

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES**

NOTICE OF PUBLIC HEARING
Natural Resources Board Order WT-13-12

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Stats, the Department of Natural Resources, hereinafter the Department, will hold a public hearing on proposed revisions to chs. NR 200, 201, 203, and 205, Wis. Adm. Code, relating to the Wisconsin Pollutant Discharge Elimination System (WPDES) wastewater permit program regarding permit processing and permit issuance procedures, on the date and at the time and location listed below.

Hearing Information

Date and Time

May 1, 2014
10:00 AM to noon

Location

Wisconsin Department of Natural Resources
Room 313 Natural Resources Building
101 South Webster Street
Madison, WI 53703

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Paul Luebke using the contact information below. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and Fiscal Estimate

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link <https://health.wisconsin.gov/admrules/public/Home>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Paul Luebke using the contact information below.

Submitting Comments

Comments on the proposed rule must be received on or before May 12, 2014. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Paul Luebke, WQ/3
Department of Natural Resources
Bureau of Water Quality
101 S Webster St
PO Box 7921
Madison, WI 53707-7921

Phone: (608) 266-0234
Fax: (608) 267-2800
E-mail: Paul.Luebke@wisconsin.gov
Internet: Use the Administrative Rules System Web site accessible through the link provided

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, 283.63, 285.61, and 285.62, 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.

10. Effect on small business:

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

The Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us, or by calling (608) 266-1959.

Environmental Analysis

The Department has made a preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate Summary

The Department's tentative 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.

Dated at Madison, Wisconsin __ March 13, 2104 _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____/S/_____
Cathy Stepp, Secretary