

Briefing Memorandum

STATEMENT OF BASIS FOR THE ISSUANCE OF A NPDES PERMIT

Name and Address of Applicant:

Sokaogon Chippewa Community
3051 Sand Lake Road
Crandon, Wisconsin 54520

Name and Address of Facility Where
Discharge Occurs:

Sokaogon Chippewa Community
Wastewater Treatment System (SCC WWTS)
3000 Ackley Circle
Crandon, Wisconsin 54520
(SW ¼ of Section 28, T35N, R12E)

Permit No.: WI-0071501-1

Receiving Water: Wetland 22 via hydrologically connected ground water

DESCRIPTION OF APPLICANT'S FACILITY AND DISCHARGE

The above-named applicant has applied for an NPDES Permit to discharge into the designated receiving water. The facility is located within the exterior boundaries of the Mole Lake Indian Reservation. The permit will be issued by the U.S. Environmental Protection Agency.

The application and plans indicate that the permittee owns and operates a 0.09 mgd wastewater treatment system. The system consists of fine screening followed by septic tanks (2 primary and 2 secondary), recirculating sand filter beds (4) and ultraviolet disinfection. The discharge is continuous to a subsurface discharging system. The subsurface discharge is 50 feet from the edge of a wetland on the Mole Lake Indian Reservation. This facility replaces the Community's existing system. Sludge generated at the facility is hauled offsite by a private hauler and land applied. The treatment system serves the Community and Casino/Hotel.

Limitations and Monitoring Requirements

The draft permit requires the applicant to meet the following effluent limitations:

Parameter	Date	30-Day Average	7-Day Average	Daily Minimum	Daily Maximum
CBOD ₅	All Year	20 mg/L	30 mg/L	NA	NA
Total Suspended Solids	All Year	20 mg/L	30 mg/L	NA	NA
Ammonia as N	All Year	NA	NA	NA	9.87 mg/L
pH	All Year	NA	NA	6.5 S.U.	8.5 S.U.
E-Coli	May 1- October 31	126 E. coli/100 ml*	NA		

Loading limits in the permit were calculated using the following formula based on the design flow:

$0.09 \text{ mgd} \times \text{limit (mg/l)} \times 8.34 = \text{Loading (lbs/d)}$.

Basis for limits

As stated above, the facility discharges its effluent through a subsurface drainage system. EPA would not normally require a NPDES permit for a subsurface discharge. The Clean Water Act does not directly answer the question of whether a discharge to surface waters via hydrologically connected ground water is unlawful. However, given the broad construction of the terms of the CWA by the federal courts and the goals and purposes of the Act, the Agency believes that while Congress has not spoken directly to the issue, the Act is best interpreted to cover such discharges. The statutory terms certainly do not prohibit the Agency's determination that a discharge to surface waters via hydrologically-connected ground waters can be governed by the Act, while the terms do clearly indicate Congress' broad concern for the integrity of the Nation's waters. Section 301(a) of the CWA provides that "the discharge of any pollutant [from a point source] by any person shall be unlawful" without an NPDES permit. The term "discharge of a pollutant" is defined as "any addition of a pollutant to navigable waters from any point source." 33 U.S.C. Sec. 1362(12). In turn, "navigable waters" are defined as "the waters of the United States, including the territorial seas." 33 U.S.C. Sec. 1362(7). None of these terms specifically includes or excludes regulation of a discharge to surface waters via hydrologically connected ground waters. (Please also see Federal Register, vol. 66, No. 9, Fri., January 12, 2001, pp. 3015-3020 for additional discussion.) In this case, EPA believes that with the close proximity of the wetland to the subsurface discharge location (roughly 50 feet) and the design of the subsurface drainage system, there will be a direct hydrological connection to the wetland and as such, would act like a direct discharge to the wetland.

The effluent limits in the permit were developed to protect the wetland and to ensure compliance with 40 CFR Part 133, the Sokaogon Chippewa Community's (SCC's) federally approved water quality standards (WQS) within the Mole Lake Indian Reservation and Wisconsin water quality standards where they are applicable. Also, EPA has moved in the direction of using E. coli, which is a better indicator of recreational suitability, instead of fecal coliform. The 30-day average limit for E. coli is based on EPA's water quality criteria. The daily maximum ammonia-N limit is based on protecting the acute criteria at the maximum pH level allowed by the permit. Though the actual average effluent pH level discharged by the facility should be lower, the maximum pH limit in the permit is 8.5 S. U., which is more stringent than EPA's secondary treatment standards. The permit also requires monitoring for total phosphorus and dissolved oxygen.

Antidegradation

Though this facility is replacing an existing subsurface discharge, it is designed to treat more wastewater. As such, SCC's WQS require that an antidegradation demonstration application be submitted to and approved by SCC Tribal Authorities prior to permitting the facility. SCC Tribal Authorities consists of the SCC Environmental Director and the SCC Natural Resources Board. The antidegradation demonstration application was submitted by the permittee on October 15, 2010, in accordance with the procedures found in the SCC's WQS (Section IV.B.2). In accordance with Section IV.B.4 of SCC's WQS, Tribal Authorities issued a preliminary Antidegradation Decision and then held a public meeting regarding the preliminary decision on December 1, 2010. Tribal Authorities issued a Final Antidegradation Decision on December 2, 2010, which states that "because the facility will treat wastewater from residential and

commercial facilities currently served by outdated and/or inefficient wastewater treatment technologies, and because the facility will also allow for treatment of additional wastewater to be generated from the anticipated residential growth, the operation of this Wastewater Treatment Facility will result in positive socio-economic benefit to the Tribe and will also result in improved water quality in the areas of current inadequate wastewater treatment” and “the overall water quality in the Wetland 22 complex may be lowered, but this potential water quality lowering is justified by anticipated benefits to the Tribe and to the water resources.” This decision is solely for purposes of satisfying SCC water quality regulations and is not intended to supplant local requirements, including land use or zoning laws. It is not, and should not be construed as, a finding by Tribal Authorities that the proposed development meets local requirements or ordinances.

Section 401 Water Quality Certification

Where states or tribes have federally approved water quality standards that are applicable at the point of discharge, federal NPDES permits cannot be issued unless water quality certification for the discharge is granted or waived pursuant to Section 401 of the Clean Water Act. The tribal Section 401 authority within the Mole Lake Reservation is SCC Tribal Authorities. EPA has provided a copy of the permittee’s NPDES permit application and a copy of the draft NPDES permit to Tribal Authorities. If Tribal Authorities needs any additional information in order for the Section 401 application to be considered complete, Tribal Authorities will request such information from the permittee. It is the permittee’s responsibility to ensure that Tribal Authorities has received a valid, complete application for tribal Section 401 certification and to obtain a final Section 401 action from Tribal Authorities.

The SCC Environmental Department (SCCED) has indicated that they have public noticed the application for Section 401 water quality certification under Tribal Rules on November 22, 2010. The SCCED has also indicated that Tribal Authorities will provide Section 401 certification or conditions for certification to EPA during the public notice period for this NPDES permit action. It should be noted that the this permit may be republic noticed based on the conditions for Section 401 certification provided Tribal Authorities.

Special Conditions

1. The treatment plant shall be operated by certified operator for the class of wastewater treatment provided.
2. EPA has determined that the residual material to be removed from the septic tanks meets the federal definition of domestic septage, and therefore will be treated as such. The applicant is required to dispose of the domestic septage in a manner that is consistent with 40 CFR part 503; “Standards for the Use or Disposal of Sewage Sludge” as it applies to domestic septage. If the septage is disposed of outside the reservation boundaries, Wisconsin regulations (Administrative Rule ch. NR 113) will also have to be complied with.
 - i. The following sites have been identified by the permittee as sites that could be used for the land application of domestic septage by the permittee’s hauler.

WDNR #	Site Owner	QQQ	QQ	Q	Sec	Township	Range	Town
80704	Deward Ison (DI 1)	W	SW	SW	14	35N	12E	Nashville
80709	Deward Ison (DI 2)	E	NE	NE	22	35N	12E	Nashville
28667	Dave Jansen (DJ 1)	E	SE	NE	34	34N	12E	Ainsworth
26897	Dave Jansen (OL 1)	NW	SW	NW	35	34N	12E	Ainsworth

- ii. The permittee shall maintain adequate records of the quantities of domestic septage removed from the treatment plant's septic tanks and land applied or disposed of by a different method and have said records available for EPA inspection.
3. The permit contains Industrial Waste Pretreatment Program requirements in accordance with 40 CFR Parts 122 and 403.
4. To assure that the water quality of the hydrologically connected downstream wetlands is maintained, monitoring is required to demonstrate that the ground water discharge does not adversely affect the integrity of the wetlands. Monitoring results are intended to document that the discharge does not have a significant impact on the downstream wetlands. The permittee shall submit as soon as possible but no later than 90 days from the effective date of the permit, a wetland protection/monitoring plan for review and approval by EPA.

ESA and NHPA Compliance

EPA believes it has satisfied its requirements under the Endangered Species Act and the National Historical Preservation Act. It is believed that the issuance of the permit and the continued operation of the facility will have no effect on endangered or threatened species or their critical habitat and will have no impact to historical, archeological, or cultural resources.

The permit is based on an NPDES application dated July 10, 2009, and additional documents found in the administrative record.

This permit will be effective for approximately five years from the date of issuance as allowed by regulation.

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