, and copies of the required reports. In addition, a facility covered under this Tier 1 industrial storm water permit must assist and provide information to the permitted municipality if an illicit discharge, spill, or dumped material enters the municipality's separate storm sewer system.

Additional Information

Further information on this permit and the DNR's storm water permit program is available online at <http://dnr.wi.gov/runoff/stormwater/ind.htm> or by contacting the appropriate DNR regional office or the DNR's Central Office at:

Wisconsin Department of Natural Resources
Storm Water Program
Runoff Management Section, WT/3
P.O. Box 7921
Madison, WI 53707-7921
Phone: (608) 267-7694

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. This guidance does not establish or affect legal rights or obligations, and is not finally determinative of any of the issues addressed. This guidance does not create any rights enforceable by any party in litigation with the State of Wisconsin or the Department of Natural Resources. Any regulatory decisions made by the Department of Natural Resources in any matter addressed by this guidance will be made by applying the governing statutes and administrative rules to the relevant facts.