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Response to Public Comments on the Proposed General Permit for Discharges of Miscellaneous Sewer Compatible Wastewater from Industrial Users

On January 14, 2019, the Department of Energy and Environmental Protection (Department) published notice of its tentative decision to reissue the ***General Permit for Discharges of Miscellaneous Sewer Compatible Wastewater from Industrial Users*** (“Miscellaneous Industrial User General Permit”; “MISC IU GP”). The notice was published in the Connecticut Post, the Hartford Courant, the New Haven Register, the New London Day, the Waterbury Republican American, and the Willimantic Chronicle. The notice as well as a draft copy of the MISC IU GP and a Fact Sheet were concurrently posted on the Department’s website.

The notice provided a thirty (30) day comment period for the public to comment on the draft MISC IU GP.

A timely and sufficient petition requesting a public hearing was submitted to the Department’s Adjudications Division regarding the MISC IU GP. A status conference was held March 19, 2019 at 1:00 PM at the MDC’s Training Center at 125 Maxim Road in Hartford, CT.

This document is a compilation of the comments submitted during the public comment period and the Department’s preliminary response to those comments. Prior to responding to the comments, the Department feels it pertinent to offer some commentary on the overall intent and scope of the MISC IU GP.

It is the Department’s opinion that this proposed MISC IU GP does not increase the responsibility that each individual Water Pollution Control Authority currently has under their National Pollutant Discharge Elimination System (NPDES) permit issued by the Department.

NPDES Permits issued to Publicly Owned Treatment Works (POTWs) incorporate regulations that include requirements that the POTWs are aware of all non-domestic wastewater dischargers. Moreover, it should be considered an essential part of the POTWs’ operations to understand all sources of wastewater being treated at their POTW.

Section 4(C) of each POTW’s NPDES permit specifically requires that “The Permittee shall maintain a system of user charges or dedicated taxes or other fees sufficient to operate and maintain the POTW (including the collection system) and replace critical components.” These user fees should include a structure suitable for funding the requirements of this general permit, or existing fees should be amended by ordinance to address any budgetary shortfall.

Section 4(D) of each permit requires that “The Permittee shall maintain a sewer use ordinance that is consistent with the Model Sewer Ordinance for Connecticut Municipalities prepared by the Department of Energy and Environmental Protection.” The Department understands ordinances may need to be amended to address the needs of the proposed MISC IU GP. One reason the effective date of this general permit is extended to October 2020 is to allow time to for WPCAs to develop and adopt amended ordinances.

It should also be noted that each POTW's NPDES discharge permit also contains a reference to the Regulations of Connecticut State Agencies (RCSA) Section 22a-430-3(l) Conditions applicable to POTWs. This section contains the requirements noted above, but also contains a requirement at RCSA 22a-430-3(l)(2) that the POTW must provide notice to the director (of the Water Permitting and Enforcement Division) of any discharger to their system who is discharging without a permit from the commissioner or is violating their permit. The POTWs have always been required to be aware of the quality of any discharge to their system.

The following is the Department's responses to comments received during the comment period:

Commenters questioned the Department's authority to require that the WPCFs administer a pretreatment program and the Department's proposed MISC IU GP.

Response: The Department, as the Approval Authority in Connecticut under the National Pretreatment Program is not exercising its authority pursuant to Title 40 Sections 403.8 and 403.9 of the Code of Federal Regulations (40 CFR 403.8 & 40 CFR 403.9) to require that Water Pollution Control Authorities administer a POTW Pretreatment Program. In proposing to issue the draft MISC GP, the Department is not changing its roles as both the Approval Authority and the Control Authority to administer the pretreatment program pursuant to 40 CFR 403.10(e).

While the National Pretreatment Program does not specifically require that the Department regulate non-Significant Industrial Users by a general permit, EPA has noted in its discussion of the 2005 Pretreatment Streamlining Final Rule that Control Authorities have had the authority to regulate such non-Significant Industrial Users under a general permit (see page 60143 – “B. General Control Mechanisms” at <https://www.govinfo.gov/content/pkg/FR-2005-10-14/pdf/05-20001.pdf>). In fact, the Department is required to issue an individual permit for such dischargers pursuant to Section 22a-430 of the Connecticut General Statutes, or a general permit pursuant to Section 22a-430b of the Connecticut General Statutes.

The proposed MISC IU GP does not require that the WPCFs assume any new responsibilities beyond what is currently specified under their current NPDES permits and state and federal regulations. Current and proposed requirements are that the WPCFs know who discharges to their collection system and that they notify the Department if a discharge is causing problems for the POTW.

What communications has the Department had with EPA regarding the changes in the proposed MISC IU GP and what has been EPA's response?

Response: The Department has received written comments from EPA dated March 19, 2019 from the EPA Region 1 Pretreatment Coordinator confirming that the proposed MISC IU GP is consistent with federal law. The Coordinator also indicated general support for the proposed MISC IU GP.

The Coordinator indicated that EPA does not consider this a delegation to the POTWs as there is no federal mandate to issue pretreatment permits to non-significant industrial users, which this proposed permit covers. The Coordinator also reinforced the Department's stance that the POTWs have always had the authority and obligation to provide oversight to its industrial users.

How will POTWs be aware of this general permit and their responsibilities under it?

Response: The Department initiated outreach in the Fall of 2017 on the possible issuance of the MISC IU GP and a new **General Permit for Discharges of Wastewater from Significant Industrial Users (“SIU GP”;** heretofore collectively referred to as “the proposed general permits”) when Department staff presented to the Connecticut Association of Water Pollution Control Authorities at their November 3, 2017 annual conference, and to the NEIWPCC Managers Forum at their November 16, 2017 meeting. Presentations were also given in March 2018 and February 2019 to the Connecticut Environmental Forum and to the Connecticut Business and Industry Association in January 2018. An electronic copy of the presentation was provided to the host organizations to be shared with their constituencies.

Department staff also attended LabACT’s quarterly meeting in December 2018 to brief the group of POTW Lab Directors and contract laboratories on the proposed general permits and answer any pertinent questions.

As indicated in the public notice on January 14, 2019 for the two draft general permits, the Department also held an informational meeting at DEEP headquarters on January 23, 2019.

Lastly, the Department’s Municipal Facilities group shared the public notice and a cover email message regarding the proposed general permits on the Municipal Facilities Listserv.

A request was made for a permit list, sorted by town, of all the current permittees in Connecticut who could be covered by the proposed Miscellaneous Industrial User General Permit and the SIU General Permit.

Response: The Department posted a table on the Industrial Wastewater webpage that includes all Industrial User that have been issued an individual pretreatment permit or have registered under one of the pretreatment general permits currently in effect. The table can be filtered by town and permit type.

How much assistance will the Department provide the POTWs and the regulated community after the Miscellaneous Industrial User General Permit is issued?

Response: The Department will continue to offer assistance as resources allow, and partner with the POTWs, as it always has since the inception of the pretreatment program, and provide outreach and support to the regulated community.

Local POTWs do not have the resources needed to administer the general permit.

Response: The proposed MISC IU GP general permit does not change the responsibilities that POTWs currently have under their NPDES permits. Section 4(C) of each POTW’s NPDES permit requires the Permittee to maintain a system of user fees sufficient to operate and maintain the POTW (including the collection system) and replace critical components. These user fees should include a structure suitable for funding the requirements of this general permit, or existing fees should be amended by ordinance to address any budgetary shortfall.

There were questions pertaining to the 1992 amendment to the NPDES Memorandum of Agreement between the US EPA Region 1 and the Department (“1992 NPDES MOA amendment”), including the numbers of permits and level of funding prior to and after it, and the annual 106 work plan/SEA process.

Response: The 1992 NPDES MOA amendment specifically addresses general permits for NPDES (i.e., direct discharges to receiving waters), and is not applicable to the issuance of these pretreatment general permits. EPA Region 1's cover letter transmitting the 1992 NPDES MOA specifically states that EPA is, "...approving the State of Connecticut's National Pollutant Discharge Elimination System (NPDES) General Permit Program in accordance with 40 C.F.R. Part 123." The letter further notes that, "...delegation of the General permit Program will allow the State to meet the Federal Storm water permitting deadlines. The program will also regulate discharges of wastewater which are more appropriately controlled under a general permit rather than by individual NPDES permits..."

There were questions about the Department's funding to run the NPDES program.

Response: The Department does not receive additional funding to run the Pretreatment Program. Federal funding for administering the NPDES program is based on a regulatory formula set forth under 40 CFR 35.162. Such funding is not allocated on whether a state is administering a pretreatment program (see also <https://www.gpo.gov/fdsys/pkg/CFR-2016-title40-vol1/pdf/CFR-2016-title40-vol1-sec35-162.pdf>). For more information on federal funding to Connecticut and how such funds are directed, see also <https://www.epa.gov/water-pollution-control-section-106-grants>.

It can be difficult to enforce Inter-Municipal Agreements between towns with POTWs and the neighboring towns that discharge to them. POTWs need the Department's enforcement assistance.

Response: The Department will continue to retain and exercise its enforcement authority as may be warranted with respect to Industrial User compliance with the MISC IU GP and assist local POTWs with compliance with Inter-Municipal Agreements.

A state agency raised concerns about the potential for inconsistent requirements being imposed by different POTWs for their many facilities located throughout the state and suggested that the Department maintain complete administrative control over state permittees.

Response: The Department recognizes the desire for uniformity, which has also been expressed by industries and consultants, however the Department cannot preclude a POTW from additional or more stringent requirements, as is the case today.

Some commenters indicated many specific areas in the proposed MISC IU GP where language could be modified. Some of these topics include registration thresholds, fees, registration forms, monitoring thresholds and requirements, certifications, etc.

Response: The Department continues to work with stakeholders during the mediation process to refine the language in the proposed MISC IU GP.

A recommendation was made that the effective date of authorization should be the date that the MISC IU GP is issued, not when the POTW approves the registration.

Response: The Department agrees with the comment when it relates to existing permittees and will revise the general permit language accordingly.

Several comments related to the proposed registration process. One recommendation was to let each POTW modify the registration form to suit their needs.

Response: The Department is willing to provide flexibility on what the registration process would be, provided that the requisite information is submitted for the POTWs to comply with RCSA Section 22a-430-3(l): discharger name, location, type of wastewater, volume and discharge characterization, including any substances added or treatment required. The Department was offering a registration form based on feedback received following their presentations to stakeholders, where business and consulting firms expressed a desire for using one registration form, for consistency and efficiency.

There were questions and comments about the Department's involvement in the registration process.

Response: The Department will continue to maintain its permitting and enforcement authority to review all pretreatment discharges, and can act on information from various sources, including POTWs.

The proposed MISC IU GP asks the registrant to certify that the wastewater shall not contain mercury, but then places a mercury limit in Table 5-1.

Response: The discharge cannot include a known source of mercury. The mercury limit in Table 5-1 is at the quantification level for mercury.

There was a request to include an annual oil & grease monitoring requirement for Vehicle Maintenance facilities.

Response: While the Department isn't requiring monitoring, the POTW always maintains the right to require additional monitoring requirements as they deem appropriate.

Does the Department have the authority to require that POTWs receive and manage the Discharge Monitoring Reports (DMR)?

Response: The Department's wastewater discharge permits currently require that permittees send copies of their DMRs to the POTW that receives their discharge. It is recommended that POTWs receive and review DMRs because DEEP has found that the requirement that registrants submit monitoring data is a very effective compliance tool. It is the POTW's decision on their review of the DMRs to the extent that it may inform the POTW authority on how to protect its infrastructure, operations, etc., in compliance with its NPDES permit.

Why is the reporting threshold in Section 5(c)(2) of the proposed MISC IU GP set at 10,000 gpd?

Response: Given that we have a different framework in categorizing process and non-process wastewaters than the current MISC GP, the Department believes that it would be more appropriate to revise the proposed MISC IU GP so that dischargers of non-process wastewaters ("Group II discharges") maintain their monitoring data on site, unless otherwise dictated by the POTW Authority; the Department believes that monitoring data for all process wastewaters should be submitted to the POTW Authority, regardless of flow.

There was an objection to POTWs receiving violation reports when the proposed MISC IU GP is issued by the Department.

Response: Consistent with the current MISC GP, the Department believes that at a minimum, certain violations must be reported to the POTW Authority. The Department would also receive these notifications. Therefore, the Department will revise the violations reporting section to reflect more closely the requirements in the current MISC GP.

The Department should receive and assist with processing registration modification requests required by Sections 5(e)(3)(A) and (B) of the proposed MISC IU GP.

Response: Submittal to the Department is not necessary. POTWs currently review such requests prior to submittal to the Department. The POTW is required to notify the Department of any new SIUs discharging to its system or discharges that are causing problems, and can seek Department assistance as needed.

It was requested that in Section 5(f)(12)(A)(i)9, the visual inspection of each oil water separator only be required for new registrations that were not previously approved by the POTW or the Department.

Response: The Department agrees and will modify the proposed MISC IU GP accordingly.

Can the Department provide a list of all vehicle maintenance facilities with collection and/or treatment systems that do not meet the specifications of Section 5(f)(12)(A)(i) or (ii) that were previously approved by the Commissioner?

Response: The Department sent copies of all of these approvals to the respective POTW Authorities. The Department will investigate how it can provide the requested list based on available information.

Clarify the future process for registrants to request minor variances from proposed MISC IU GP effluent limits.

Response: Minor variances are a slight modification of the effluent limit for a registrant. Prior to approval of the variance, the registrant must submit a request for variance. The variance is granted only when a registrant demonstrates that they have exhausted all reasonable treatment options. The effluent limit is modified only to the degree necessary to allow the registrant to comply and only with the consent of the receiving POTW.

Such variances must comply with the provisions of the general permit, including the prohibitions listed in Section 5(a)(2) and RCSA Section 22a-430-4(q).

The proposed MISC IU GP defines the term POTW Authority as the "chairperson" of the WPCA. Others should be able to approve registrations besides the "chairperson".

Response: The Department will add "...or such Chairperson's designee" to the definition of POTW Authority.

There appears to be redundancy in the POTW approval requirements. The registration requires sign-off by the POTW, but the registration is being submitted to the POTW for approval.

Response: The Department agrees to delete the redundant language. The registration will suffice as the required submittal to the POTW.

There appear to be “cut and paste” errors in the proposed MISC IU GP.

Response: The Department will correct errors that have been identified.

Some commenters had questions about which discharges would be considered Significant Industrial Users (SIUs).

Response: Determining which dischargers are SIUs depends on whether there are process wastewaters or other wastewaters that meet the definition of SIU. The Department has already identified SIUs and maintains regulatory oversight of these. It is incumbent on the POTWs to identify any other industrial users that may be an SIU as defined in the proposed MISC GP. For purposes of clarity, the Department will include the definition of process wastewater in this MISC GP, as defined in our regulations.

Include definitions for “process” and “non-process” wastewater.

Response: The Department will add the definitions.

Include a definition for treatment.

Response: The proposed MISC IU GP incorporates the regulatory definition for a treatment facility by reference to RCSA section 22a-430-3: “Treatment Facility” means a system or any part thereof the purpose of which is to improve the chemical, physical or biological quality of a waste or wastewater discharge, including pretreatment facilities discharging to a POTW.”

The Department should include provisions that will limit, cap, or structure municipal fees for these discharges.

Response: The Department does not have the authority to dictate fee structure in this manner.

Why is water treatment wastewater (WTW) a process water, whether or not it is being produced for sale or distribution?

Response: Water treatment wastewater meets the regulatory definition of process wastewater. The definition of process wastewater is not dependent on whether such water is being produced for sale or distribution.