

**State of Wisconsin
Department of Natural Resources**

**Responses to Public Comments on
Wisconsin Pollutant Discharge Elimination System (WPDES)
General Industrial Storm Water Discharge Permits**

April 2021

Recycling of Scrap and Waste Materials, General Permit No. WI-S058831-4 (“scrap recycling general permit”)

Dismantling of Vehicles for Parts Selling and Salvage, General Permit No. WI-S059145-4 (“vehicle dismantling general permit”)

On February 19, 2021, the Wisconsin Department of Natural Resources (department) public noticed the WPDES general industrial storm water discharge permits listed above. The public comment period closed on March 22, 2021.

The department received written comments from the United States Environmental Protection Agency; Dan Collins (DC); Jonathan Kusowski (JAK Environmental LLC); Darren Engbring, CCP Board of Directors (CCP); Dave Kendziorski (ARCCP Administrator); Midwest Environmental Advocates, Clean Water Action Council of NE WI Board of Directors, Nancy Aten & Dan Collins, River Alliance of Wisconsin, and the Milwaukee Riverkeeper. In this document, the department may have paraphrased or edited comments to capture the main point or to clarify a comment. Any minor corrections to typographical errors, updating page numbers and headers/footers, updating the Table of Contents and titles, and correcting formatting and web links are not included in this summary document. The acronyms and abbreviated words below used in this document have the meaning indicated:

ARCCP	Auto Recyclers Cooperative Compliance Program
CCP	Cooperative Compliance Program
DC	Dan Collins
ERW	Exceptional Resource Water
JAK	JAK Environmental LLC
MEA	Midwest Environmental Advocates
ORW	Outstanding Resource Water
SIC Code	Standard Industrial Classification Code
SWPPP	Storm Water Pollution Prevention Plan
USEPA	United States Environmental Protection Agency

Changes indicated below apply to both general permits unless otherwise indicated.

Changes Initiated by the Department

The department has **clarified** in section A.(3) that an owner or operator of a facility requiring coverage under this permit shall prepare a Storm Water Pollution Prevention Plan (SWPPP) prior to applying for permit coverage under s. NR 216.22, Wis. Adm. Code, and shall submit the SWPPP summary to the department when applying for coverage under this permit. For existing facilities that previously operated without required permit coverage and without a SWPPP as required, the owner or operator shall immediately develop a SWPPP, submit the SWPPP summary to the department when applying for coverage

under this permit, and implement the SWPPP to achieve compliance with this permit in the shortest practicable time. A facility has the option to submit their full SWPPP in lieu of the SWPPP summary when applying for coverage.

Comments by the United States Environmental Protection Agency (USEPA)

By letter dated March 19, 2021, the USEPA stated it would not object to reissuance of the general permits.

Public Comments

Comments by Dan Collins (DC)

DC Comment 1: Please include a requirement that licensed facilities must have a Wetland Delineation performed by a qualified delineator on file with the appropriate agency at their county to be in compliance with their WPDES permit. The facilities operator will exclude all use of any delineated wetlands plus a buffer of 10 feet.

Response: All permits issued by the department's storm water program are required to comply with wetland water quality standards in ch. NR 103, Wis. Adm. Code. Discharges that do not meet this requirement are not eligible for coverage under the general permit in accordance with Part A.(2)(h) of the draft general permits. Chapter NR 103, Wis. Adm. Code, sets forth the conditions to protect water quality related functions and values of wetlands including sediments and pollutant attenuation, storm and flood water retention, hydrologic cycle maintenance, shoreline protection against erosion, biological diversity, and production and human uses such as recreation. However, there is no requirement to conduct a wetland delineation in accordance with this section.

In circumstances where land disturbing construction activities may affect wetlands where a discharge of dredge or fill material is proposed, the department's Waterway Bureau has regulatory oversight over those activities as noted in Part G.(1) of the draft permits.

The department has made no changes to the draft general permits in response to this comment.

DC Comments 2: Please include a requirement that for facilities in counties determined to have karst geology features, no use of lands (vehicle storage, or scrap storage, or other purposes) occur *on soils with a depth to groundwater or bedrock if less than 24 inches, or if Springs or groundwater at ground's surface or within 100' of a direct conduit to groundwater or if wells sinkholes, swallets or fractured bedrock at the surface, or if tile inlets discharging to groundwater or if depressional groundwater recharge areas over shallow fractured bedrock, or if 200' upslope conduits to groundwater unless effectively incorporated – NRCS technical standard 590. or if 300' Surface Water Quality Management Area (SWQMA) around sinkholes* – // The prior italicized portions of Item 2 were copied from Chapter NR 243 and grammatically modified. //

Response: Chapter NR 243, Wis. Adm. Code, is applicable to large and medium CAFO facilities. Permits issued by the storm water program are intended to comply with ch. NR 140, Wis. Adm. Code. The best management practices and source area controls outlined in the permit are used by the industry to reduce, with the goal of eliminating, storm water runoff which may have contacted exposed materials at facilities classified by SIC Code 5051 or 5093 or meeting the applicability criteria in Part A. of the draft permits. If the permittee or the department becomes aware that storm water discharges do not meet the discharge limitations in Part B. of the draft general permits, the permittee shall undertake corrective actions in accordance with s. NR 216.27 (4), Wis. Adm. Code, and Part C.(2) of this permit.

The department has made no changes to the draft general permits in response to this comment.

Comments by Jonathan Kusowski, JAK Environmental LLC (JAK)

JAK Comment 1: WI-S058831-4 and WI-s059145-4 Part F (2)(f) Annual Training Requirements Mentions that individual training sessions do not meet this requirement. Suggest modifying it to state that annual training sessions can be held in person as long as it is documented. One thing that COVID has taught us is that working one on one or people working in different circumstances can still be effective. Though I agree having group and in-person training is effective, the permit changes every 5 years, with only minor modifications. During most annual meetings the information presented is similar and could easily be delivered effectively in person. Many facilities are one or two man shops and cannot afford to leave for an annual meeting. By allowing in-person meetings I suspect that the attendance would increase for all CCPs.

Response: The intent of Part F.(2)(f) of the draft general permits are to bring all members participating in a Cooperative Compliance Program (CCP) together to allow for an open exchange of members' knowledge, experience, and expertise with the other members. CCP Administrators have contacted the department to arrange alternative means to hold annual training sessions considering the circumstances that COVID-19 have presented. The department has received feedback from CCP members that find this opportunity to meet with others in the CCP a valuable experience and an opportunity for open discussion on topics that the permittee will need to perform or evaluate within the coming year. The department has updated the note in the draft version of the permits to provide additional training topics that CCPs may consider.

The department has made no changes to the draft general permits in response to this comment.

Comments by Darren Engbring, CCP Board of Directors (CCP) on the WPDES Storm Water Permit for Recycling of Scrap and Waste Materials (WI-S058831-4)

CCP Comment 1: The CCP supports changing the compliance reporting year date from late May to July 1. We believe that the annual CCP Audits and annual group training programs should be conducted towards the end of the compliance year. It is best to conduct the audits and training in the late spring and early summer.

Response: The department appreciates general comments related to changing the compliance reporting year. No changes to the scrap recycling draft general permit were made in response to this comment.

CCP Comment 2: The CCP enthusiastically supports the simplification of when visual storm water observations can be conducted. The restrictions in the previous permit were confusing to some of our members. The limits in the proposed version of the permit are fair and reasonable.

Response: The department is pleased the revised language has added clarity for CCP Members. No changes have been made to the scrap recycling draft general permit in response to this comment.

CCP Comment 3: The CCP agrees with the changes in the proposed permit regarding electronic reporting, removal of the SWPPP Summary, clarification of building floor drains and oil/water separators as non-storm water discharges, the revised list of pollution sources and BMPs to be addressed in the SWPPP, and the continued requirement for annual group training programs and CCP Annual Report submittals. Comments on Proposed Reissuance of the WPDES Storm Water Permit for Recycling of Scrap and Waste Materials (WI-S058831-4).

Response: The department has revised Part A.(3) of the draft scrap recycling permit related to submission of a SWPPP summary or a full SWPPP. The SWPPP summary is additional paperwork for permittees, so facilities that choose to submit the full SWPPP are encouraged to do so. Where a SWPPP summary is not sufficient to make a determination for coverage, the department may request that the full SWPPP be provided to the department. Please refer to changes initiated by the department regarding clarification on the SWPPP summary.

Comments by David Kendziorski, ARCCP Administrator (ARCCP) on the WPDES Storm Water Permit for Dismantling of Vehicles for Parts Selling and Salvage (WI-S059145-4)

ARCCP Comment 1: The ARCCP supports changing the compliance reporting year date from late May to July 1. We believe that the annual ARCCP Audits and annual group training programs should be conducted towards the end of the compliance reporting year. It is best to conduct the audits and training in the late spring and early summer.

Response: The department appreciates general comments related to changing the compliance reporting year. The department has made no changes to the vehicle dismantling draft general permit in response to this comment.

ARCCP Comment 2: The ARCCP enthusiastically supports the simplification of when visual storm water observations can be conducted. The restrictions in the previous permit were confusing to some of our members. The limits in the proposed version of the permit are fair and reasonable.

Response: The department is pleased the revised language has added clarity for CCP Members. The department has made no changes to the vehicle dismantling draft general permit in response to this comment.

ARCCP Comments 3: The ARCCP agrees with the changes in the proposed permit regarding electronic reporting, removal of the SWPPP Summary, clarification of building floor drains and oil/water separators as non-storm water discharges, the revised list of pollution sources and BMPs to be addressed in the SWPPP, and the continued requirement for annual group training programs and ARCCP Annual Report submittals

Response: The department has revised Part A.(3) of the draft vehicle dismantling general permit related to submission of a SWPPP summary or a full SWPPP. The SWPPP summary is additional paperwork for permittees, so facilities that choose to submit the full SWPPP are encouraged to do so. Where a SWPPP summary is not sufficient to make a determination for coverage, the department may request that the full SWPPP be provided to the department. Please refer to 'Changes Initiated by the Department' above regarding clarification on the SWPPP summary.

Comments by Midwest Environmental Advocates, Clean Water Action Council of NE WI Board of Directors, Nancy Aten & Dan Collins, River Alliance of Wisconsin, and the Milwaukee Riverkeeper (MEA)

MEA Comment 1: The permits should require major storm event preparedness as part of the SWPPP to acknowledge the impacts of more frequent and intense rainfall events expected before the permits expire. The provisions in both permits should be amended to require that facilities' SWPPP identify potential contamination during major storm or flood events and include measures to reduce that contamination, including moving sources of contamination out of the 100-year floodplain.

Response: The department's storm water program does not have direct regulatory authority over placement of materials within the floodplain. In accordance with s. NR 216.27 (2), Wis. Adm. Code, when plans are developed or activities conducted in accordance with other federal, state, or

regulatory programs that meet the requirements of this section, the plans may be incorporated in the SWPPP by reference.

Ch. NR 116, Wis. Adm. Code, applies to all municipalities and their respective jurisdictions to regulate all floodplains where serious flood damage may occur. Municipalities are required to develop maps of the areas to be regulated under this chapter and develop floodplain zoning ordinances to define proper uses in those regulated areas. Under s. NR 116.12 (1)(c) and (g), Wis. Adm. Code, respectively, storage of materials that are buoyant, flammable, explosive or injurious to human, animal, plant, fish or other aquatic life are prohibited in floodways areas. Section NR 116.13 (6), Wis. Adm. Code, provides that storage of any materials which are buoyant, flammable or explosive, or which in times of flooding could be injurious to property, water quality or human, animal, plant, fish or aquatic life, shall be either floodproofed to or placed at or above the flood protection elevation. Adequate measures shall be taken to assure that these materials will not enter the river or stream during flooding.

Subsequently, the SWPPP may be modified to reflect changes to minimum source area controls, best management practices, and good housekeeping measures where activities and materials may be present in the floodplain or incorporated by reference into the SWPPP where these conditions are present.

The department has made no changes to the draft general permits in response to this comment.

MEA Comment 2: Some discharges within Indian Country appear to be afforded coverage under the permits. The permits should be amended to clarify that permittees seeking coverage for discharges from facilities within Indian Country should contact the relevant Tribe and EPA to ensure compliance with the Clean Water Act. DNR should amend § A.(2)(k) of both permits to indicate any discharges within Indian Country are not eligible under either permit. A clarifying note could also be added directing potential permittees to contact the EPA and relevant Tribe(s) to determine what entity has storm water permitting authority for the area.

Response: The department has **amended** the language and Note associated within sections A.(2)(k) of the draft general permits to clarify storm water discharges within Indian Country are no longer eligible for coverage under the draft general permits and must contact the USEPA to apply.

MEA Comment 3: The SWPPP should be publicly available because it is an integral part of the Wisconsin Pollutant Discharge Elimination System permits. DNR should amend the permits to require that permittees who will have continuing coverage under the new general permits, including those covered under the CCP, confirm with DNR via email that they have made their SWPPP available on their own public-facing website and upload the link or the SWPPP itself to DNR's database. All facilities covered under the permits should post a publicly accessible sign indicating permit coverage and directing the public to its SWPPP.

Response: The department provides a public facing webpage for industrial facilities that have applied for coverage after October 1, 2020 where the Notice of Intent and SWPPPs are available online: <https://permits.dnr.wi.gov/water/SitePages/Permit%20Search.aspx>. The department will continue to request the SWPPP where the department deems appropriate and will make these publicly accessible. For all other industrial facilities, interested parties may contact the department to request a facility's records. However, the department may not have a SWPPP on file for every permitted facility. Department staff contact information can be accessed at the following link: <https://dnr.wisconsin.gov/topic/Stormwater/contacts.html>.

The department has made no changes to the draft general permits in response to this comment.

MEA Comment 4: Monitoring requirements should be more robust to ensure protection of surface water and

groundwater quality standards. DNR should amend the permits to require that the permittee submit photographs with its required visual observations or visual monitoring inspections and indicate that DNR will audit the inspection reports to ensure that they are meaningfully completed.

Response: The department is considering modifications to the quarterly visual inspection form to include photos and will indicate that deficiencies noted during annual facility site compliance inspections and quarterly visual inspection forms requires department notification. While the department does not require submittal of all such reports, it has the authority to request records required under the industrial subsection for all facilities covered under subch. II of NR 216, Wis. Adm. Code.

In accordance with Part C.(2) of the draft permits, facilities are required to amend and submit the SWPPP to the department within 30 days of the annual facility site compliance inspection, quarterly visual inspections, or other information reveals the provisions of the SWPPP are ineffective in controlling storm water pollutants discharged to the state.

Language has been **added** in Parts D.(4), D.(5), E.(2)(a), and E.(2)(b), of the draft general permits to reflect submission of an amended SWPPP is required if annual facility site compliance inspections, quarterly visual inspections, monthly inspections, or annual compliance audits reveal that the provisions of the SWPPP are ineffective in controlling storm water pollutants discharged.

MEA Comment 5: DNR should require annual chemical sampling to ensure compliance with surface- and groundwater quality standards, including for participants in the CCP. The DNR should amend the permits to require annual chemical monitoring for those facilities covered by a CCP, or at a minimum, require that facilities conduct annual chemical monitoring every other year and every year for facilities discharging into impaired, ORW, or ERW surface waters and discharging into the recharge zone for a drinking water well. Allowing them to conduct no chemical monitoring does not adequately protect surface or groundwater.

Response: The Cooperative Compliance Program (CCP) is a voluntary option for permittees to participate in a privately-managed program to help oversee permit compliance. The CPP option requires the permittee to comply with the following conditions:

- Receive and participate in annual training provided by the CCP operator
- Implement the CCP operator's technical assistance recommendations
- Conduct monthly self-inspections
- Participate in annual compliance audits conducted by the CCP operator
- Utilize mutually agreed upon best management practices identified for the industry

Since the CCP concept provides these regulatory and environmental benefits that may not otherwise be utilized due to cost or the level of expertise at the facility, the department provides permittee's an incentive to participate by de-emphasizing chemical monitoring.

However, if the department believes that a permittee is not in compliance with the requirements for participation in a CCP, under Part F.(2)(d) the department may terminate the permittee's membership and require compliance with the non-CCP chemical monitoring provisions of the general permit. Additionally, the department may make a determination under Part A.(2)(e) of the general permit that a storm water discharge is more appropriately covered under an individual WPDES permit, in which case more extensive chemical monitoring may be required on a case-by-case basis.

The department currently requires annual chemical monitoring for those not participating in a CCP and has added the requirement that Total Phosphorus be included with annual chemical storm

water sampling in the draft version of the permits.

The department has made no changes to the draft general permits in response to this comment.

MEA Comment 6: DNR should require that the facilities authorized under this permit also comply with DNR's regulations related to wetlands.

Response: Under s. 281.36 Wis. Stats., the department regulates the discharge of dredge or fill material into wetlands where not exempted by state statute. These discharges require authorization by the department's Waterway Bureau, and where federal wetlands are present, permits or authorizations from the United States Army Corps of Engineers – St. Paul District may also be needed. If a discharge is proposed, the department may require a wetland delineation in order to comply with s. 281.36(3b)(b), 281.36(3g)(d) or 281.36(3g)(h)1., Wis. Stats. The draft permit outlines these general conditions in Part G.

The base drainage map required as part of the SWPPP requires dischargers depict how storm water drains on, through and from the facility to groundwater, surface water or wetlands; the location of outfalls that discharge channelized flow to these resources; and the location of activities and materials that have the potential to contaminate storm water.

Where necessary, and through the conditions of Part C.(2), any modifications to the SWPPP shall be submitted to the department within 30 days.

The department has made no changes to the draft general permits in response to this comment.

MEA Comment 7: DNR should harmonize the language in the general permits with the proper standard for an anti-degradation analysis. DNR should amend the Auto Dismantling Permit §§ B(2)(c)-(e), B(4)(b)-(d) and Recycling Permit §§ B(2)(c)-(e), B(4)(b)-(d), (c)(1)(j) to mirror the anti-degradation language in DNR's regulations and the federal regulations by including the word "necessary" rather than "related to" and to clarify that the permittee must demonstrate that this discharge is necessary to accommodate important economic or social development in the area in which the waters are located and that water quality remains adequate to protect existing uses fully.

Response: The department has **amended** the language in Part B.(2)(d), B.(2)(e), and B.(4)(d) of the draft general permits from 'related to' to 'will accommodate' to reflect the applicable anti-degradation language of ch. NR 207, Wis. Adm. Code. Chapter NR 207, Wis. Adm. Code, establishes the antidegradation policy for chs. NR 102 and NR 104, Wis. Adm. Code. The draft permits include language which establish how discharges are to be evaluated to ensure that the discharge of pollutants is equal to or less than existing levels of pollutants immediately upstream of the discharge site and requires permittees to include practices designed to meet this requirement in the SWPPP. Adherence to this condition affords that water quality remains adequate in the receiving water body to protect existing uses fully for ORW and ERW waters. The draft permits also require discharges to Fish and Aquatic Life Waters may not establish a new discharge of pollutants or increase the discharge of pollutants if the discharge will result in a significant lowering of water quality which also ensures water quality remains adequate to protect existing uses.