

Wisconsin 401 Conditional Certification to the EPA Small Vessel General Permit

BEFORE THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES

Application of the United States Environmental)
Protection Agency for a Clean Water Act Water)
Quality Certification for Issuance of a National)
Pollutant Discharge Elimination System Small)
Vessel General Permit for Regulating Discharges)
Incidental to the Normal Operation of a Vessel)

On December 8, 2011, the US Environmental Protection Agency (EPA) requested a water quality certification under Section 401 of the Federal Clean Water Act (33 U.S.C. § 1341) for the proposed permit issuance of the National Pollutant Discharge Elimination System (NPDES) Small Vessel General Permit (sVGP). The proposed general permit and the notice of public hearing were published in the Federal Register December 8, 2011 (76 FR 76,716). If the State grants the water quality certification, EPA will be able to issue the sVGP and authorize discharges into waters of Wisconsin. EPA has requested the certification by June 30, 2012.

The proposed sVGP is applicable to discharges incidental to the normal operation of non-military and non-recreational vessels less than 79 feet in length that meet the applicability criteria. EPA has proposed a separate next Vessel General Permit (VGP), which will not be addressed in this 401 Certification.

The Wisconsin Department of Natural Resources (WDNR) has reviewed EPA's proposed sVGP pursuant to Section 401 of the Clean Water Act and ch. NR 299, Wis. Adm. Code. WDNR has made the determination that inclusion of the following conditions in the EPA sVGP are required to ensure compliance with state water quality standards enumerated in s. NR 299.04, Wis. Adm. Code. Each of the conditions in the proposed permit has been reviewed, and based upon the review, WDNR has determined that none of the conditions may be made less stringent without violating the requirements of Wisconsin law, including water quality standards, found in chs. NR 102-106 and 207, Wis. Adm. Code.

STATE CONDITIONS AND LIMITATIONS OF CERTIFICATION

The WDNR conditionally grants water quality certification for the EPA sVGP subject to compliance with the General Conditions and Specific Conditions identified below, with a citation to state law or administrative code as the basis for a more stringent condition than those contained in the EPA sVGP:

GENERAL CONDITIONS:

1. Activities not eligible for authorization under this state water quality certification include:
 - (a) Fills or deposition of material in navigable waters (s. 30.12, Wis. Stats.).
 - (b) Activities likely to jeopardize the continued existence of a state designated threatened or endangered species or a species proposed for such designation, or which is likely to destroy or adversely modify the habitat of such species [s. 29.604, Wis. Stats.; s. NR 1.015(1)(a), Wis. Adm. Code].
 - (c) Activities that would result, overall, in adverse impacts to fishery spawning habitat or adversely affect avifauna breeding areas or substantially disrupt the movement of those species which normally migrate from open water to upland or vice versa (i.e., amphibians, reptiles and mammals) [s. NR 102.01(2), Wis. Adm. Code].
 - (d) Activities detrimental to the public interest in waters of the state [s. NR 102.01(2), Wis. Adm. Code].
2. If WDNR determines vessel discharges covered by this certification can no longer comply with the conditions set in accordance with Section 401 of the Clean Water Act or the applicable state statutes and administrative codes, then this certification may be revoked or modified after appropriate public notice [s. NR 299.01(2)(a), Wis. Adm. Code].

SPECIFIC CONDITIONS:

3. Discharges of graywater or sewage into Lake Michigan, a No Discharge Zone, are subject to penalties [s. 29.601(3), Wis. Stats.].
4. All instances of non-compliance with this certification must be reported to WDNR immediately [s. NR 205.07(1)(s), Wis. Adm. Code].

State of Wisconsin Department of Natural Resources
For the Secretary

By 
Ken Johnson
Administrator, Water Division


Date Signed

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin Statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

To request a contested case hearing pursuant to section 227.42, Wis. Stats., you have 30 days after the decision is public noticed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. The petition for hearing shall comply with the requirements of chapter NR 2, Wis. Adm. Code, and section NR 299.05(5), Wis. Adm. Code.

This determination becomes final in accordance with the provisions of section NR 299.05(7), Wis. Adm. Code, and is judicially reviewable when final. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities, upon request.

