

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

Item No. 3.A.1.

SUBJECT:

Request adoption of Board Order WT-13-12, proposed rules affecting chapters NR 200, 201, 203, and 205 related to the Wisconsin Pollutant Discharge Elimination System (WPDES) permits.

FOR: January 2015 Board meeting

PRESENTER'S NAME AND TITLE: Susan Sylvester, Water Quality Bureau Director

SUMMARY:

The proposed rule revisions relate to the Wisconsin Pollutant Discharge Elimination System (WPDES) permit program that regulates wastewater discharges. In a July 18, 2011 letter the U.S. Environmental Protection Agency (EPA) identified 75 potential issues with Wisconsin's statutory and regulatory authority for the WPDES permit program. EPA directed the department to either make rule changes to address the inconsistencies between federal and state requirements or obtain a statement from the Attorney General's Office verifying that the state's existing rule is consistent with federal regulations.

The effort to address the 75 issues was divided into 8 rule packages, with each package having a common theme. Rule package 6 addresses EPA's concerns for 13 of the 75 issues related to WPDES permit processing and other permit issuance procedural matters. Rule Packages 1 and 2 have been completed and are in effect; and 3, 4, 5, 7, and 8 are being drafted. The department is required to make these rule changes so the Natural Resources Board action is necessary on rule package 6 and the other related rule packages in the future.

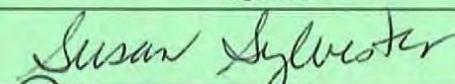
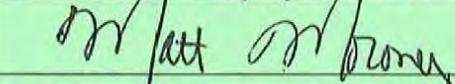
Chapters NR 200, 201, and 203, Wis. Adm. Code, relate to permit processing and permit issuance procedures. Chapter NR 205, Wis. Adm. Code, contains general provisions applicable to the WPDES permit program. The proposed rule changes will ensure that state regulations are consistent with federal regulations, as well as recent statutory revisions in 2011 Act 157. The rule changes will establish clear regulatory requirements for the processing of WPDES permits. Minor clarifications and corrections will also be made to these chapters.

The statement of scope for this rule was approved by the Governor on May 29, 2012, published in Register 678 on June 14, 2012, and approved by the Natural Resources Board on June 27, 2012. From November 4 to December 4, 2013 the department solicited comments and participation on the economic impact analysis. No comments were received. The rule is a level 3 - little to no economic impact is expected. A notice for public hearing was posted March 12, 2014, and the hearing was held May 1, 2014. No one appeared in person at the hearing but two written comments were received.

RECOMMENDATION: That the Board adopt the revisions to chapters NR 200, 201, 203, and 205.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- | | |
|---|---|
| <input checked="" type="checkbox"/> Background memo | <input type="checkbox"/> Attachments to background memo |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input checked="" type="checkbox"/> Response to comments summary | <input checked="" type="checkbox"/> Board order/rule |

Approved by	Signature	Date
Susan Sylvester, Water Quality Bureau Director		12/22/14
Russell Rasmussen, Water Division Administrator		12/23/14
Cathy Stepp, Secretary		1/8/15

cc: Laurie Ross - AD/8
Paul Luebke - WY/3

Robin Nyffeler - LS/8
Julia Riley - WY/3

Linda Haddix - LS/8

CORRESPONDENCE/MEMORANDUM

DATE: December 11, 2014

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on Board Order WT-13-12, Rule Package 6 of the EPA 75 issues letter relating to Wisconsin Pollutant Discharge Elimination System (WPDES) permits.

1. Subject of Proposed Rule:

Chapters NR 200, 201, 203, and 205, Wis. Adm. Code, which contain the department's authority to administer the Wisconsin Pollutant Discharge Elimination System (WPDES).

The proposed rules revisions address inconsistencies with federal regulations. In addition, revisions were made to include recent statutory revisions in 2011 Act 167 that pertain to permit processes, plus other minor clarifications and corrections.

2. Background:

Rule Package 6 contains revisions to create, repeal, and amend parts of chs. NR 200, 201, 203, and 205, Wis. Adm. Code. All four codes relate to the WPDES wastewater permit program regarding permit drafting and permit issuance procedures for public participation.

3. Why is the rule being proposed?

US EPA Region 5 sent the department a letter July 18, 2011, which identified 75 potential inconsistencies or gaps with Wisconsin's statutory and regulatory authority for implementing the National Pollutant Discharge Elimination System (delegated to Wisconsin in 1974). The effort to address the 75 issues was divided into 8 rule packages, with each package having related issues. The primary purpose of the Rule Package 6 revisions is to establish clear regulatory requirements for the processing of WPDES permits to make them consistent with the federal regulations. Pursuant to Wis. Stats. chapter 283, our rules must be consistent with the federal regulations.

Coincidentally, with the effort to draft rule revisions to address EPA's issues, the proposed rule revisions also address recent Wisconsin statutory revisions in 2011 Act 167 that pertain to permit processes, as well as some other minor clarifications and corrections.

4. Summary of the rule.

This rule package addresses the following topics:

- NR 200: Application for a WPDES permit. A new section was added that details the preparation of a draft permit for public notice.
- NR 201: Contents of the permit fact sheet. Recreated the rule because numerous revisions were needed to eliminate inconsistencies with federal regulations and state statute, and so it includes a complete description of the discharge and rationale for the permit requirement.
- NR 203: Public participation procedures. Revisions clarify the reasons for permit actions and procedures to process permit reissuances, modifications, and terminations. Also included were provisions from Act 167 to clarify the contents of the public notice, and to reflect broader use of electronic media.
- NR 205: Standard requirements and general permits. Revisions clarify existing language and a few conditions were added that were previously missing.

5. How does this proposal affect existing policy?

The proposed rule revisions will make Wisconsin's rule consistent with federal regulations and 2011 Act 167.

6. Has Board dealt with these issues before?

Yes. At the January 25, 2012 Board meeting an informational update was given on the department's response to EPA's letter of July 18, 2011, which identified 75 potential inconsistencies in Wisconsin's legal authority to administer the WPDES permit program. The department responded to EPA with a proposal to address the inconsistencies in a letter October 14, 2011. And a meeting was held with EPA December 15, 2011, in which EPA requested a more detailed schedule to reconcile the inconsistencies.

At the June 27, 2012 Board meeting the Board was requested to approve the scope statement for WT-13-12. Other rule packages to address the 75 issues are at different stages in the rule making process.

7. Who will be impacted by the proposed rule? How?

The following groups may be interested in the rule changes:

Municipal wastewater treatment systems with individual or general WPDES permits.

Industries and CAFO's with individual or general WPDES permits.

Members of the public that submit comments on proposed WPDES permit actions.

Because the rules impact the procedures on how the department processes WPDES permits and related actions, and incorporates statutory requirements in 2011 Act 167, no impact to the permittees and the public is expected.

8. Soliciting public input on economic impact synopsis

The department's determination is that proposed Rule Package 6 will not have an economic impact, and we do not anticipate any entity will be economically affected. The requirements of this rule package establish permit processing procedures that are implemented by the department and affect the department staff, not the permit applicants. The solicitation notice for comments on the economic impact analysis was posted on November 4, 2013. The department has not received any comments or requests for information about Rule Package 6.

9. Environmental Analysis

No environmental impact. The rules all relate to administrative procedures.

10. Small Business Analysis

None, the requirements of this rule package affect the department not the permit applicants.

11. Public Hearing and Comment Received

The notice for public hearing was dated March 12, 2014. A public hearing was held May 1, 2014 in Madison. No one appeared in person. Two comment letters were received during the comment period that concluded Mar 12, 2014. The Wisconsin Legislative Council Rules Clearing House provided comments April 8, 2014. Refer to attached document entitled "Response to Comments on Rule Package 6" for a summary of the comments received and the department's response.

Since the public notice of the rule package the department made a few minor corrections and clarifications to three subsections in NR 205.08 that should have been included in the initial draft of the rule. The changes are consistent with the scope statement and are not substantive. The changes

were made to be consistent with recent changes in s. 283.39, Stats., and the federal regulations. These minor corrections and clarifications include:

Amended the following introduction and paragraphs:

NR 205.08 (intro) - Replaced “suspended or revoked” with the correct expression “revoked and reissued, or terminated”.

NR 205.08 (8) (a) - Included an alternative to the newspaper public notice in all counties where a discharge may occur, by adding “or in the official state newspaper and on the department’s Internet Web site. This is consistent with s. 283.39, Stats. and the current department practice.

NR 205.08 (8) (h) - Added the “U.S. fish and wildlife service” to the permit distribution list to be consistent with federal regulations.

NR 205.08 (8) (j) - Replaced “revocation or suspension” with the correct expression “termination”.

NR 205.08 (9) (a) - Corrected an error in a statutory reference.

NR 205.08 (9) (b) - Replaced “suspension or revocation” with a reference to the relevant procedural requirements.

NR 205.08 (10) (a) and (e) - Replaced “suspension” with the correct expression “termination”, and added “reissue” and “revoke and reissue” that are actions that need to be included.

Created the following paragraph:

NR 205.08 (8) (k) - Added language regarding mailing requirements and the use of the department’s Internet Web site, which is also included in s. NR 203.02 (4) (f), and is consistent with s. 283.39, Stats.

A minor correction was also made to the recreated ch. NR 201, with the deletion of paragraph (e) in s. NR 201.02 (12). This subsection addresses supplemental attachments to the fact sheet, and (e) required the attachment of land application or land treatment management plans, if applicable. These plans may be very large documents and outside the purpose of the fact sheet. The following paragraph (f) for the ground water evaluation would be the appropriate place for any discussion about management plans. There’s no need to attach the management plans, but these documents can be referred to.

Response to Comments on Rule Package 6

Wisconsin Legislative Council Rules Clearinghouse

All suggested changes were made except for the following:

- 2.b. Paragraph (h) of s. NR 201.02 (12) was changed to a new sub. (13), but the “section” reference is still appropriate because the information that may be omitted applies to the entire section not just sub. (12). The language in sub. (13) was revised to indicate what items are typically included in the public notice that may likely be omitted from the fact sheet.
- 5.a. The language identified to be edited in s. NR 200.11 (2) wasn’t made. It’s correct as written, and is in accordance in 40 CFR 124.6 (b), which EPA instructed the department to include.
- 5.h. Instead of defining what a “small group” is under s. NR 203.05 (1) (e), the expression was removed and replaced with “fewer than 5 persons”.
- 5.i. Specifying in s. NR 203.05 (2) (d) how the department will determine whether “there is significant public interest in the permit application” in deciding on whether an informational hearing is needed will not be included in the rule as suggested. It would be difficult to define what is significant and would eliminate any flexibility in making this determination. In the past, questions on whether a hearing should be held have not been a problem. A petition signed by 5 persons under s. NR 203.05 (2) (c) is a relatively easy threshold to show public interest for when a hearing must be held.
- 5.l. Clarification was requested on this sentence. None is needed. The code reference s. NR 203.015 contains the information about the exemption “without a draft permit or public review”. It’s unnecessary to repeat that here.
- 5.m. The question of “to whom is the notice provided?” ... is addressed in the following sentence in the reference to s. NR 200.11.
- 5.q. The comment was to replace phrase “in accordance with” and instead use “under”. Three changes were made. But, this change wasn’t always appropriate as it depends on the specific sentence where it’s used. The existing rule language used “in accordance with” twice at s. NR 203.02 (k) and s. NR 203.03 (1), but it wasn’t changed because it wouldn’t read right.

Public Hearing and Written Comments Received

The public informational hearing was held as scheduled on May 1, 2014, in room 313 of the Natural Resources Building in Madison. Paul Luebke and Mike Lemcke (hearing examiner) were present during the designated time for the hearing from 10:00 a.m. until noon. No one appeared at the hearing and it was closed at noon.

Two written comments were received during the comment period that concluded May 12, 2014. Their comments and the department's response are provided below.

Stafford Rosenbaum Attorneys:

1. Revisions to the Signatory Requirement.

Comment - The rules should maintain a municipality's ability to authorize an individual to submit an application, as is allowed for corporate signatories, instead of the change that limits individuals that can sign on behalf of a municipality. The process for delegation also needs to be included similar to corporations.

Response - The department agrees and revised s. NR 205.07 (1) (g) by making the municipal requirements equivalent to the corporate, and clarified what the process is for a duly authorized representative.

2. Revision to the Threshold for a Request for Public Information Hearing.

Comment - The department changed the criteria for when a public information hearing is required that's inconsistent with s. 283.49 (1) (b), Stats. An unnecessary change was made by including language for a petition from "a small group", and then the term is undefined.

Response - The department agrees and revised s. NR 203.05 (1) and (2) to correct the language.

3. Statutes Interpreted.

Comment - In the citation of statutes interpreted in the board order, ss. 285.61 and 285.62, Stats. were identified. This statute relates to air permits so it's unclear why they're listed in the citation.

Response - The reference to the statutes related to air permits was a mistake and will be corrected.

Wisconsin Electric Power Company:

1. Clarification of Language in s. NR 203.135 (5) (b).

Comment - Use of the adjective "unmodified" has the potential to create confusion about the permit, and suggest it be replaced with "existing". Use of existing would also be consistent with the other uses of existing in this paragraph.

Response - The department agrees with the suggested change.

2. Scope of Proposed Change to s. NR 203.136 (1) (c).

Comment - An objection is made to the inclusion of "a decision or stipulation from a contested case hearing" as a reason to reopen a permit for modification. The reason being an administrative law judge does not have the authority to stay or remand a DNR rule in a contested case process.

Response - Clarifying language was added to address this comment. The Department concurs that an administrative law judge does not have the authority to change or stay a standard in a rule or statute. The intent of the proposed rule language was to acknowledge that an administrative law judge can

direct a permit modification that complies with promulgated rules or existing statutes. In its comments, We Energies concurs that an administrative law judge has the authority to direct a change to the permit. Consequently, paragraph (c) was revised and a separate paragraph (d) was created to clarify that administrative law judges can direct changes to permit terms and that an order from an administrative law judge (or other judicial entity or a stipulation) can be the basis for modifying a permit. If the permittee believes an administrative law judge has exceeded statutory or regulatory authority in its decision directing a permit modification, the permittee can challenge the administrative judge's decision through judicial review.

3. Change in Description of Authorized WPDES Signatory in s. NR 205.07 (1) (g) 2.

Comment - The duly authorized representative who may be delegated authority must have overall operational authority for the facility or overall responsibility for environmental matters for the company. Because environmental matters may be the responsibility of several individuals, specific reference should be made to WPDES instead of the more generic use of environmental matters.

Response - The Department agrees with the suggested change.

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

NR 200, NR 201, NR 203, and NR 205

3. Subject

Regulatory requirements for the processing of WPDES permits

4. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

None

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

The primary purpose of these rule additions and amendments is to establish clear regulatory requirements for the processing of WPDES permit. In a letter dated July 18, 2011, U.S. Environmental Protection Agency (EPA) identified 75 potential issues with Wisconsin's statutory and regulatory authority for the WPDES permit program. EPA directed the department to either make rule changes to address this inconsistency or obtain a statement from the Attorney General's Office verifying that the existing rule is consistent with federal regulations. The department believes adoption of these rule changes (referred to as Rule Package 6) will address EPA's concerns for 13 of the issues.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

We do not anticipate that any of these groups will be economically affected by this rule package.

11. Identify the local governmental units that participated in the development of this EIA.

Not applicable.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

Not applicable. The requirements of this rule package are directed at the WDNR, and will not affect permit applicants.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The department will be in compliance with EPA regulations.

14. Long Range Implications of Implementing the Rule

The department will be in compliance with EPA regulations and will maintain its regulatory authority for WPDES permit programs.

15. Compare With Approaches Being Used by Federal Government

The department rules will be consistent with existing federal regulations with the revisions contained in this rule package. No proposed federal regulations are applicable; none were mentioned in EPA's letter containing the 75 issues the department needed to address.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)
All the other U.S. EPA Region 5 states (Illinois, Indiana, Michigan, Minnesota and Ohio) are subject to the U.S. EPA regulations that are delegated to the states for implementation. Wisconsin's rules for permit processing and other permit issuance procedures should essentially be the same as the other states.

17. Contact Name
Paul W. Luebke

18. Contact Phone Number
(608) 266-0234

This document can be made available in alternate formats to individuals with disabilities upon request.

**State of Wisconsin
Department of Natural Resources**

**NOTICE OF SUBMITTAL OF PROPOSED RULE TO
LEGISLATIVE COUNCIL RULES CLEARINGHOUSE**

The statement of scope for this rule, WT-13-12 was approved by the governor on May 29, 2012, published in Register No. 678, on June 14, 2012, and approved by the Natural Resources Board on June 27, 2012.

Date Submitted to the Rules Clearinghouse: March 12, 2014

Board Order No.: WT-13-12

Subject: Wisconsin's authority to administer the Wisconsin Pollutant Discharge Elimination System.

Administrative Codes: chs. NR 200, 201, 203, and 205

Date of Public Hearing: May 1, 2014

Name and Organizational

Unit of Agency Contact: Linda Haddix – Legal Services, (608) 266-1959

Approved by:

Cathy Stepp, Secretary
Department of Natural Resources

Report to
Legislative Council Rules Clearinghouse
NR 200, 201, 203, and 205, Wis. Adm. Code
Natural Resources Board Order No. WT-13-12
Final Rule Proposal for Adoption

Wisconsin Statutory Authority

Section 227.11, Stats. - Administrative Procedure and Review

Sections 283.11, 283.31, 283.37, 283.39, and 283.41, Stats. - Pollutant Discharge Elimination

The primary purpose of this proposed rule package is to incorporate specific federal National Pollutant Discharge Elimination System (NPDES) permit procedures and requirements that apply to the Wisconsin Pollutant Discharge Elimination System (WPDES) permit program, and to include new permit processing requirements for the WPDES permit program in 2011 Act 167. Wis. Stat. s. 283.11(1) states that the Department shall promulgate by rule effluent limitations, standards of performance for new sources, toxic effluent standards or prohibitions and pretreatment standards for any category or class of point sources established by the U.S. Environmental Protection Agency and for which that agency has promulgated any effluent limitations, toxic effluent standards or prohibitions or pretreatment standards for any pollutant. Subject to a few exceptions, Wis. Stat. s. 283.11(2) further states that rules must comply with and not exceed federal law and regulations. Wis. Stat. s. 283.11 clearly provides rulemaking authority for the majority of this rule package. Additional authority is discussed below.

Wisconsin Stat. 283.37(1) specifies that the Department shall promulgate rules relating to applications for permits under this chapter which shall require at a minimum that every owner or operator of a point source discharging pollutants into the waters of the state shall have on file either a completed permit application on forms provided by the Department or a completed permit application under section 13 of the rivers and harbors act of 1899, 33 USC 407 or under the federal water pollution control act, as amended, 33 USC 1251 to 1376. This statutory provision provides rulemaking authority related to permit applications.

Wisconsin Stat. ss. 283.39 (1) and s. 283.41 state that the Department shall promulgate by rule procedures for providing notice of permit applications and permit actions.

In addition, Wis. Stat. s. 283.31(3) and (4) states that the Department may issue a permit upon condition that the permit contains limitations necessary to comply with any applicable federal law or regulation and state water quality standards. Wis. Stat. s. 283.13(5) states that the Department shall establish more stringent limitations than required under subs. (2) and (4) (technology based requirements) and shall require compliance with such limitations in any permit issued, reissued or modified if these limitations are necessary to meet applicable water quality standards, treatment standards, schedules of compliance or any other state or federal law, rule or regulations. All of these explicit statutory requirements in combination with s. 227.11(2) provide the Department with authority to promulgate rules that are consistent with federal regulations.

Finally, the following list of sections in Chapter 283, Wis. Stats. in combination with s. 227.11(2), Wis. Stats., provides the Department with authority to promulgate rules that are consistent with federal regulations.

<u>Wis. Stats.</u>	<u>Description</u>
283.49	Public hearing.
283.45	Fact sheets.
283.53	Permit duration, modification, revocation and reissuance.
283.63	Review of permits, decisions, terms and conditions.

Federal Authority

The Federal Water Pollution Control Act also known as the Clean Water Act, 33 U.S.C 1251.

40 CFR Part 122 - EPA Administered permit program the National Pollutant Discharge Elimination System

40 CFR Part 124 - Procedures for decision making

Comparison of Adjacent States

All the other U.S. EPA Region 5 states (Illinois, Indiana, Michigan, Minnesota and Ohio) are subject to the U.S. EPA regulations that are delegated to the states for implementation. Wisconsin's rules for permit processing and other permit issuance procedures should essentially be the same as the other states.

Court Decisions Directly Relevant

None.

Analysis of the Rule - Rule Effect - Reason for the Rule

The purpose of the proposed rule changes is to ensure that the state's regulations are consistent with federal regulations as well as recent statutory revision in 2011 Act 167. The rule changes will establish clear regulatory requirements for the processing of WPDES permits. Minor clarifications and corrections will also be made to these chapters.

Specifically, the proposed rule package will address EPA's issues with the state authority regarding permit processing issues and other permit issuance procedural matters. In a letter dated July 18, 2011, the U.S. Environmental Protection Agency (EPA) identified 75 potential issues with Wisconsin's statutory and regulatory authority for the WPDES permit program. EPA directed the department to either make rule changes to address this inconsistency or obtain a statement from the Attorney General's Office verifying that the existing rule is consistent with federal regulations. The department believes adoption of these rule changes (referred to as Rule Package 6) will address EPA's concerns for 13 of the issues. The item number of the applicable EPA issue is indicated in each rule section that addresses an EPA issue.

Following is a brief summary of changes to NR 200, NR 201, NR 203, and NR 205, Wis. Adm. Code:

Chapter NR 200 - This chapter contains the requirements for permit applications and water quality standards variances. A new section was created to add the federal regulations for the preparation of a draft permit after the receipt of a complete application, which were lacking in the rule as cited in EPA issue 65.

Chapter NR 201 - This chapter contains the requirements for the contents of the fact sheet for WPDES permits. Because of several changes needed to update the existing rule this chapter was repealed and recreated. It now includes all the federal regulations to address EPA issues 21 and 66. It is also consistent with s. 283.45, Stats. A note states that if the public notice includes some of the information specified in the fact sheet it may be omitted from the fact sheet because it is more appropriate in the public notice (decision to issue or deny a permit and the beginning and end dates of the comment period). The recreated rule was written compliant with the format procedures for drafting rules that the existing rule did not follow.

Chapter NR 203 - This chapter contains the processes for public noticing a draft permit, informational hearing, final determination to issue or deny a permit, and public adjudicatory hearing. Following are the significant changes to this rule:

- The rule was revised to address EPA issues 3, 22, 50, and 51 to be consistent with federal regulations. This consists of language clarifying the processes for permit actions (modifications, revocation and reissuance, or termination), identifying the causes for permit actions, the notification of government agencies and others, and public informational hearing requests.
- The rule was revised to address 2011 Act 167 changes to ch. 283 and ch. 285, Stats., and changes initiated by the department to clarify public notice procedures. This consists of language to identify what is to be included in the public notice, allows use of the department's Internet Web site to post public notices and documents, proposed variances to water quality standards may be included in the public notice, the term notification replaces circulation to reflect the broader use of electronic media, and permit actions related to substantial changes to concentrated animal feeding operation nutrient management plans.

Chapter NR 205 - This chapter contains WPDES program definitions, general conditions applicable to WPDES permits, and requirements for the issuance of WPDES general permits. The rule was revised to address EPA issues 18, 45, 47, 48, 49, and 62 to be consistent with federal regulations. This consists of

language that added termination of the permit for certain violations, replaced the use of the term suspension with termination, clarified the signatory requirements for permit documents, revised the reporting requirements for facility changes, and added general conditions that permit compliance constitutes compliance for purposes of enforcement and affirmative defense.

Agency Procedures for Promulgation

Preparation of the rule package was conducted in conformance with the Wisconsin Legislative Council "Administrative Rules Procedures Manual" dated November 2011.

The department held one public hearing on May 1, 2014 to solicit public comments regarding the proposed changes to chs. NR 200, 201, 203, and 205. No one appeared at the hearing but two written comments were received. After reviewing submitted comments, a few minor changes to the rule were made in response to the comments, plus some minor revisions initiated by the department to provide clarification in a few sections. The final proposed rules changes are then presented to the Natural Resources Board for approval and final promulgation.

Description of any Forms (attach copies if available)

Not Applicable

Name and Telephone Number of Agency Contact

Paul W. Luebke
608-266-0234
Paul.Luebke@wisconsin.gov

Wisconsin Department of Natural Resources
Bureau of Water Quality, WQ/3
101 South Webster Street
P.O. Box 7921
Madison, WI 53707-7921

Date

November 24, 2014

**ORDER OF THE STATE OF WISCONSIN
NATURAL RESOURCES BOARD
REPEALING, RENUMBERING, AMENDING, REPEALING AND RECREATING,
AND CREATING RULES**

The statement of scope for this rule, WT-13-12, was approved by the Governor on May 29, 2012, published in Register 678 on June 14, 2012 and approved by the Natural Resources Board on June 27, 2012. This permanent rule was approved by the Governor on _____.

The Wisconsin Natural Resources Board proposes an order to **renumber** subchapter III of ch. NR 203; to **amend** subchapter I (title) of chapter NR 203, 203.02 (title), (1), (2), (3) (intro.), (e), (f), (g), (h), (j), and (k), and (4) (title), (intro), (b) and (c), 203.03 (title), (1), and (4) (title), and (b), 203.05 (1) (d) and (e), (2) (intro.), (3), (4), and (5), 203.12, 203.13 (1), and 205.07 (1) (a) and (b), 205.08 (8) (intro), (a), (h), and (j), (9) (a) and (b), (10) (a) and (e); to **repeal and recreate** chapters NR 201 and 205.07 (1) (g) and (q); to **create** chapter NR 200.11, 203.02 (3) (L) and (m), (4) (d), (e), and (f), and (5), 203.03 (5), subchapter III (title) of chapter NR 203, 203.135, 203.136, 205.07 (1) (x) and (y), and 205.08 (8) (k), relating to the processing of WPDES permits and other permit issuance procedural matters.

WT-13-12

Analysis Prepared by the Department of Natural Resources

1. Statutes interpreted:

Sections 283.31, 283.33, 283.35, 283.37, 283.39, 283.41, 283.45, 283.49, 283.53, and 283.63, Stats.

2. Statutory authority:

Sections 227.11, 283.11, 283.31, 283.37, 283.39, and 283.41, Stats.

3. Explanation of agency authority:

Chapter 283, Stats., grants authority to the department to establish, administer and maintain a Wisconsin Pollutant Discharge Elimination System (WPDES). More specifically, ss. 283.11 and 283.31, Stats., provide authority to promulgate rules to administer the WPDES permit program consistent with federal requirements. The department has general authority to promulgate rules under s. 227.11 (2) (a), Stats., that interpret the specific statutory authority granted in ch. 283, Stats.

4. Related statute or rule:

These rules relate directly to the WPDES permit program that regulates wastewater discharges. Chapters NR 200, 201 and 203, Wis. Adm. Code relate to permit processing and permit issuance procedures. Chapter NR 205, Wis. Adm. Code contains general provisions applicable to the WPDES permit program.

5. Plain language analysis:

The purpose of the proposed rule changes is to ensure that the state's regulations are consistent with federal regulations as well as recent statutory revision in 2011 Act 167. The rule changes will establish

clear regulatory requirements for the processing of WPDES permits. Minor clarifications and corrections will also be made to these chapters.

Specifically, the proposed rule package will address EPA's issues with the state authority regarding permit processing issues and other permit issuance procedural matters. In a letter dated July 18, 2011, the U.S. Environmental Protection Agency (EPA) identified 75 potential issues with Wisconsin's statutory and regulatory authority for the WPDES permit program. EPA directed the department to either make rule changes to address this inconsistency or obtain a statement from the Attorney General's Office verifying that the existing rule is consistent with federal regulations. The department believes adoption of these rule changes (referred to as Rule Package 6) will address EPA's concerns for 13 of the issues. The item number of the applicable EPA issue is indicated in each rule section that addresses an EPA issue.

Following is a brief summary of changes to NR 200, NR 201, NR 203, and NR 205, Wis. Adm. Code:

Chapter NR 200 - This chapter contains the requirements for permit applications and water quality standards variances. A new section was created to add the federal regulations for the preparation of a draft permit after the receipt of a complete application, which were lacking in the rule as cited in EPA issue 65.

Chapter NR 201 - This chapter contains the requirements for the contents of the fact sheet for WPDES permits. Because of several changes needed to update the existing rule this chapter was repealed and recreated. It now includes all the federal regulations to address EPA issues 21 and 66. It is also consistent with s. 283.45, Stats. A note states that if the public notice includes some of the information specified in the fact sheet it may be omitted from the fact sheet because it is more appropriate in the public notice (decision to issue or deny a permit and the beginning and end dates of the comment period). The recreated rule was written compliant with the format procedures for drafting rules that the existing rule did not follow.

Chapter NR 203 - This chapter contains the processes for public noticing a draft permit, informational hearing, final determination to issue or deny a permit, and public adjudicatory hearing. Following are the significant changes to this rule:

- The rule was revised to address EPA issues 3, 22, 50, and 51 to be consistent with federal regulations. This consists of language clarifying the processes for permit actions (modifications, revocation and reissuance, or termination), identifying the causes for permit actions, the notification of government agencies and others, and public informational hearing requests.
- The rule was revised to address 2011 Act 167 changes to ch. 283 and ch. 285, Stats., and changes initiated by the department to clarify public notice procedures. This consists of language to identify what is to be included in the public notice, allows use of the department's Internet Web site to post public notices and documents, proposed variances to water quality standards may be included in the public notice, the term notification replaces circulation to reflect the broader use of electronic media, and permit actions related to substantial changes to concentrated animal feeding operation nutrient management plans.

Chapter NR 205 - This chapter contains WPDES program definitions, general conditions applicable to WPDES permits, and requirements for the issuance of WPDES general permits. The rule was revised to address EPA issues 18, 45, 47, 48, 49, and 62 to be consistent with federal regulations. This consists of language that added termination of the permit for certain violations, replaced the use of the term suspension with termination, clarified the signatory requirements for permit documents, revised the reporting requirements for facility changes, and added general conditions that permit compliance constitutes compliance for purposes of enforcement and affirmative defense.

6. Summary and comparison with existing and proposed federal regulations:

The department rules will be consistent with existing federal regulations with the revisions contained in this rule package. No proposed federal regulations are applicable; none were mentioned in EPA's letter that contained the 75 issues the department needed to address.

7. Comparison of similar rules in adjacent states:

All the other U.S. EPA Region 5 states (Illinois, Indiana, Michigan, Minnesota and Ohio) are subject to the U.S. EPA regulations that are delegated to the states for implementation. Wisconsin's rules for permit processing and other permit issuance procedures should essentially be the same as the other states.

8. Summary of factual data and analytical methodologies:

Not applicable.

9. Analysis and supporting documentation used to determine effect on small business or in preparation of an economic impact analysis:

Not applicable. The requirements of this rule package establish permit processing procedures that are implemented by the department and affect department staff, not the permit applicants. Other changes to the standard permit conditions in ch. NR 205 are minor.

10. Effect on small business:

None, the requirements of this rule package affect the department not the permit applicants.

11. Agency contact:

Paul W. Luebke, PH
Wisconsin Department of Natural Resources
Bureau of Water Quality WQ/3
101 South Webster Street
P.O. Box 7921
Madison, WI 53707-7921
Paul.Luebke@wisconsin.gov

12. Where comments may be submitted:

Comments on the rule package may be submitted to the agency contact listed in item 11. A notice of public hearing was posted March 14, 2014. The rule package documents are posted on the Administrative Rules System Web site which can be accessed at the link below.

<https://health.wisconsin.gov/admrules/public/Rmo?nRmoId=13187>

An informational hearing is scheduled for May 1, 2014. Comments on the proposed rule must be received on or before May 12, 2014.

SECTION 1. NR 200.11 is created to read:

NR 200.11 Draft Permit. (1) Once an application is complete, the department shall tentatively decide whether to prepare a draft permit or to deny the application.

(2) If the department tentatively decides to deny the permit application, the department shall issue a notice of intent to deny. A notice of intent to deny the permit application shall follow the same procedures as any draft permit prepared under this section. If the department's final decision is that the tentative decision to deny the permit application was incorrect, the department shall withdraw the notice of intent to deny and proceed to prepare a draft permit under par. (4) of this section.

(3) If the department tentatively decides to issue a WPDES permit, a draft permit shall be prepared under paragraph (4) of this section.

(4) A draft permit shall contain terms and conditions required pursuant to ch. 283, Stats., and all rules promulgated pursuant to ch. 283, Stats.

(5) All draft permits prepared by the department under this section shall be accompanied by a fact sheet if required under ch. NR 201. The department shall provide public notice of the draft permit and fact sheet, and opportunity for a public hearing under ch. NR 203 and ch. 283, Stats.

SECTION 2. NR 201 is repealed and recreated to read:

CHAPTER NR 201

FACT SHEET FOR WPDES PERMITS

NR 201.01 Purpose. The purpose of this chapter is to identify when the department shall prepare a fact sheet for a draft Wisconsin Pollutant Discharge Elimination System (WPDES) permit, and what information shall be included in the fact sheet. The fact sheet describes the discharge to be permitted with a brief explanation of the draft permit's effluent limits, monitoring requirements, and other conditions. The department shall send a copy of the fact sheet to the applicant and any interested person upon request.

NR 201.02 Applicability. The department shall prepare a fact sheet for each discharge for which it proposes to issue a WPDES individual permit under s. 283.31, Stats., a storm water permit under s. 283.33, Stats., or a general permit under s. 283.35, Stats. A fact sheet does not need to be prepared for each facility that is granted coverage under a general permit that covers a specific category of discharge.

NR 201.03 Contents of permit fact sheet. The fact sheet shall include all of the following information if applicable:

(1) The name and address of the applicant and facility location where the discharge occurs.

(2) A statement as to whether the discharge is in existence or is a proposed new discharge or new source.

(3) Justification for any waivers from permit application requirements that were granted.

(4) A brief description of the type of facility and activity resulting in the discharge that is described in the permit application and is subject to the permit requirements.

(5) A sketch or detailed description of the discharge outfall location with respect to the receiving water, surface water or groundwater as applicable.

(6) A description of the type and quantity of discharges regulated under the permit shall include all of the following:

(a) Information about the wastewater sources and by-product solids, biosolids or sludges.

(b) Treatment processes, storage facilities, and outfalls.

(c) The average daily discharge concentration and mass loading where appropriate of any pollutants subject to effluent limitations.

(d) The average daily flow in gallons or millions of gallons per day for continuous flows or the volume and frequency of batch discharges.

(e) The average monthly effluent temperatures for thermal discharge outfalls that may be subject to temperature limitations.

(7) If the tentative determination is to issue a permit all of the following shall be included:

(a) An explanation of the derivation of proposed effluent limitations for those pollutants proposed to be limited including: toxic pollutants, internal waste streams, and indicator pollutants. Include the calculation of any water quality based effluent limitations, technology based limitations, best professional judgment limitations established on a case-by-case basis, and limitations that are established for new sources or new discharges.

(b) Justification for any waivers granted from monitoring any pollutants contained in technology based effluent limit guidelines because the pollutant is not present or is only present at the background level due to the water intake without any increase of the pollutant from the activities of the discharger.

(c) A brief discussion and rationale of any proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations. For schedules to achieve compliance with water quality based effluent limitations, a brief description of treatment technologies or control strategies that may be available to achieve compliance.

(d) A brief summary of and basis for any proposed permit conditions including supporting regulatory or statutory references, which will have a significant impact on the discharge described in the application.

(e) An explanation of the limitations, conditions or standards included in the permit regarding by-product solids, biosolids or sludges, and a description of the land application plan or other means of disposal.

(8) A brief description of the uses for which the receiving waters have been classified and of the applicable water quality standards and effluent limitations.

(9) A statement of the tentative determination to issue or deny a permit.

(10) A description of the procedures for reaching a final decision on the draft permit including all of the following:

(a) The beginning and ending date of the 30 day period for submitting written comments.

(b) The address where comments will be received.

(c) Procedures for requesting a public hearing and a statement on the nature of such hearings.

(d) Any other procedures for public participation in the final determination.

(e) Name and contact information of the person from whom to obtain additional information.

(11) For every permit issued to a privately owned treatment works an explanation of any conditions expressly applicable to any user of the treatment works, as a limited co-permittee, that may be necessary in the permit to ensure compliance. If separate permits are issued to the treatment works and to its users, an explanation of the department's decision to issue the permits and what conditions are applicable to the treatment works and users.

(12) Any of the following supplemental information shall also be attached to the fact sheet to provide supporting information for permit limits, conditions, or other requirements when applicable to the permitted discharge:

(a) Substantial compliance determination for an existing discharger.

(b) Water quality based effluent limits recommendation with limits calculations.

(c) Water quality variance or alternative effluent limit.

(d) Water intake evaluation for determining compliance with s. 283.31 (6), Stats.

(e) Groundwater evaluation of land treatment systems, land application systems, and storage facilities that have an associated monitoring well system.

(f) The assumptions and information used by the department to calculate any mixing zones for the discharge.

(13) If any of the specified fact sheet contents in this section are included in the public notice of the permit, that information may be omitted from the fact sheet. The items identified in subs. (9) and (10) are typically included in the public notice.

SECTION 3. NR 203 Subchapter I (title), NR 203.02 (title), (1), (2), (3) (intro.), (e), (f), (g), (h), (j), and (k) are amended to read:

SUBCHAPTER I

NOTICES OF COMPLETED PERMIT APPLICATIONS AND DRAFT PERMITS

NR 203.02 Public notice of receipt of a completed permit application and draft permit.

NR 203.02 (1) INTENT. Public notice of the receipt of a completed permit application and draft permit is intended to inform interested ~~and potentially interested~~ members of the public of a completed application, the tentative determination to issue or deny the permit as required in s. 283.39, Stats., and the public's right to obtain additional information, submit written comments, or request a public hearing with respect to issuance of a ~~particular~~ draft permit. Exceptions to the requirements for noticing are provided in s. NR 203.015. Public notice procedures for the issuance of general permits are contained in s. NR 205.08.

(2) FORM. The public notice of receipt of a completed permit application and draft permit shall be in writing, with a title identifying the subject of the notice and the number of the ~~application~~ permit.

(3) CONTENT. The notice of receipt of a completed permit application and draft permit shall contain all of the following information:

(e) A brief description of the procedures for ~~the formulation of final determinations~~ reaching a final decision on the draft permit, including the 30-day period for public comment, and the 30-day period for requesting an informational public hearing, ~~and the~~ or the hearing date and location if the department has already decided to hold a hearing. The availability of fact sheets documents including the draft permit, fact sheet and other supporting information shall also be included in the notice.

(f) The name, address, ~~and phone number, and email~~ of the ~~governmental unit~~ contact person issuing the notices.

(g) The name, address, and phone number, email, and Internet Web site where interested persons may obtain further information, ~~request a copy of the fact sheet when applicable~~, request a copy of the draft permit, fact sheet, and inspect and copy forms and related documents.

(h) A statement that reasonable costs will be charged for copies of all information excluding public notices, permits, and fact sheets.

(j) If applicable, the location of each sludge treatment works treating domestic sewage including those for "sludge only facilities", the sludge use, the sludge disposal practices, and the location(s) of each sludge use or disposal site(s) known at the time of permit application.

(k) The requirements applicable to cooling water intake structures under 33 USC ~~1316 (b)~~ 1326 (b), ~~in accordance with~~ and 40 CFR part 125, subparts I, and J.

SECTION 4. NR 203.02 (3) (L) and (m) are created to read:

NR 203.02 (3) (L) Information indicating where the completed permit application, draft permit, and fact sheet may be viewed on the department's Internet Web site.

(m) If the applicant applied for a variance to a water quality standard, a statement regarding the tentative decision to approve or deny the variance. If the tentative decision is to grant the variance, the notice shall also specify which of the conditions specified in s. 283.15 (4) (a) 1. a. to e., Stats., were met, and shall also specify any effects of the variance on the designated use of the water body during the term of the permit.

SECTION 5. NR 203.02 (4) (title and intro), (b) and (c) are amended to read:

NR 203.02 (4) CIRCULATION NOTIFICATION. Procedures for ~~circulation~~ of providing public notice of a completed permit application shall include all of the following:

(b) Mailing the notice to the applicant, any user of a privately owned treatment works that was specifically identified in the permit application, and any person or group upon request.

(c) Mailing the notice to individuals and groups on a ~~formal~~ department WPDES permit application mailing list. Requests to be placed on the mailing list shall be directed to the Department of Natural Resources, WPDES Permits, P.O. Box 7921, Madison, Wisconsin 53707-7921.

SECTION 6. NR 203.02 (4) (d), (e), (f), and (5) are created to read:

NR 203.02 (4) (d) Publication of the notice through an electronic notification system established by the department.

(e) Publication of the notice on the department's Internet Web site.

(f) To satisfy the mailing requirement of this subsection the department may either send a paper copy of the document in the US mail, or transmit the document electronically by email, provided the person or group does not object to electronic mailing. The document mailed may reference the department's Internet Web site where additional referenced material can be accessed.

(5) PUBLIC NOTICE DATE. Public notice shall be considered to be provided on the date that the department first publishes the notice on its Internet Web site.

SECTION 7. NR 203.03 (title), NR 203.03 (1), (4) (title), and (b) are amended to read:

NR 203.03 Notice of receipt of a completed permit application and draft permit to other government agencies. (1) INTENT. The intent ~~for~~ proved of providing notice of the completed permit application and draft permit to other government agencies is to inform interested ~~and potentially interested~~ federal, state, and local government agencies of a completed application, the tentative determination to issue or deny the permit, and their right to obtain additional information, submit

written comments, or request a public hearing with respect to issuance of a ~~particular~~ draft permit. Exceptions to the requirements for noticing are provided in s. NR 203.015. Notification to government agencies of the proposed issuance of general permits shall be in accordance with s. NR 205.08.

(4) CIRCULATION NOTIFICATION. The following agencies shall be mailed government agency notices as described above:

(b) ~~United States~~ U.S. army corps of engineers, and U.S. fish and wildlife service.

SECTION 8. NR 203.03 (5) is created to read:

NR 203.03 (5) WAIVER OF NOTICE AND ELECTRONIC NOTICE. Any agency in sub. (4) may waive the right to receive notice or may consent to receive notices electronically.

SECTION 9. NR 203.05 (1) (d) and (e), (2) (intro.), (3), (4), and (5) are amended to read:

NR 203.05 (1) (d) ~~Any person.~~

(e) ~~Any group of persons less than 5.~~ Fewer than 5 persons.

(2) MANDATORY HEARING. The department shall schedule a public hearing on any permit if any of the following occur:

(3) FORM OF REQUEST OR PETITION. Any request or petition for hearing filed pursuant to this section shall be in writing and dated. The request or petition for hearing shall indicate the number of the draft permit, the interest of the party filing the request or petition, the issues that the party desires to be considered at the hearing and the reason why a hearing is warranted and the number of the proposed permit or application.

(4) TIMELINESS OF REQUEST OR PETITION. No request or petition for hearing under this section shall be timely unless received by the department within 30 calendar days of the issuance of the public notice of the receipt of a completed permit application and draft permit.

(5) FILING ADDRESS. All requests or petitions for a public informational hearing shall be served by delivery or mail addressed to the Department of Natural Resources, WPDES Permits, P.O. Box 7921, Madison, Wisconsin 53707-7921.

SECTION 10. NR 203 Subsection III (title), inserted after NR 203.11, is created to read:

SUBCHAPTER III
PERMIT ACTIONS

SECTION 11. NR 203.12 and 203.13 (1) are amended to read:

NR 203.12 Final determination to issue or deny a discharge permit. The department shall ~~have the discretion to issue~~ or deny any permit for a discharge under ch. 283, Stats., ~~or~~ and may modify any terms and conditions of a draft permit based on consideration of required standards, the permit application, statements by the public or by government agencies, and any other pertinent information.

NR 203.13 (1) FORM. The notice of final determination under s. NR 203.12 shall be in writing, with a title identifying the subject of the notice and the number of the ~~application permit~~.

SECTION 12. NR 203.135 and 203.136 are created to read:

NR 203.135 Modification, revocation and reissuance, or termination of permits.

(1) GENERAL. The department may modify, revoke and reissue, or terminate a permit upon request of any interested person, including the permittee, or upon the department's initiative. Permits may only be modified, revoked and reissued, or terminated for one of the causes listed in s. NR 203.136. If cause exists, the department may request an updated application if necessary.

(2) NOTIFICATION. Whenever, on the basis of any information available to it, the department finds that there is cause under s. NR 203.136 for modifying, revoking and reissuing, or terminating a permit, in whole or in part, the department shall notify the permittee by certified mail or personal service of its intended permit action. However, if the department proposes to modify a permit to authorize a substantial change to a nutrient management plan of a concentrated animal feeding operation, the department may notify the permittee by email. When notifying the permittee of a proposal to modify, revoke and reissue, or terminate the department shall specify the information upon which the department relies, and if the department intends to modify the permit, shall explain the modifications which the department intends to make in the permit.

(3) REQUESTS. Permits may be modified, revoked and reissued, or terminated at the request of any interested person, including the permittee. All requests for a modification, revocation and reissuance, or termination by a permittee or interested person shall be in writing and shall contain facts or reasons supporting the request.

(4) DENIAL. If the department decides the request is not justified, the department shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice, comment, informational hearings or adjudicatory hearings under s. 283.63, Stats.

(5) PERMIT ACTION PROCEDURES. (a) If the department tentatively decides to modify or revoke and reissue a permit the department shall prepare a draft permit under s. NR 200.11 incorporating the proposed changes. For a permit modification, the department may request additional information and

may require the submission of an updated application. For revoked and reissued permits, the department shall require the submission of a new application. The department shall follow the public notice, comment and hearing procedures in ch. NR 203 with respect to its intention to modify, or revoke and reissue a permit, except as otherwise provided in this section.

(b) In a permit modification only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the existing permit. When a permit is revoked and reissued, the entire permit is reopened just as if the permit had expired and was being reissued for a new term. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(c) Minor modifications that qualify for a procedural exemption under s. NR 203.015 are not subject to the requirements of this section, and the permit may be modified without a draft permit or public review.

(6) TERMINATION. (a) Except as provided in paragraph (b), if the department tentatively decides to terminate a permit, the department shall issue a notice of intent to terminate. A notice of intent to terminate is subject to the same procedures as a draft permit prepared under s. NR 200.11.

(b) If the department tentatively decides to terminate a permit due to permanent elimination of a discharge that is due to a facility closure, connection to a publicly owned treatment works or some other cause, the department may terminate the permit by written notice to the permittee. The termination of the permit shall be effective 30 days after the notice is sent, unless the permittee files a written objection of the termination with the department within the 30 day time period. If a notice of objection is filed by the permittee, then the department shall follow the procedures for preparation of a draft permit under s. NR 200.11.

(7) CAFO PERMITS. (a) If the department proposes to modify a permit to authorize a substantial change to a nutrient management plan of a concentrated animal feeding operation (CAFO), the department is not required to provide notice of the substantial change under s. 283.39 (1) (a), Stats. The department shall provide a 14-day period, from the date on which notice is provided on the department's Internet Web site in accordance with s. 283.39 (1) (d), Stats., for written comments on a proposed modification to authorize a substantial change to a nutrient management plan. A petition for an informational hearing on a proposed permit modification to authorize a substantial change to a nutrient management plan of a concentrated animal feeding operation shall be filed within 14 days of the date notice is provided under s. 283.39 (1) (d), Stats.

(b) Incorporation of a nutrient management plan in a CAFO general permit when a CAFO obtains coverage under a general permit is not a permit modification subject to the notice and public notice procedures in the subsection.

NR 203.136 Causes for a modification, revocation and reissuance, or termination.

(1) MODIFICATION. The department may modify a permit for any of the following causes:

(a) *Changes to facility or discharge.* There are material and substantial alterations or additions to the permitted facility or activity, including changes in sludge use or disposal which occurred after permit reissuance which would justify the application of different permit conditions or the addition of permit conditions.

(b) *New information.* The department has received new information, other than revised regulations, guidance or test methods, that was not available at the time of permit issuance or reissuance and that would have justified different permit terms or conditions.

(c) *New regulations or standards.* After permit reissuance or issuance, the standards or regulations have changed and a permittee has requested a change in a timely manner, or a judicial decision stays or remands an applicable standard or regulation that requires a change to the permit. For purposes of this paragraph, a changed standard or regulation means a change in an effluent limitation guideline, a change in secondary treatment regulations, or a change in a water quality standard that has been approved by EPA.

(d) *Judicial decision.* A decision from an administrative law judge or judicial court, or a signed stipulation to resolve a s. 283.63, Stats contested case hearing, specifies a change to a permit term or condition that was the subject of the contested case hearing or judicial proceeding.

(e) *Compliance schedules.* The department determines good cause exists for modification of the compliance schedule such as events over which the permittee has little or no control and for which there is no reasonably available remedy. The department may also modify a compliance schedule to reflect time lost during construction of an innovative or alternative facility. The compliance schedule may not be modified to extend beyond the deadlines established under state and federal law.

(f) *Variations.* If a permittee has filed a variance request to an effluent limitation or thermal discharge, or a variance from a technology based effluent limit based on the presence of fundamentally different factors from those on which the effluent limitations guideline was based.

(g) *Toxics.* When required to incorporate an applicable toxic effluent standard or prohibition.

(h) *Reopener.* When required by a provision in the permit that requires a modification or reopening of the permit.

(i) *Net limits.* Upon the request of a permittee for an adjustment to a technology based limitation based on pollutants in the intake water, provided the permittee qualifies for the limit adjustment, or the department may modify a technology based limitation based on an intake credit if the permittee no longer qualifies for the adjustment.

(j) *Pretreatment.* When necessary to establish a compliance schedule for development of a pretreatment program.

(k) *Failure to notify.* Upon failure of the department to notify another state whose waters may be affected by the discharge.

(L) *Non-limited pollutants.* When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements applicable to the permittee.

(m) *Errors.* To correct technical mistakes such as errors in calculations or mistakes in applying pertinent regulations to permit terms and conditions.

(n) *Unable to achieve effluent limitation.* Where the permittee has installed a treatment technology considered by the permit writer in setting effluent limitations, and where the permittee has properly operated and maintained its treatment facilities, but nevertheless has been unable to achieve compliance with those effluent limitations, the department may modify the limitations to reflect the level of pollutant control actually achieved, but in no case be less stringent than a subsequently promulgated effluent limitations guideline.

(o) *Land application plans.* When required by a permit condition to incorporate a land application plan for beneficial reuse for sewage sludge or other biosolids, to revise an existing land application plan or to add a land application.

(p) *Transfer of permit.* To reflect a change in ownership or operator of a permitted facility. A transfer of a permit to a new owner or operator is subject to all of the following procedures:

1. A permit may only be transferred after notification of the department of the proposed new permittee. The modification request shall include the "Facility Information" section of the permit application or equivalent.

2. The current permittee and proposed new permittee shall submit to the department a written agreement that specifies the date of transfer and acceptance of responsibility for compliance with the permit and liability for any violations.

3. The modification is exempt from public notice procedures under s. NR 203.015, if the department determines no other change to the permit is necessary.

(q) *Other.* One of the causes for termination in sub. (3) exists and the department determines that a modification is more appropriate than termination.

(2) REVOCATION AND REISSUANCE. The department may revoke and reissue a permit for any of the following causes:

(a) For any of the causes for a modification listed in sub. (1) provided the permittee agrees to the revocation and reissuance.

(b) Based on one of the causes for termination in sub. (3) if the department determines that a revocation and reissuance is the appropriate action to take.

(3) TERMINATION. The department may terminate a permit, or deny an application for reissuance, for any of the following causes:

(a) Substantial noncompliance by the permittee with any condition of a permit.

(b) Failure by the permittee in the permit application or during the permit issuance process to fully disclose all relevant facts, or the permittee's misrepresentation of any relevant facts at any time.

(c) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification, revocation and reissuance, or termination.

(d) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge or sludge use or disposal practice regulated by the permit.

Note: Refer to 40 CFR 122.62, 122.63, and 122.64 for federal regulations on the causes for a permit modification, revocation and reissuance, or termination.

SECTION 13. NR 203 subch. III is renumbered subch. IV.

SECTION 14. NR 205.07 (1) (a) and (b) are amended to read:

NR 205.07 (1) (a) *Duty to comply.* The permittee shall comply with all conditions of the permit. Any permit noncompliance is a violation of the permit and is grounds for enforcement action; ~~permit termination, permit-revocation and reissuance, or modification;~~ or denial of a permit reissuance application. If a permittee violates any terms of the permit, the permittee is subject to the penalties established in ch. 283, Stats.

(b) *Permit actions.* As provided in s. 283.53, Stats., after notice and opportunity for a hearing the permit may be modified, ~~suspended, terminated or revoked and reissued, or terminated~~ for cause. ~~If the~~ The filing of a request by the permittee files a request for a permit modification, ~~termination, suspension,~~ revocation and reissuance, or termination, or ~~submits~~ a notification of planned changes or anticipated noncompliance, ~~this action by itself does not relieve the permittee of~~ does not stay any permit condition.

SECTION 15. NR 205.07 (1) (g) and (q) are repealed and recreated to read:

NR 205.07 (1) (g) Signatory requirement. 1. All permit applications, reports, and other information requested by the department shall be signed by a responsible executive or municipal officer, manager, partner or proprietor as specified in s. 283.37(3), Stats., or a duly authorized representative of the officer, manager partner or proprietor that has been delegated signature authority pursuant to subd. 2. All applications and reports submitted to the Department shall include the certification statement specified in subd. 3.

Note: Section 283.37 (3), Stats. states that an application form shall be signed by :

(a) In the case of a corporation, by a principal executive officer of at least the level of vice president or by the principal executive officer's authorized representative responsible for the overall operation of the point source for which a permit is sought.

(aL) In the case of a limited liability company, by a member or manager.

(b) In the case of a partnership, by a general partner.

(c) In the case of a sole proprietorship, by the proprietor.

(d) In the case of publicly owned treatment works or a municipal separate storm sewer system by a principal executive officer, ranking elected official, or other duly authorized employee.

Note: Examples of permit documents that must be signed and certified by an officer, manager, partner or proprietor or their authorized representative include: permit applications under s. NR 200.07, variance applications under s. NR 200.23, submittals for other permit actions under s. NR 203.135, discharge monitoring reports under s. NR 205.07 (1) (r) 1, and compliance maintenance annual reports under s. NR 208.04. In addition, any other department forms with a signature block for the authorized representative shall comply with these signatory requirements.

2. An officer, manager, partner or proprietor in subd. 1 may only delegate signature authority to a duly authorized representative if that person has responsibility for the overall operation of the facility or activity regulated by the WPDES permit. To delegate signature authority, the officer, manager, partner or proprietor shall:

a. Provide written permission to a duly authorized representative to submit specific documents on behalf of the officer, manager, partner or proprietor for the permitted facility.

b. The delegated authorization shall specify either a named individual or an employment position that has the signature authority and responsibility.

c. The written permission must be submitted to the department prior to or together with the submittal of any required document. If there are any changes to this permission, a new written permission shall be submitted to the department.

3. Any person under subd. 1 or 2 signing a permit application, report or other form as required by the department shall provide the following certification statement: I certify under penalty of law that this

document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

4. Upon written request to the department and subject to the department's approval, a permittee may submit information by electronic media or electronic transmission provided the officer or authorized representative signs and submits a certification statement in accordance with subd. 3.

NR 205.07 (1) (q) *Reporting Requirements.* The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source.

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification requirement applies to pollutants which are not subject to effluent limitations in the existing permit.

3. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process nor reported pursuant to an approved land application plan. Additional sites may not be used for the land application of sludge until department approval is received, as required by ch. NR 204.

SECTION 16. NR 205.07 (1) (x) and (y) are created to read:

NR 205.07 (1) (x) *Permit as enforcement shield.* Compliance with a permit during its term constitutes compliance for purposes of enforcement with 33 USC 1311, 1312, 1316, 1317, 1328 and 1345 (a) and (b), except for any toxic effluent standard or prohibition, and standards for sewage sludge use or disposal. If a new or revised toxic effluent standard or toxic prohibition becomes effective during the term of the permit, the permittee may be subject to enforcement action if the discharge exceeds the new or revised effluent standard for the toxic pollutant even though the discharge is in compliance with the existing permit. The permittee may also be subject to enforcement action standards for sewage sludge use or disposal. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in ch. 283, Stats., and ch. NR 203.

Note: The toxic effluent standards in s. NR 205.07 (1) (x) are the technology based limitations applicable to the categorical sources in accordance with 33 USC 1317 (sec. 307 of the Clean Water Act). Refer to 40 CFR 122.5 (a).

(y) *Affirmative defense.* Compliance with a permit condition which implements a particular standard for sewage sludge use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for sewage sludge use or disposal.

SECTION 17. NR 205.08 (8) (intro.), (a), (h), and (j) are amended to read:

NR 205.08 (8) (intro.) Any general permit issued by the department may, after an opportunity for hearing, be modified, ~~suspended or revoked, in whole or in part~~ revoked and reissued, or terminated. Whenever the department finds there is a need to modify, ~~suspend or revoke~~ and reissue, or terminate a general permit, a public notice shall be made allowing 30 days for public comment prior to the intended date of final action. Any public notice shall:

(a) Be published as a class 1 notice under ch. 985, Stats., in all counties where dischargers may be located, or in the official state newspaper as defined in s. 985.04, Stats. and on the department's Internet Web site.

(h) Be distributed for comment to the U.S. environmental protection agency, the U.S. army corps of engineers, U.S. fish and wildlife service, and other states potentially affected by the discharges. This subsection shall only apply to general permits which authorize discharges to surface waters.

(j) Be mailed to all facilities known by the department to be covered by a general permit in the case of ~~revocation or suspension~~ termination of a general permit to a class or category of discharge.

SECTION 18. NR 205.08 (8) (k) is created to read:

205.08 (8) (k) To satisfy the mailing requirement of this of this section the department may either send a paper copy of the document in the US mail, or transmit the document electronically by email, provided the person or group does not object to electronic mailing. The document mailed may reference the department's Internet Web site where additional referenced material can be accessed.

SECTION 19. NR 205.08 (9) (a) and (b), (10) (a) and (e) are amended to read:

205.08 (9) (a) General permits may be reissued following public notice and opportunity for hearing. The public notice procedures of sub. (8) shall apply to general permit reissuance. Whenever possible, the department shall reissue general permits prior to the expiration date of the previous general permit to prevent the possibility of dischargers being unpermitted. Even though dischargers under a general permit are not required to submit an application for reissuance, the provisions of s. ~~227.14(2)~~

227.51 (2), Stats., shall apply as though an application had been submitted by the class or category of dischargers covered by the permit.

(b) If the department intends to terminate the coverage of a general permit to a class or category of discharger upon the expiration of the general permit, the action shall ~~be taken as a suspension or revocation~~ follow the procedural requirements under sub. (8).

(10) (a) The department shall hold public informational hearings on any proposed general permit issuance, reissuance, modification, ~~suspension~~, ~~revocation~~ ~~or~~ and reissuance, or termination if the department determines that there is significant public interest in holding a hearing or upon the petition of 5 or more persons. Petitions shall indicate the interest of the petitioners and the reasons why a hearing is warranted. Requests for hearings under this section shall be submitted so that the requests will be received by the department during the 30-day comment period provided by the public notice of the proposed action.

(e) The department shall make a final determination on the proposal to issue, reissue, modify, ~~suspend~~, ~~revoke~~ ~~or~~ and reissue, or terminate a general permit based upon the consideration of statements by the public, government agencies and any other pertinent information. A notice of final determination shall be prepared and circulated in accordance with s. NR 203.13.

SECTION 20. EFFECTIVE DATE.

This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

December 11, 2014

SECTION 21. BOARD ADOPTION.

The forgoing rule was approved and adopted by the State of Wisconsin Natural Resources Board

on _____.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary