



STATE OF CONNECTICUT  
DEPARTMENT OF TRANSPORTATION



2800 BERLIN TURNPIKE, P.O. BOX 317546  
NEWINGTON, CONNECTICUT 06131-7546

Phone:

February 13, 2019

James Creighton  
Department of Energy and Environmental Protection  
Water Permitting and Enforcement Division  
79 Elm Street  
Hartford, CT 06106-5127

Re: General Permit for the Discharge of Miscellaneous Wastewater (Comments)

Dear Mr. Creighton:

The Connecticut Department of Energy and Environmental Protection (DEEP) has issued a notice of intent to reissue the *General Permit for Discharges of Miscellaneous Sewer Compatible Wastewater from Industrial Users* (MISC General Permit) with modifications. These changes include administrative and technical modifications as well as integrating activities currently covered under the *General Permit for the Discharge of Vehicle Maintenance Wastewater* (Vehicle Maintenance General Permit). The Department of Transportation (Department) has found the Vehicle Maintenance General Permit to be a widely utilized tool for the management of wastewaters discharged from its many facilities. As such, it is anticipated that some of the proposed modifications will have a significant impact on the Department and appreciates the opportunity to comment on the proposed modifications to the MISC General Permit.

Of the administrative modifications being proposed, the most significant is DEEP's delegation of its authority to the Publicly Owned Treatment Works (POTWs) for the administration of the MISC General Permit. This delegated authority includes registering dischargers, receiving and reviewing discharge monitoring reports, and enforcing effluent limits and permit conditions. If adopted as proposed, the Department, which is a state agency, could be subject to the rules, regulations, fees and enforcement policies of more than forty different local POTW authorities – at least one for every Vehicle Maintenance General Permit the Department currently has registered with DEEP.

The Department understands that Chapter 103 of the Connecticut General Statutes grants certain powers and duties to the POTW authorities. The Department is unclear on how these specific powers and duties interface with the State's long-standing principle of sovereign immunity. The Connecticut Office of the Attorney General has consistently opined that, because of the State's sovereign immunity, a municipality does not have the power to subject the State to enforcement of local zoning laws or regulations absent a statute that expressly subjects the State to the municipality's power.

In short, the Department requests a clear demonstration (e.g., authoritative statutory language or an opinion of the Office of Attorney General) that DEEP can lawfully delegate to local POTW authorities the administration of the MISC General Permit over state agencies.

More specific to the Department's activities, there are several related concerns to the delegation of permit authority to the POTWs.

- The logistics of having many different authorities for the same general permit will be a substantial drain on the Department just to track, let alone comply with, the manner in which each POTW administers the permit requirements. The Department's limited resources would be responsible for tracking and potentially participating in any municipal process that proposes a new ordinance or fee structure that relates to the newly delegated authority.
- This concern extends beyond vehicle maintenance wastewater. POTWs granted such authority could opt to manage and charge fees for other ubiquitous discharges (such as boiler blowdown, potable water system maintenance wastewater, and building maintenance wastewater) in very different manners. For example, without a statewide standard, the spectrum of monitoring requirements the Department would have to manage for the variety of its MISC General Permit discharges could range significantly.
- The MISC General Permit does not provide the permittee any minimum amount of time by which it must comply with new requirements that could be instituted through municipal ordinances. There is concern that there will not be sufficient time for the Department to coordinate its compliance effort, making it subject to possible enforcement actions by the local POTW authorities.

As a solution to the above concerns, the Department suggests that either a separate general permit be issued to cover activities of State agencies, or that the MISC General Permit include provisions whereby DEEP retains complete administrative authority over State-permittees.

Beyond the question of delegated authority, there are additional technical concerns, regardless of which entity is the permit administrator, as described below.

- Resubmitting treatment verification forms and written approvals for oil water separator (OWS) installations, as proposed in Section 4(c)(2)(N) and Section 4(c)(2)(Q)(iii), as part of facility renewal registrations is a repetitive process. Consider exempting renewal registrations from these requirements, or making it something to which the registrant must simply certify in the renewal registration.
- In the proposed MISC General Permit, Section 5(f)(12)(A)(i)(9) requires inspection by the POTW of any newly installed OWS. In order to prevent project delays and extending unsafe excavations longer than necessary, a suggested change would be to have the MISC General Permit standardize the advance notice the permittee must provide and the timeframe in which the permit authority must perform its inspection. The permit should also allow the permit authority to accept information provided by the permittee, such as photo documentation, in lieu of the inspection.
- The Department recommends creating a minor discharge exemption based on wastewater category and flowrate and limiting wastewater quality monitoring for any such discharge. Such limitations could not be superseded unless there is a specific problem at the POTW.

Should DEEP incorporate these considerations, the result would streamline the process by which the Department's facilities are permitted, thereby reducing time and increasing compliance.

Thank you for considering these suggestions. If you would like to discuss this matter further, please feel free to contact me at (860) 594-3404.

Very Truly Yours,



Adam G. Fox  
Transportation Principal Engineer  
Bureau of Engineering and Construction